Testimony- SB 2217

March 7, 2023 – ND House of Representatives Finance and Taxation Committee

Chairman Headland and Members of the House Finance and Taxation Committee

Regarding **SB 2217**

My name is John Dyste, and I am the President of the North Dakota Grocers Association (NDGA). NDGA represents the independent retail grocery stores in the state as well as over 80 wholesalers, distributors, and vendors. I ask that you give a "do pass" recommendation on **SB 2217**.

Since 1935 grocery stores, and most retail businesses in North Dakota have been **required** to collect state and local sales tax. Businesses would calculate their taxable sales and send their payments to the ND Tax

Department. This collection process has changed through the years, but at no time has the collection of sales tax cost a merchant money to do the work of being a collector of taxes for the state. This all changed with the advent of credit card payments. Currently most of North Dakota's independent grocers are finding that more than 70 percent of their transactions are by credit and debit cards.

I would like to briefly explain a credit card transaction from a retailer's perspective. To accept credit card payments; businesses must use a system that has become in some respects a monopoly. The two largest credit card companies and the largest banks in the country control the vast majority of all credit card transactions.

To accept credit card payments, merchants must pay interchange fees, assessment fees, and processing fees. These fees go to the card's issuing bank, the card's payment network, and the payment processor. Interchange fees and assessment fees are **non-negotiable** credit card fees for merchants. Processing fees can be negotiated.

Currently retailers pay between 2% to 4% in swipe fees on each transaction. Visa and Mastercard can, and many times have raised these fees annually. With virtually no competition, merchants have no recourse but to pay these fees. In addition to raising fees the biggest beneficiaries of the high inflation we are experiencing have been the credit card companies. They make more every time the price of products go up.

North Dakota merchants understand and assume the costs of accepting credit cards. However, we do not feel that credit card companies and banks should profit off the collection of sales taxes. SB 2217 prohibits this by preventing the collection of interchange fees on the sales tax portion of a credit card transaction. North Dakota still collects the sales tax due to it and merchants are not penalized for being required to partner with state and local governments in this process.

I would like to dispel some myths that those opposed to SB 2217 may claim:

- Merchants are not required to accept credit cards. We are not required to have electricity or running water either, but our customers expect that as well as expecting us to accept credit cards.

- North Dakota and all states have the authority to prohibit these fees. The Commerce Clause does not apply.
- POS Systems (Cash registers and credit card terminals) already support this process by segregating sales tax from the rest of the transaction.
- Credit Card Companies already collect sales tax data under their Level 2 data collection system. Level 2 data collected is:
    - Total purchase amount.
    - Purchase Date
    - Merchant Category Code
    - Sellers Name
    - **TAX AMOUNT**
    - Customer code/PO number
    - Merchant zip code.
- Credit Card Companies then **SELL** that data back to the merchants while claiming that there is "no special hardware or software required."
- Credit Card companies by law are **not** able to collect swipe fees on **SNAP** transactions. When a customer shops the store for groceries, they may purchase items that are SNAP approved and purchase items

that are taxable and not eligible for SNAP benefits. In **one** transaction the stores POS systems recognizes the SNAP eligible items and distinguishes them from the taxable items that are not eligible. The customer uses their SNAP Card for eligible products and uses another form of payment (credit card, cash, or check) to complete the transaction. There is no need to separate purchases into two transactions. The Credit Card swipe fee system recognizes this transaction and is able to process the purchase without assessing swipe fees on the SNAP portion of the transaction.

- Most merchants have these POS systems in place.
- Credit Card rewards programs will not be affected- those awards are only calculated on the purchase price of products and services.

Thank you for allowing our testimony. I would again urge a do pass on **SB 2217**. I will stand for any questions.

