



OHIO COUNCIL OF  
**RETAIL**  
MERCHANTS  
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PROPONENT TESTIMONY BEFORE THE  
SENATE WAYS & MEANS COMMITTEE  
ON SUBSTITUTE HOUSE BILL 223

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Good morning, Chairman Blessing, Vice Chair Roegner, Ranking Member Martin, and members of the Senate Ways and Means Committee. On behalf of the members of the Ohio Council of Retail Merchants that provide credit to customers through their partnerships with private label credit card companies, I am here to offer testimony in support of Substitute House Bill 223 and hopefully provide you with a greater understanding of the bill. Thank you for this opportunity and also many thanks to Representative Hillyer for his leadership on an issue of great importance to many Ohio retailers.

The statute regarding sales tax credits on vendor bad debts no longer reflects current industry practice. The author of the original legislation--Senate Bill 16 of the 113<sup>th</sup> General Assembly--could not have foreseen that there would come a time when almost every retailer offering credit to consumers would partner with a private label credit card company to manage their credit accounts. Although the card itself bears the name of the retailer, the credit is issued by a third-party bank otherwise known as a private label credit card company. This contractual partnership between the retailer and the card company hired to manage the retailer's credit program contains specifics regarding the sharing of program expenses, which includes bad debts. The greater the bad debts, the greater the cost of the program to the retailer.

Regardless of how the program is financed and how expenses are shared, the retailer is the responsible entity when it comes to advancing sales tax to the state on behalf of the consumer with the expectation that the consumer will pay his or her debt. While they serve as the primary sales tax collection agents for the state, retailers have never been the taxpayer on whom the tax is imposed. They are the intermediaries that are required by law to hold the customer's tax in trust until remitted, however, vendors were never meant to be the guarantors of the tax.

When a consumer defaults on an account, the spirit of the current statute indicates that the retailer is due a credit of the sales tax paid because the tax is imposed on the consumer, not the retailer. That is the reason why the bad debt deduction should be considered a reimbursement or

credit, not a tax expenditure. If the retailer is not reimbursed or given credit for the amount of sales tax that the taxpayer did not pay, the tax unfairly becomes a business tax instead of a consumption tax as designed by statute.

Every state in the country that assesses a sales tax provides a credit to retailers for sales tax bad debts written off on their books. Operationally, however, Ohio's current statute falls short when a private label credit card company is involved because the card company is the entity writing off the debt. House Bill 223 seeks to remedy this deficiency and update the statute to reflect current industry practice so that all retailers are treated the same regardless of how they finance their credit programs.

A private label credit card is very different from a general-purpose credit card bearing the Mastercard/VISA/American Express/Discover logo. A private label credit card can only be used at the retailer whose name appears on the card. This is a closed-loop relationship between the retailer and the private label card company. Every detail of every transaction made by the retailer and financed by the card company is known by both entities. The card company receives SKU-level data from retailers that enables them to know which portions of a sale are taxable and which aren't. When a bad debt occurs, the card company knows exactly how much sales tax is attributable to the bad debt.

In contrast, a card bearing the Mastercard/VISA/American Express/Discover logo can be used at any retail location that accepts them as payment. When one of these types of cards is used at a retail location, the only information that gets transmitted to the card company is the total price of the transaction. The card company has no way of knowing what portion of the transaction is attributable to sales tax, nor do they care to know. For this reason, it would be impossible for them to request a credit for sales tax paid on bad debts because they don't have the information required by both statute and rule to claim the deduction.

It is also important to point out that this bill--as well as current law--does not apply to secured loans such as auto and home loans as property that can be repossessed is not considered a bad debt.

I would like to leave you with a final thought. We all know that sales tax is owed by the customer and that the state requires retailers to remit the tax even when the customer has not yet paid for the purchase. If a customer never pays for the purchase, why should the retailer and the private label credit card company be required to absorb the customer's tax liability out of their own pockets? If someone owes taxes to the IRS and they fail to pay, does someone else then become responsible for that person's tax liability? The sales tax is the only tax assessed on an individual that becomes another entity's liability when the individual doesn't pay it.

With that Mr. Chairman, Vice Chair Roegner, Ranking Member Martin and members of the Committee, again I thank you for your time and thoughtful consideration of my remarks here today concerning Substitute House Bill 223. I will do my best to answer any questions the Committee may have.