NDGA

North Dakota Grocers Association

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Testimony- SB 2217

January 25, 2023 – Senate Finance and Taxation Committee

Chairman Kannianen and Members of the Senate Finance and Taxation Committee

Regarding **SB 2217**

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

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 sent 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.

I would like to briefly explain a credit card transaction from a retailers perspective. To accept credit card payments, business must use a system that has become in some respects a monopolist. 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.

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:

- 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.
- 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.

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."

POS Systems Are Already in Place to Separate Sales Tax

- Separating the sales tax from the underlying total does not require a hardware change or upgrade to the POS.
- This would only be a software change.
- There are software solutions today in the market which, are widely used that can separate out tax and other attributes. They must be able to do this to complete tax-exempt transactions and others. These are often called level 1, 2 & 3 transactions.
- While many retailers already use this, i.e., for SNAP benefits or government spending cards where sales tax may not be applied, others would need software upgrades to enable this.
- Visa and Mastercard each have two technical releases per year (April & September) that they require all their acquirers support. Some of these updates apply to only certain regions of the world. If North Dakota were to pass this law, Visa and Mastercard could make this change in their upcoming release, and acquirers would be required to support it in the upcoming release and ensure that it only applies to transactions within North Dakota. Both Visa and Mastercard make dozens of changes in each release (including rate increases) so this would just be another change.

FMI THE FOOD INDUSTRY ASSOCIATION

SWIPE FEES ON SALES TAX

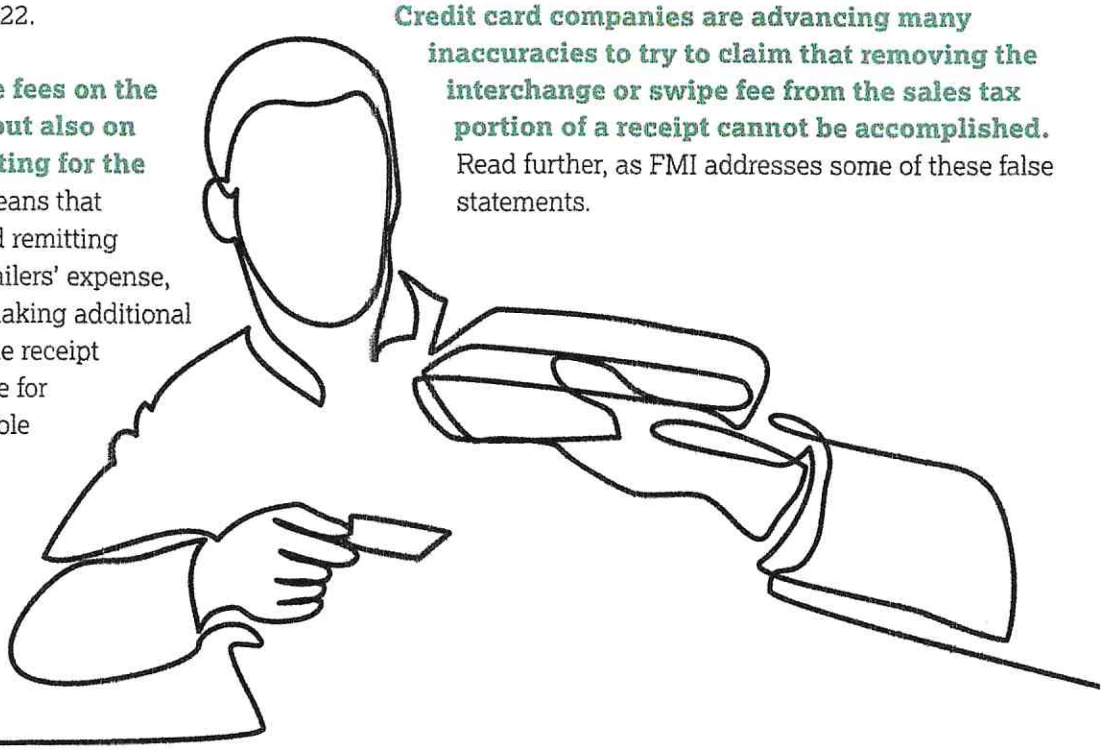
Retailers partner with the government on many issues. One way is how we act as the government's agent in the collection and submission of state and local sales and excise taxes. Retailers accept many forms of payment, including credit cards. Because of COVID, retailers in 2020 saw a seismic shift in 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 on-line 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.