



Testimony of Anna Blom

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Before the

North Dakota House Finance and Taxation Committee

at the Public Hearing on SB 2217

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Thank you for allowing me the opportunity to testify today in support of SB 2217 which would provide a modicum of relief from credit and debit card swipe fees for retailers that collect taxes on behalf of North Dakota. Most consumers are not aware of these swipe fees and do not see the effects they create on the cost of goods and services and the U.S. economy, but those effects are dramatic. For merchants, the fees are a constant source of stress and financial difficulty, while for the economy the fees reduce economic efficiency and contribute significantly to inflation.

I am testifying today on behalf of my association, the National Association of Convenience Stores (NACS). NACS is an international trade association representing the interests of the convenience industry. In the United States, the industry includes about 150,000 stores employing 2.3 million people. It is truly an industry of small business with a full 60 percent of the industry comprised of single-store operators. The industry handles about 165 million transactions each day – a number equivalent to about half of the U.S. population. For convenience and fuel retailers, swipe fees are their second highest operating cost, only second to labor. An efficient and competitive payment system is critical to the health of the industry and its employees.

The credit card market in the United States is fundamentally broken. Two dominant players – Visa and Mastercard – control more than 80% of the market and use their monopolistic power to centrally set the swipe fees (interchange fees) that their issuing banks charge merchants.¹ The banks should compete on swipe fees as they do on other fees and services they provide, but they do not and instead they charge rates dictated to them by the card networks. It is an upside-down market where the fees are not subject to normal, competitive market pressures and as a result they increase at an astounding rate year over year. In 2021, U.S. merchants paid nearly \$140 billion in swipe fees, up 25 percent from the previous year.

This broken market ultimately hurts consumers. With retail profit margins on average around 2.5% and swipe fees on average more than 2.2%, retailers cannot

¹ Bianca Peter, "Credit Card Market Share by Issuer," (Feb. 24, 2022) available at <https://wallethub.com/edu/cc/market-share-by-credit-card-issuer/25530>.

afford to absorb these fees and have no option but to pass them through in the form of price. Since credit card swipe fees are a percentage of the total transaction amount, these fees multiply with every cent of inflation. While the method for processing credit cards does not change at all as prices rise, the fees that the credit card networks and their banks collect increase at a rapid rate. Last year during a quarterly earnings call with shareholders, Visa's Chief Financial Officer acknowledged this boondoggle stating, "We're a beneficiary of inflation."²

North Dakota has a unique opportunity to correct one of the clear failures of the swipe fee system by passing SB 2217. SB 2217 would ensure that North Dakota businesses are protected from paying swipe fees on funds that they do not keep. Retailers provide a service to the state by collecting taxes, yet the swipe fee system penalizes them for this service. When a customer uses a credit card in a store, the bank who issued the card collects a swipe fee from the retailer off the total amount, including the sales tax. However, the sales tax portion are not funds that the retailer pockets but that the retailer fully remits to state and local government. This means retailers must go into their own pockets to make up for the sales taxes that the credit card industry takes away from them during the transaction process. In 2020, North Dakota retailers paid \$17 million in swipe fees on sales tax.

SB 2217 is a matter of fundamental fairness for the private businesses that collect taxes on North Dakota's behalf. I urge you to swiftly pass it into law.

I would like to address questionable claims made by credit card industry critics of SB 2217.

Question 1: Won't this legislation ultimately hurt small businesses?

No, this legislation will benefit small businesses by reducing the costs that small businesses foot to collect taxes for the state. Small retailers will not need specialized equipment to implement it. Whether this is done during the transaction process or through an after-the-fact rebate program, it will not be difficult for small businesses to benefit from SB 2217.

Question 2: Does existing equipment and technology need to be replaced to ensure SB 2217 can go into effect?

No, SB 2217 does not require any new systems or hardware – for banks or retailers – and Visa's own statements make that clear. While the processors and banks keep saying they would need to build new systems to recognize tax amounts at the point of sale, that isn't true.

Credit card companies charge swipe fees today – not processors or banks. Today merchants pass 3 data fields – (1) purchase amount, (2) tax amount, and (3) total – to

² [https://s1.q4cdn.com/050606653/files/doc_financials/2022/q1/CORRECTED-TRANSCRIPT_-Visa,-Inc.\(V-US\),-Q1-2022-Earnings-Call,-27-January-2022-5_00-PM-ET.pdf](https://s1.q4cdn.com/050606653/files/doc_financials/2022/q1/CORRECTED-TRANSCRIPT_-Visa,-Inc.(V-US),-Q1-2022-Earnings-Call,-27-January-2022-5_00-PM-ET.pdf)

processors, which send that data to the card networks, which determine swipe fee rates. Banks receive settlement of funds, including swipe fees from the network or processor.

It is possible to stop charging swipe fees on tax amounts at the point of sale much more easily than the financial services industry suggests. Not only do the card companies collect this data, they also try to sell it back to merchants (Visa calls this service “IntelliLink”).³ In its marketing of IntelliLink, Visa assures merchants that there is “no special hardware or software required.”⁴

In the event that a retailer is unable to separate sales tax information at the point of sale, SB 2217 allows the retailer to send the tax information to the card company after the sale and allows the card network to refund the swipe fees to the retailer after the fact. Retailers can just send the tax information and get a rebate later.