FMI THE FOOD INDUSTRY ASSOCIATION

SWIPE FEES ON SALES TAX

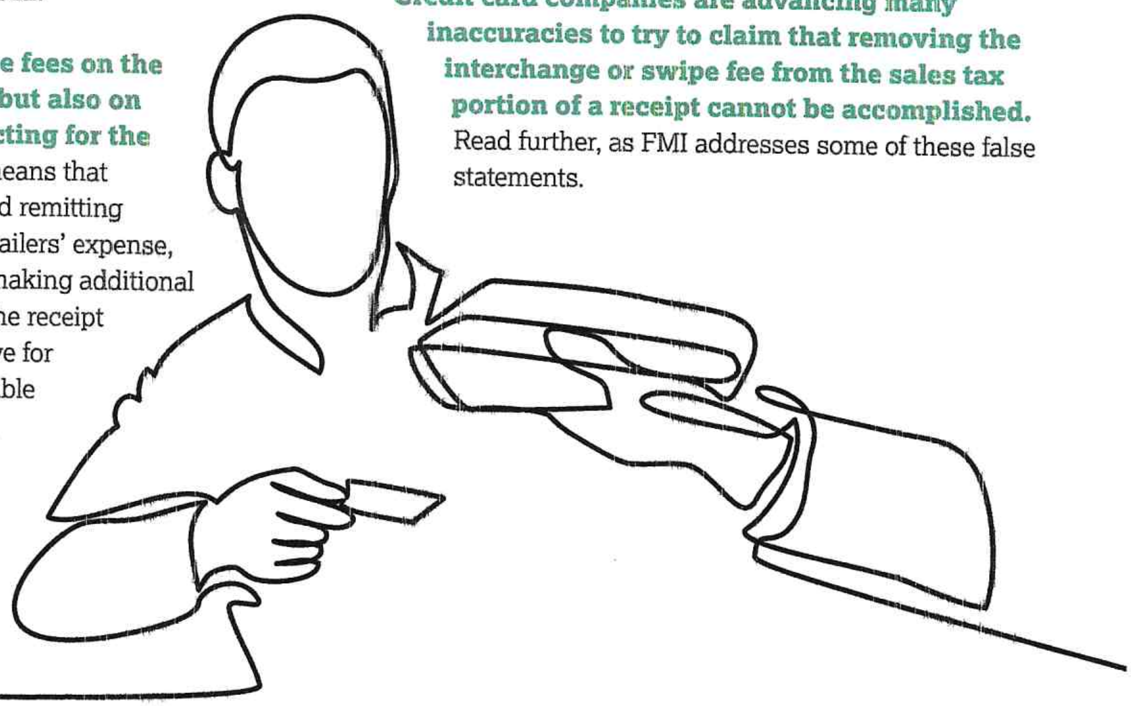
Retailers partner with the government on many issues. One way is how we act as the government's agent in the collection and submission of state and local sales and excise taxes. Retailers accept many forms of payment, including credit cards. Because of COVID, retailers in 2020 saw a seismic shift in card spending as consumers quickly changed their shopping habits in response to the pandemic.

As credit and debit card usage has increased, so have interchange fees charged to retailers by the credit card companies, also known as swipe fees. Retailers generally pay between 2% to 4% in swipe fees on a credit card transaction - fees that exceed the industry profit margin. In 2019, U.S. retailers paid over $116.4 billion in these processing fees, a 7.7% increase from the prior year. In April 2021, in the middle of a pandemic when many businesses were already struggling, Visa and Mastercard had planned to implement rate increases that would have cost US merchants an additional $1 billion in swipe fees, which would have been on top of the $119 billion merchants already paid in 2020 in swipe fees. U.S. Senator Dick Durbin (D-IL) and U.S. Representative Peter Welch (D-VT) sent a letter to these two companies requesting they stop their plans to increase interchange fees in April. FMI issued a statement applauding the letter. Just a month before the increases were set to take effect, Visa and Mastercard said they would forego the increases for one year – until 2022.

Retailers not only pay swipe fees on the base price of a transaction but also on the sales tax they are collecting for the state and/or locality. This means that while retailers are collecting and remitting sales tax for the state, at the retailers' expense, the credit card companies are making additional profits from the tax portion of the receipt – making it even more expensive for merchants to provide this valuable government service – and even more lucrative for Visa and Mastercard. This actually creates an environment where credit card companies can make more money on a retail transaction than the retailer.

