

HOUSE BILL No. 2511

By Committee on Taxation

2-13

9 AN ACT concerning sales taxation; relating to bad debts; deductions or
10 refunds; requirements and procedures therefor; amending K.S.A. 2006
11 Supp. 79-3674 and repealing the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 79-3674 is hereby amended to read as
15 follows: 79-3674. (a) A seller is allowed a deduction from taxable sales for
16 bad debts attributable to taxable sales of such seller that have become
17 uncollectable. Any deduction taken that is attributed to bad debts shall
18 not include interest.

19 (b) *In the case of private label credit card accounts, a seller or lender*
20 *who makes a proper election pursuant to subsection (c), or an assignee or*
21 *affiliate of such seller or lender, shall be entitled to claim a deduction on*
22 *its sales and use tax returns or file a claim for refund of sales tax that the*
23 *seller has previously reported and paid to the department, if all of the*
24 *following conditions are met:*

25 (1) *No deduction or refund was previously taken or allowed with*
26 *respect to the portion of the account written off as a bad debt;*

27 (2) *the account has been found worthless and written off, either in*
28 *whole or in part, as a bad debt on the books and records of the lender or*
29 *an affiliate of the lender; and*

30 (3) *the account has been deducted as a bad debt for federal income*
31 *tax purposes under section 166 of the federal internal revenue code of*
32 *1986 (public law 99-514, 26 U.S.C. § 166) by the seller, the lender or an*
33 *affiliate of the seller or lender.*

34 (c) *In order for an entity to be eligible for a deduction or a refund*
35 *under subsection (b), the lender and the seller shall execute and maintain*
36 *a joint election, signed by both parties, designating as between the lender*
37 *and seller the entity that is entitled to claim or assign the deduction or*
38 *refund. This election may not be revoked unless a written notice is signed*
39 *by the parties that signed the election being revoked.*

40 ~~(b)~~ (d) *The amount of the bad debt deduction shall be calculated*
41 *pursuant to 26 U.S.C. § 166(b), except that such amount shall be adjusted*
42 *to exclude financing charges or interest, sales or use taxes charged on the*
43 *purchase price, uncollectable amounts on property that remain in the*

1 possession of the seller until the full purchase price is paid and expenses
2 incurred in attempting to collect any debt and repossessed property.

3 ~~(e)~~ (e) Bad debts may be deducted on the return for the period during
4 which the bad debt is written off as uncollectable ~~in the seller's books~~
5 ~~and records~~ and is eligible to be deducted for federal income tax purposes.
6 For purposes of this subsection, ~~a seller who~~ *an entity* that is not required
7 to file federal income tax returns may deduct a bad debt on a return filed
8 for the period in which the bad debt is written off as uncollectable ~~in the~~
9 ~~seller's books and records~~ and would be eligible for a bad debt deduction
10 for federal income tax purposes if the ~~seller~~ *entity* was required to file a
11 federal income tax return.

12 ~~(f)~~ (f) If a deduction is taken ~~or a refund is received~~ for a bad debt
13 and the debt is subsequently collected in whole or in part; ~~by the seller~~
14 ~~or the lender, or an affiliate or assignee of either, the entity that took the~~
15 ~~deduction or received the refund shall remit~~ the tax on the amount so
16 collected ~~must be paid and reported~~ on the return filed for the period in
17 which the collection is made. ~~If the entity is not required to file periodic~~
18 ~~returns, the entity shall remit the proportional tax to the department with~~
19 ~~any other return.~~

20 ~~(g)~~ (g) When the amount of bad debt exceeds the amount of taxable
21 sales for the period during which the bad debt is written off, a refund
22 claim may be filed by the seller within ~~the applicable statute of limitations~~
23 ~~for refund claim pursuant to subsection (b) of K.S.A. 79-3609 and amend-~~
24 ~~ments thereto, however, the statute of limitations shall be measured from~~
25 ~~the due date of the return on which the bad debt could first be claimed~~
26 ~~three years from the date the account is determined to be worthless.~~

27 ~~(h)~~ (h) Where filing responsibilities have been assumed by a certified
28 service provider, the service provider may claim, on behalf of the seller,
29 any bad debt allowance provided by this section. The certified service
30 provider must credit or refund the full amount of any bad debt allowance
31 or refund received to the seller.

