

# ***Missouri – Retailer may receive bad debt refund on amounts written off by third party, extrapolated refund permitted***

October 4, 2013

## ***In brief***

In a case of first impression, the Missouri Administrative Hearing Commission found that a retail merchant was entitled to a sales tax refund on bad debts written off by its private label credit card bank. Missouri law does not expressly require that the entity requesting the refund be the entity that writes off the bad debt. The Commission found that the retailer and bank, acting as a unit, satisfied the requirements that allowed the merchant to qualify for a bad debt refund.

Additionally, the retailer was permitted to extrapolate bad debt amounts for 16 months of a 40 month refund period. Missouri retailers that issue private label credit cards should be aware of potential bad debt refund opportunities consistent with the rationale provided in this decision. [[\*Circuit City Stores, Inc. v. Director of Revenue\*](#), Administrative Hearing Comm'n of Missouri, No. 10-2239RS (8/21/13)]

## ***In detail***

### ***Facts***

Circuit City Stores, Inc., a retail merchant, sold tangible personal property to Missouri customers and remitted sales tax to the Missouri Director of Revenue on all taxable merchandise sold in the state. In order to provide financing to its customers, Circuit City created a private label credit card (PLCC) pursuant to an agreement with a bank (the PLCC Bank). The PLCC was a credit card that typically could only be used at a Circuit City store.

When purchasing merchandise with a Circuit City PLCC, Circuit City remitted Missouri sales tax to the Department and PLCC Bank reimbursed Circuit City for the tax remitted.

To the extent Circuit City PLCC cardholders defaulted on their obligations, PLCC Bank charged off the amounts as bad debts and deducted these bad debts, which included the payment of merchandise and sales tax, for federal income tax purposes under IRC sec. 166.

Circuit City requested a sales tax refund generally measured by:

(1) actual and estimated sales tax paid on bad debts written off by PLCC Bank for the January 1, 2007, to December 31, 2008, tax period, and (2) an extrapolated amount for the January 1, 2009, to April 30, 2010, tax period.

Following the Director's denial, Circuit City filed a complaint with the Commissioner.

### ***Missouri bad debt refund statute and regulation***

Missouri law provides that a tax erroneously collected may be refunded to the person legally obligated to remit the tax.

Further, a Missouri regulation provides that a seller may file for a refund on sales written off as bad debts so long as (among other requirements) the sale was previously reported as taxable.

***Circuit City eligible for a sales tax refund on bad debts written off by PLCC Bank***

The Commissioner acknowledged that the issue of whether Circuit City qualified for a refund relating to bad debts written off by its private label credit card company was one of first impression. Under the plain reading of Missouri law, Circuit City satisfied the two requirements for requesting a refund regarding a bad debt deduction: (1) it reported and remitted the sales tax at the time of the sale, and (2) the sales were written off as bad debts (albeit by a different entity).

The Commissioner recognized that Missouri allows a refund of overpaid sales tax to be made to a ‘seller,’ which is further defined as a ‘person,’ which

includes any corporation “or any other group or combination [of corporations] acting as a unit.” The Commissioner found that Circuit City and the PLCC Bank, together: (1) were legally obligated to remit sales tax, and (2) wrote off some transactions as bad debts. Accordingly, both Circuit City and PLCC Bank, acting as a unit, were a ‘person’ and a ‘seller’ entitled to a sales tax refund on overpaid Missouri sales tax.

***Extrapolated refund amount is permissible***

The Director argued that, by using extrapolation, Circuit City did not provide reliable information as to the amount of sales tax refund due.

The Commissioner recognized that the Director uses extrapolation to support tax liability and such a method has been accepted by the Commission. Accordingly, the Commissioner found that Circuit City may determine the amount of overpaid tax it is owed through extrapolation.

***The takeaway***

Missouri retailers that issue private label credit cards should be aware of potential bad debt refund opportunities consistent with the rationale provided in this decision. Taxpayers may file for a refund within three years from the due date of the return or the date the tax was paid, whichever is later.

The Commissioner’s lengthy opinion provides a summary of approximately eighteen decisions from other states regarding various issues involved in bad debt sales tax refunds. The Commissioner dismissed many cases because they were factually different, addressed different legal issues, or involved state law or regulations requiring that the party requesting the refund was the one that wrote off the bad debt. However, taxpayers interested in a concise digest of recent state-wide bad debt decisions may find this opinion instructive.

***Let’s talk***

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