2023 SENATE FINANCE AND TAXATION

SB 2217

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2217
1/25/2023

Relating to the calculation of interchange fees for electronic payment transactions; and to provide a penalty.

8:59 AM Chairman Kannianen opens hearing.

Senators Present: **Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum.**

Discussion Topics:
- Other States
- Taxation spread
- City sales tax
- Snapshot card
- Company fees
- Similar bills
- Infostructure
- Tax fees

8:59 AM Senator Vedaa introduced the bill.

9:10 AM John Dyste – President of ND Grocers Association, in favor. #16774

9:19 AM Matt Leiseth – President of Hornbacher's foods, in favor. #16775

9:24 AM Jerod Sheeler – CEO for The Hub Convenience Stores, in favor. #16753

9:30 AM Torry Reutter - Part Owner and General Manager of Miller's Fresh Foods, in favor. #16778

9:31 AM Mike Rud - President of the ND Retail and Petroleum Marketers Association, in favor. #16776

9:35 AM Don Larson - National Federation of Independent Business, in favor. #16650

9:36 AM Barry Haugen – President of Independent Community Banks of ND, in opposition. #16751

9:48 AM Angie Olson – Director of Card Services for ICB Services, in opposition. #16750

9:57 AM Rick Clayburgh – ND Bankers Association, in opposition. #16777

10:05 AM Pam Sharp – Dakota Credit Union, in verbal opposition.

10:07 AM Max Danielson – Tax Commissioner, verbally neutral.

Additional written testimony:

Douglas Kellogg #16437

Rudie Martinson #16599

Jeff Hinz #16756

Jeff Olson #16759

10:08 AM Chairman Kannianen adjourns hearing.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2217
1/25/2023

relating to the calculation of interchange fees for electronic payment transactions; and to provide a penalty.

3:15 PM Chairman Kannianen opened meeting.

Senators Present: **Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum.**

Discussion Topics:
- Credit Card process

3:29 PM Senator Patten moved a Do Not Pass.

3:29 PM Senator Rummel Seconded.

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	N
Senator Jeffery J. Magrum	N
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Dean Rummel	Y

Motion failed 3-3-0

3:31 PM Senator Magrum moved Do Pass.

3:31 PM Senator Piepkorn Seconded.

Senators	Vote
Senator Jordan Kannianen	N
Senator Mark F. Weber	Y
Senator Jeffery J. Magrum	Y
Senator Dale Patten	N
Senator Merrill Piepkorn	Y
Senator Dean Rummel	N

Motion failed 3-3-0

3:32 PM Senator Piepkorn motioned to move bill without committee recommendation.

3:32 PM Senator Magrum seconded.

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	Y
Senator Jeffery J. Magrum	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Dean Rummel	Y

Motion passed 6-0-0

3:33 PM Kannianen will carry.

Nathan Liesen, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2217: Finance and Taxation Committee (Sen. Kannianen, Chairman) recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2217 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE FINANCE AND TAXATION

SB 2217

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

SB 2217
3/7/2023

A bill relating to the calculation of interchange fees for electronic payment transactions.

Chairman Headland opened the hearing at 9:33AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVille, and Representative Ista. No members absent.

Discussion Topics:
- Swipe fees
- Electronic payment transactions
- Interchange fees
- Software updates

Mike Rud, President of the North Dakota Retail and Petroleum Marketers Associations, testified in support (#22567).

Senator Vedaa introduced the bill in support (#22516).

John Dyste, President of North Dakota Grocers Association, testified in support (#22578).

Adam Hinz, Kirkwood Ace Hardware, testified in support (#22625).

Don Larson, National Federation of Independent Business, testified in support (#22190).

Anna Blom, Director of Government Relations with National Association of Convenience Stores, testified in support (#22466).

Steven Rauschenberger, Electronic Payments Coalition, testified in opposition (#22062).

Jeff Olson, President and Chief Executive Officer of the Dakota Credit Union Association, testified in opposition (#22523).