Question 3: Won’t an after-the-fact rebate program be difficult and costly to administer?

No, Visa and Mastercard already administer many different after-the-fact settlement processes including determining chargebacks, additional assessments, and more. Adding a refund for swipe fees on North Dakota taxes would be a very small adjustment compared to what Visa and Mastercard already do.

Question 4: Don’t credit card companies need swipe fees on taxes to cover fraudulent charges, especially since retailers are getting the service of a “guaranteed payment?”

No, retailers pay for a majority of fraud losses and swipe fees are many multiples of total fraud losses. Retailers do not receive a “guaranteed payment.”

Retailers pay for fraud multiple times. Retailers “pre-pay” for fraud through swipe fees. However, the \$140 billion that retailers paid in swipe fees in 2021 far exceeds what is actually needed to cover banks’ fraud losses.

The Federal Reserve reports that merchants covered 56.3 percent of debit card fraud while card issuing banks only covered 35.4 percent.⁵ The picture is similar for credit losses. The Federal Reserve has reported that the merchant share of fraud on dual message debit cards (processed in similar fashion to credit cards) is more than 60 percent.⁶

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

⁴ *Id.*

⁵ “2019 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions,” Board of Governors of the Federal Reserve System (May 2021) at 4, available at https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2019.pdf.

⁶ *Id.*

Retailers often pay for fraud in the form of “chargebacks.” It means that the money the merchant was supposed to receive on the transaction is taken away (in other words, charged back). For up to 90 days after a transaction has been approved, the bank can reverse that approval and “chargeback” the funds from the merchant. When this happens, the retailer is out the funds from the bank plus they are they out the product that was purchased fraudulently.

In addition, merchants pay networks to cover mandated fraud solutions. And, card companies require merchants to invest in costly equipment to prevent card fraud (i.e., EMV chip readers).

The idea that retailers should pay limitless fees to the giant credit card companies because payment is “guaranteed” makes no sense when there is no guarantee. All fraud costs are accounted for many times over in the swipe fee amount (long before considering the swipe fees on tax amounts) and most fraud costs simply get charged back to retailers.

Question 5: Won't consumers lose convenience because they will need to “swipe twice” in order to pay for a product if swipe fees can't be collected on taxes?

No, consumers will not need to swipe their cards twice in order to make a purchase. There is no need for two transactions – and claiming a card will need to be swiped twice to account for the sales tax amount just doesn't make sense. Credit card networks already get the tax data today.

When swipe fees are collected on taxes, what consumers actually lose is money because they have to pay higher retail prices to cover the billions of dollars in swipe fees that merchants pay each year.

Question 6: If SB 2217 passes, will banks/processors need to have specific transaction level data to know what tax to charge? Won't this be a privacy violation because retailers will need to tell banks that a customer is purchasing something like eggs, milk, or gasoline?

No, processors have no involvement in identifying tax nor collecting tax today, as stated above all they have to do is pass an existing data field to networks, which calculate interchange. The state of North Dakota handles these tax dollars and ensures they are correct without requiring individual private data regarding the products purchased. Visa and Mastercard don't need any of that data either. This is just a completely unfounded excuse to try to keep the fee revenue on taxes.

Question 7: Don't retailers get compensation from the State of North Dakota for collecting taxes?

Retailers only receive a fraction of their tax collection costs, especially compared to the cost of swipe fees on sales taxes. North Dakota only compensates retailers up to \$110.00 per month.⁷

The amount the state provides to retailers is intended to cover their administrative and bookkeeping costs to collect and remit tax. And it doesn't begin to compare with the large sums of swipe fees charged on taxes.

Collectively, North Dakota retailers pay \$17 million annually in processing fees on state taxes – most of that money leaving the state. Financial institutions will suggest that the state should increase vendor's compensation – because that would allow them to continue profiting off swipe fees on taxes.

However, increasing vendor compensation to compensate for *all swipe fees* paid on taxes would do nothing to benefit North Dakotans. In fact, it would create an incentive for Visa and Mastercard to further abuse their market power to increase swipe fees. Why wouldn't they with North Dakota subsidizing the payment of the fees?

Asking North Dakota taxpayers to pick up the bill so the card industry can continue to profit off retailers' mandated obligation to collect taxes is not the answer. Ending swipe fees on taxes is the answer, and one that comes at no cost to the state or its taxpayers.

Question 7: Don't financial institutions need to recover swipe fees on the product and the taxes paid on that product because they are financing the total amount of the purchase plus tax? Isn't the swipe fee a form of cost recovery for the "guarantee" they provide for the total purchase?

No, financial institutions are well compensated for the service they provide to purchase a product with a payment card. Recovering swipe fees on the taxes is just additional windfall profit.

To conclude, the current system is unfair to North Dakota businesses and North Dakotans. The credit card industry should not be allowed to take tax dollars away from the retailers that collect them for the state and, in effect, require those retailers to reach into their own pockets to pay the difference in order to comply with state law. SB 2217 is a commonsense solution that is workable for all parties involved and will remove one of the clearest injustices in the swipe fee system.

⁷ <https://taxadmin.memberclicks.net/assets/docs/Research/Rates/vendors.pdf>