States have the authority to prohibit credit card companies from charging swipe fees on state sales tax. Prohibiting swipe fees on sales tax will keep dollars in the state, stimulating economic activity, versus sending them to networks and banks in other states and countries. This would stimulate economic activity and help lift a costly burden on business at absolutely no cost to the state. In the recent past, when Congress acted to reform the banking industry, American consumers and merchants earned a hard-fought victory over escalating, uncontrollable fees with the inclusion of the debit reform measures in the Dodd-Frank Wall Street Reform and Consumer Protection Act. As a result, significant savings were passed on to consumers. The savings were proven in a study by prominent economist Dr. Robert Shapiro who found that consumers have saved nearly $30 billion since the reforms have been in place and merchants have saved more than $10 billion. (Read more here.)

Credit card companies are advancing many inaccuracies to try to claim that removing the interchange or swipe fee from the sales tax portion of a receipt cannot be accomplished. Read further, as FMI addresses some of these false statements.



THE TRUTH ABOUT SWIPE FEES, SALES TAX AND RETAILERS

Credit card companies continue to make false claims in the hopes of confusing lawmakers regarding how easily swipe fees can be removed from the sales and excise tax grocers and other businesses collect for the government. What is frustrating is that during the COVID pandemic as businesses were and still are struggling to survive, banks and card networks are trying to increase their already large profits on a system that was meant to collect badly needed sales tax revenue for the state. Main Street merchants and the hospitality industry need support now more than ever.

False Claim

"The fee retailers pay to electronically transmit money is a cost of doing business. It is voluntary. They do not have to accept cards."

The Truth Having electricity is voluntary too, but customers expect the lights to be on when they walk into our stores—just like they expect us to accept credit cards. Further, the pandemic has demonstrated the necessity of electronic forms of payment. According to Digital Commerce, consumers increased their online spending by a whopping 44% or $861.12 billion, in the U.S. in 2020, and online merchants, including those brick and mortar retailers with an online component, may pay even higher credit card interchange fees than those operating only brick and mortar stores.

False Claim

"The real cost of handling cash ranges from 4.7 to 15 percent."

The Truth The costs merchants pay to handle cash is well below 1% and for some merchants it is below 0.2%. Merchants are efficient at cash handling. A 15% cost sounds like someone who needs a lesson from our members in efficiency.

False Claim

"Merchants pay less for accepting cards than for accepting checks."

The Truth Federal law mandates that paper checks settle "at par" or face value; meaning it has an acceptance cost of zero. While there are some costs for handling cash and checks, these costs are well below levels of accepting credit cards.

False Claim

"The benefits of credit cards far outweigh the fee. They include guaranteed payment, fraud protection, cash flow and increased sale opportunities."

The Truth There is no guaranteed payment for electronic transactions. For up to 90 days after a transaction is approved, the bank can reverse that approval and "chargeback" the funds from the merchant. In those instances, the merchant is out the funds from the bank plus the merchandise that the customer collected at the time of purchase. The cost of chargebacks is passed on to merchants and is on top of the $119 billion merchants pay every year in swipe fees for the "benefit" of accepting these cards.

False Claim

"The penalties in some state bills on this issue are absurd and could easily amount to millions a week from a single merchant."

The Truth A review of Section 12 of Visa's Core Rules show that they can charge fines of $50,000 to $200,000 per violation to merchants. Those fines are much higher than the ones included in any previous or pending state bill. More importantly, penalties will be zero for those that comply with the law.

False Claim

"Systems don't support it."

The Truth Yes, they already do. To support business to business (B2B) cards, banks require that merchants pass Level 2 data in the transaction which already has sales tax separated from the purchase amount. Visa and Mastercard mandate system updates twice per year, so any system changes can be implemented during these updates. This can also be implemented via a rebate at the end of the month requiring zero impact to point of sale (POS) systems.