Byron Snider, Chief Information Officer with Scheels All Sports, testified in opposition (#22368).

Blaine Johnson, Attorney with Crowley Fleck Law and Lobbyist representing Bread Financial, testified in opposition (# 22626).

Barry Haugen, President of Independent Community Banks of North Dakota, testified in opposition (#22702).

Rick Clayburgh, President of North Dakota Bankers Association, testified in opposition (#22695).

Kelvin Hullet, Chief Investment Officer with the Bank of North Dakota, testified in opposition (#22456).

Angie Olson, Director of Card Services with ICB Services, testified in opposition (#22700).

Additional written testimony:
Rudie Martinson, North Dakota Hospitality Association, testimony in support #22487.

Jared Scheeler, The Hub Convenience Stores, testimony in support #22426.

Beth Provenzano, Merchant Advisory Group, testimony in support #22308.

Matthew Leiseth, President of Hornbacher's, testimony in support #22174.

Grover Norquist, Americans for Tax Reform, testimony in opposition #22542, #26193.

Jason Dockter, North Dakota Legislator, neutral testimony #24982.

Vice Chairman Hagert closed the hearing at 11:36AM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

SB 2217
3/14/2023

A bill relating to the calculation of interchange fees for electronic payment transactions.

Chairman Headland opened the meeting at 3:21 PM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVille. Members absent: Representative Ista.

Discussion Topics:
- Proposed amendment 23.0579.01003
- Committee vote

Representative Dockter distributed a proposed amendment from Senator Vedaa 23.0579.01003 (#26162) and **moved the amendment.**

Representative Steiner seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	N
Representative Jared Hagert	N
Representative Dick Anderson	N
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	N
Representative Zachary Ista	AB
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	N
Representative Vicky Steiner	Y
Representative Nathan Toman	Y

Motion carried 8-5-1

Representative Dockter moved a Do Pass as Amended.

Representative Steiner seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	N
Representative Jared Hagert	N
Representative Dick Anderson	N
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	N
Representative Patrick Hatlestad	N
Representative Zachary Ista	AB
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	N
Representative Vicky Steiner	Y
Representative Nathan Toman	N

Motion failed 6-7-1

Representative Motschenbacher moved to further amend by changing “may consider” to “shall consider”.

Representative Steiner seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	N
Representative Jared Hagert	N
Representative Dick Anderson	N
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	N
Representative Zachary Ista	AB
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	N
Representative Vicky Steiner	Y
Representative Nathan Toman	Y

Motion carried 8-5-1

Vice Chairman Hagert moved a Do Not Pass as Amended.

Representative Olson seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	N
Representative Lisa Finley-DeVille	N
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	AB
Representative Mike Motschenbacher	N
Representative Jeremy Olson	Y
Representative Vicky Steiner	N
Representative Nathan Toman	N

Motion carried 8-5-1

Representative Olson is the bill carrier.

Chairman Headland adjourned at 3:33 PM.

Mary Brucker, Committee Clerk

23.0579.01005
Title.02000

Adopted by the House Finance and Taxation Committee

March 14, 2023

JA
3-14-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2217

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of interchange fees charged to merchants or sellers for electronic payment transactions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ELECTRONIC PAYMENT TRANSACTION INTERCHANGE FEES. During the 2023-24 interim, the legislative management shall consider studying interchange fees charged on electronic payment transactions and the effect on merchants or sellers of applying interchange fees on electronic payment transactions to state and local taxes imposed at the point of sale. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2217: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). SB 2217 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of interchange fees charged to merchants or sellers for electronic payment transactions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ELECTRONIC PAYMENT TRANSACTION INTERCHANGE FEES. During the 2023-24 interim, the legislative management shall consider studying interchange fees charged on electronic payment transactions and the effect on merchants or sellers of applying interchange fees on electronic payment transactions to state and local taxes imposed at the point of sale. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

TESTIMONY

SB 2217

AMERICANS *for* TAX REFORM

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January 25, 2023

To: Members of the North Dakota Senate Committee on Finance and Taxation
From: Doug Kellogg, Americans for Tax Reform
Re: Testimony in Opposition to SB 2217

Chair Kannianen 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.

