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February 22, 2023

To: Members of the North Dakota House Finance & Taxation Committee

From: Americans for Tax Reform

Re: SB 2217

Chair Headland and Members of the Committee,

On behalf of Americans for Tax Reform (ATR), and our supporters across North Dakota, I urge you to reject Senate Bill 2217. This legislation would have the government interfere in the free market in an attempt to control who bears the burden of collecting and remitting sales tax – risking higher costs for North Dakotans in a time of out-of-control inflation.

The state has created a sales tax burden that affects multiple parties in a transaction. In fact, the tax burden is reflected throughout the supply chain.

The electronic payments system that has been developed to best serve consumers and businesses must account for this sales tax burden so the correct tax amount for a transaction is logged and sent to the government.

The payment must reflect the total cost of the sale: the retail cost of a good and any taxes that apply. That total amount must be collected at the transaction point so the government can receive its tax. It is logical that the electronic payment processor would tally the full cost of the transaction and apply any fee to that number. After all, that total cost reflects the amount of money being moved – just because some ultimately ends up with the government and some in a merchant's account does not change the total amount being transacted.

Now, under SB 2217, the government would insert itself into this functioning system and try to make one party bear the full burden of the tax they have created by preventing payment processors from applying the usual interchange fee to the full amount of a transaction. Under SB 2217, payment processors would be forced to apply the fee not to the actual amount processed, but to a figure that excludes sales tax.

This is unjustified government interference in the market. If the sales tax burden is too high, and transaction costs are hurting North Dakota businesses, legislators can reduce the sales tax.

Like every government attempt to control the market, there will be unintended consequences. In this case, North Dakota consumers and small businesses will get hurt the most. There would be an added compliance burden, as retailers would need to develop a way to keep sales tax out of the initial transaction cost that is processed. Likely payment processors would have to create a new system for processing payments in North Dakota. There could be other adjustments businesses on all sides of these transactions need to make. In the end these changes mean additional time and costs spent to adjust to SB 2217. Who will pay for that in the end? North Dakotans will see these costs passed down to them.

While the Senate approved this flawed bill, the margin was narrow, despite three Democrats voting yes. The House, and your committee in particular, has prioritized achieving real relief for North Dakota taxpayers and small businesses. You should continue your leadership on that tax relief, like flat tax legislation, and reject SB 2217 which attempts to control who the sales tax burden impacts, rather than actually reducing that burden.

ATR urges you to reject SB 2217 and continue your good work to make the state a more affordable place to live, work, and run a business.

Sincerely,

Grover Norquist

President, Americans for Tax Reform