False Claim

"New systems are costly to business."

The Truth Merchants already pay to purchase or rent their PIN pads; what is really costly to business are the billions of dollars in swipe fees that merchants are paying every year.

False Claim

"Fraud/credit risks remain."

The Truth Visa, Mastercard and the banks actually pass fraud costs back to merchants every year in the form of chargebacks. Banks charge cardholders interest to offset credit risk.

False Claim

"These types of bills are costly to small retailers."

The Truth Small retailers will not need specialized equipment to implement. Consider how restaurants today can enter a sales amount followed by a separate tip amount into their PIN pads. Small merchants could enter a pre-tax purchase amount followed by a sales tax amount into the PIN pads. What really hurts small retailers are the billions of dollars in swipe fees that they pay each year.

False Claim

"Consumers lose convenience."

The Truth This claim doesn't make sense. There is no need for two transactions. Do customers pay in two transactions when they leave a tip at restaurants? No, they don't. What consumers are losing is money because they have to pay higher retail prices to cover the billions of dollars in swipe fees that merchants pay each year.

SB 2217

Re: Outside Counsel opinion on Commerce Clause Question

"The bills in other states have been positioned as protecting the integrity of state taxes/state tax collection. There is no commerce clause issue with imposing state taxes on businesses that are interstate. Similarly, there is no commerce clause issue with prohibiting those businesses from interfering with the efficient collection of those state taxes. That is all the bill is – ensuring that no business operating in the state can penalize the businesses that are collecting taxes for the state as a consequence of that collection of taxes.

Generally, Commerce Clause issues arise when in-state businesses are treated differently than out-of-state businesses explicitly in legislation. For example, a tax or regulation that just applies to out-of-state, but not in-state businesses would raise a Commerce Clause problem. The swipe fees on taxes legislation does not do that. It applies to everyone and simply says they can't charge the fees on taxes. So, it has no issue with the way Commerce Clause cases come up."

The Credit Card Industry Already Uses Processes That Could Be Used to Implement SB 2217

On January 26, 2023, the North Dakota Senate passed SB 2217 to protect the collection of state sales tax from the imposition of high credit card fees on businesses that must collect those taxes. While the credit card industry has complained that the bill would be impossible to implement, it is clear from current practices that that isn't true. The card industry already collects and uses tax data on transactions and has reimbursement programs in place – either of which demonstrate its ability to implement SB 2217 as written.

Credit Card Companies Already Collect Tax Data on Transactions and Could Use That to Comply

- Credit card companies could prevent charging swipe fees on tax amounts at the point of sale much more easily than they pretend.
- They already collect sales tax data[1] and could use that to comply with the law.
- Not only do the card companies collect this and other level 2 data, they then try to sell it back to merchants (Visa calls this service "IntelliLink").[2] This service includes "Local tax support including VAT and GST".
- And, by the way, when Visa tries to sell merchants this data, they make sure to say that there is "no special hardware or software required."[3]
- It is ironic that when Visa wants to sell local tax data to merchants, it is easy and there is nothing new required, but when the North Dakota Senate wants to protect merchants from being penalized for collecting taxes, it suddenly becomes burdensome or impossible.

Credit Card Companies Already Administer Rebate Programs and Could Use That to Comply

- The legislation recognizes that a card company can simply rebate fees charged on tax amounts after the fact, when a retailer sends them tax information.
- Visa and Mastercard both already have processes whereby merchants can be reimbursed after providing information on mistaken or disputed charges.[4]
- And, both companies have extensive schedules of after-the-fact fines and charges they can levy against merchants if they don't like how merchant are following their rules.[5]
- So, both credit card companies already have robust systems for taking money from, or reimbursing money to, merchants after the transactions in question have been completed. They could simply add North Dakota tax reimbursements to this long list and provide those reimbursements after receiving tax information from merchants.

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[1] Sales tax data is on track 2 of credit card transaction data (sometimes referred to as Level 2 data). Visa specifies this in their own document written for petroleum retailers at page 13, footnote 3: https://usa.visa.com/dam/VCOM/regional/na/us/support-legal/documents/visa-petroleum-best-practices.pdf.