32 ~~(i)~~ (i) For the purposes of reporting a payment received on a previ-
33 ously claimed bad debt, ~~any payments made on a debt or account must~~
34 ~~first be applied proportionally to the taxable price of the property or~~
35 ~~service and the sales tax thereon, and secondly to interest, service charges~~
36 ~~and any other charges~~ *payments by the purchaser may be applied ratably*
37 *against the various elements comprising the debt the purchaser contracted*
38 *to pay, as provided in the contract of sale, as provided by the seller or*
39 *lender's systems maintained in the ordinary course of business, or under*
40 *any other method which reasonably determines the original purchase*
41 *price and the sales tax due on the sale. Payments made on any transaction*
42 *which includes both taxable and nontaxable components shall be allocated*
43 *proportionally between the taxable and nontaxable components.*

- 1 ~~(h)~~ (j) In situations where the books and records of the seller, or
2 certified service provider on behalf of the seller, claiming the bad debt
3 allowance support an allocation of the bad debts among the member
4 states, such an allocation is permitted. *If a seller remits sales or use tax*
5 *to the state and to one or more other states, the entity claiming any de-*
6 *ductions or refunds under this section may use an apportionment method*
7 *to substantiate the amount of Kansas tax included in the bad debts to*
8 *which the deduction or refund applies. The apportionment method must*
9 *use the seller's Kansas and non-Kansas sales, the seller's taxable and non-*
10 *taxable sales and the amount of tax the seller remitted to Kansas. In the*
11 *alternative, the entity claiming the deductions or refund may treat a spec-*
12 *ified percentage of accounts as giving rise to a deduction or refund under*
13 *this section, which percentage is derived from a sampling of the applicable*
14 *records in accordance with a methodology to be agreed upon by the de-*
15 *partment and the entity claiming the deduction or refund.*
- 16 (k) As used in this section: (1) "Affiliate" means any person who is
17 either an affiliated entity under section 1504 of title 26 of the United States
18 code of a person described in (2)(A) or (2)(B), an entity that would be an
19 affiliated entity under section 1504 of title 26 of the United States code,
20 but for the fact that such entity is not a corporation, or an assignee or
21 other transferee of a person described in (2)(A) or (2)(B);
- 22 (2) "lender" means any of the following:
- 23 (A) Any person who owns or has owned a private label credit card
24 account which that person purchased directly from a seller who reported
25 the tax;
- 26 (B) any person who owns or has owned a private label credit card
27 account pursuant to a contract directly with the seller who reported the
28 tax; or
- 29 (C) any person who is either an affiliate of a person described in
30 subsection (k)(2)(A) or (k)(2)(B), or an assignee or other transferee of a
31 person described in (k)(2)(A) or (k)(2)(B); and
- 32 (3) "private label credit card" means any charge card, credit card or
33 other instrument serving a similar purpose that carries, refers to or is
34 branded with the name or logo of a seller that can be used for purchases
35 from the seller whose name or logo appears on the card or instrument or
36 for purchases from any of the seller's affiliates. In the case of a card or
37 instrument which may also be used to make purchases from persons other
38 than the seller whose name or logo appears on the card or instrument, or
39 the seller's affiliates, only sales by the seller and the seller's affiliates which
40 are identifiable apart from any sales by such unrelated persons shall be
41 treated as sales made pursuant to a private label credit card. Nothing in
42 this subsection authorizes any credit or refund with respect to bad debts
43 attributable to sales by such unrelated persons.

- 1 *(l) The provisions of this act shall apply to accounts determined to be*
- 2 *worthless on and after July 1, 2007.*
- 3 Sec. 2. K.S.A. 2006 Supp. 79-3674 is hereby repealed.
- 4 Sec. 3. This act shall take effect and be in force from and after its
- 5 publication in the statute book.