[2] https://usa.visa.com/run-your-business/commercial-solutions/solutions/intellilink.html

[3] https://usa.visa.com/run-your-business/commercial-solutions/solutions/intellilink.html

[4] See Visa Rules section 11 at Visa Core Rules and Visa Product and Service Rules; Mastercard Rules section 10.1.7 at Mastercard Rules.

[5] See Mastercard rules section 2.1.4 at Mastercard Rules; Visa rules section 12 at Visa Core Rules and Visa Product and Service Rules.

- This clearly shows that no investments in new systems are necessary. The scare tactics by the credit card industry would have North Dakotans believe that the card companies cannot do things that they already regularly do.

North Dakota Consumers Will Keep Paying the Way They Want

- Nothing in the legislation changes things for consumers.
- Whether it happens automatically at the time of the transaction or through the simple back-end rebate plan that is part of the legislation, consumers would never see or be involved with the how the fee or rebate is calculated.
- Any suggestion that consumers would have to pay for part of a transaction differently is simply false.

From CNBC

Published February 9, 2023

How small businesses are fighting inflated credit card swipe fees.

Every time a customer pays for their cup or cone with a debit or credit card, companies like Visa or Mastercard charge a processing fee, also known as a swipe fee, amounting to a percentage of each transaction.

The fees have more than doubled over the last decade, leading some business owners to look for new and creative ways to claw back their profits. They're also stirring debate in Washington, pitting payments giants against the small business masses.

The swipe fees aren't new, but the worsening problem comes at a time when Main Street businesses across the country are increasingly struggling with changing macroeconomic conditions. Small business optimism sank to a six-month low in December as owners continued to battle rising costs, according to a survey conducted by The National Federation of Independent Business. That survey found inflation cited as the top concern for business owners.

The Federal Reserve's biannual survey of banks' debit card transactions estimates that it costs banks an average of 4 cents to process a transaction, regardless of the total ticket cost. That's down sharply from about 8 cents per transaction a decade earlier. Although the central bank does not conduct the same survey for credit card transactions, the processes used for debit and credit cards are similar.

To read the whole article use this address

PUBLISHED THU, FEB 9 2023 11:14 AM ESTUPDATED THU, FEB 9 2023 2:56 PM EST

https://www.cnbc.com/amp/2023/02/09/small-businesses-credit-card-swipe-fees.html

Top credit card issuers vs. networks

No matter what type of credit card you're after, be aware of the credit card companies involved. As a cardholder, you want to know both the credit card network and the credit card issuer associated with your card.

The credit card network helps process your credit card transactions. When you swipe your card, it's the network that transmits the transaction information from the merchant to your bank (and back). There are four major networks in the U.S.:

- American Express
- Discover
- Mastercard
- Visa

Where you can use your credit card will depend on the network. For example, if you have a Visa card, you can only use it with merchants that accept Visa. Every credit card operates on just one network.

The credit card issuer is the bank that financially backs your credit card's credit line. When you make a purchase, the money comes from the issuing bank. You'll be billed by and make your payments to the issuer.

Many of the best credit card companies will have different issuers and networks. Hundreds of banks partner with Visa or Mastercard. However, Discover and American Express act as both issuer and network. Here are some examples from major credit card companies:

Major credit card companies in the U.S.

Technically, any bank or credit union can -- and likely does -- issue credit cards. But your average U.S. credit card user is more likely to have a card from a multinational bank than from the regional bank down the street.

In fact, the top credit card issuers in the U.S. hold more than 80% of the market share, according to the Nilson Report. In other words, roughly 8 out of 10 credit cards in the U.S. are from one of these issuers:

- American Express
- Bank of America
- Barclays
- Capital One
- Chase
- Citi
- Discover
- Synchrony Bank
- U.S. Bank
- Wells Fargo

From https://www.fool.com/the-ascent/credit-cards/list-credit-card-companies/