SB 2217, if enacted, would have negative unintended consequences. Instead of this misguided bill, there are far better ways to provide tax relief to employers and households, such as the income tax relief Governor Burgum has been promoting.

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.

The last thing lawmakers should be considering is creating higher costs for consumers in a time of high inflation. We know the end goal of North Dakota Republicans is not to increase costs for your residents. 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.

Thank you.

Testimony of Rudie Martinson
Executive Director of the North Dakota Hospitality Association
Before the Senate Finance and Taxation Committee
January 25, 2023

Chairman Kannianen and members of the Senate Finance and Taxation Committee,

My name is Rudie Martinson, and I submit my testimony today in my capacity as Executive Director of the North Dakota Hospitality Association. The ND Hospitality Association is the trade association for our state's restaurant, lodging, and retail beverage industries.

We stand in support of our fellow retail business to urge a "Do Pass" motion on HB 2217. Our bars, restaurants, and hotels act as a tax collecting agent for the state whenever we swipe a card, and pay the swipe fee for the tax collected, on top of the cost of services rendered or goods sold. This bill seeks to remove the state and local tax collected on transactions from the swipe fee – effectively eliminating an added cost incurred by our members paid to credit card companies for our members collecting and remitting this tax.

As you know, the past three years have been uniquely challenging for all sectors of business, and particularly so for businesses in the hospitality industry. This bill will provide relief from an undue and unintentional burden.

Restaurants, hotels, and bars are cornerstones of the social fabric of our communities. We host anniversary and graduation dinners, big conferences that became a turning point in your career, and provide the time and environment you need to wind down after a tough day at work. We ask that you give this bill favorable consideration, so we do not have to continue to pay an additional fee to private companies because we dutifully assist the state and local governments in collecting taxes.

On behalf of the North Dakota Hospitality Association and the restaurant, lodging, and retail beverage industries, I urge a "Do Pass" vote.

Thank you for your consideration.

Sincerely,

Rudie Martinson
Executive Director
North Dakota Hospitality Association

Senate Finance and Taxation Committee

01/24/23

SB 2217

Chairman Kannianen and committee members, my name is Don Larson and I am speaking today on behalf of the National Federation of Independent Business (NFIB). NFIB is a non-profit, non-partisan organization and is the nation's largest small business advocacy group. In North Dakota we represent more than 2,000 small businesses. Our average member has 10 employees.

I am here today to support the passage of Senate Bill 2217. Small businesses operate on thin profit margins, which have been cut further in recent years as credit card networks' swipe fees have increased. This problem has been exacerbated by pervasively high inflation, which acts as a multiplier since swipe fees are a percentage of each sale. Small business owners do not have the market power to negotiate with large credit card companies on swipe fees.

When a small business owner swipes a card for payment, they pay three main fees. The first is a processing fee which goes to the company providing the physical hardware to process the transaction. If a small business doesn't like their processor, they can find another company as the field has several competitors and pricing plans.

The second fee is the network fee which goes to the network, typically Visa and Mastercard who provide the service of transferring funds from the small businesses bank to the bank of the credit card issuing bank or credit union. Small businesses have no ability to negotiate these fees, it is take it or leave it. The fees, however, are much smaller than the third fee, interchange fees.

Interchange fees, also known as swipe fees, are the largest fees a small business pays and can be as large as 3% of a transaction. This fee is set by the credit card network (Visa or Mastercard) and dictates how much money a small business must pay the bank or credit union issuing the credit card. Small business owners cannot negotiate these fees either.

In April of 2022 both Visa and Mastercard, separate “rival” companies, announced increased interchange (swipe) fees at the same time. It is a highly unusual arrangement for a third-party service provider (credit card companies) to set the fee structure that two separate parties (small businesses and banks) pay each other independently of the service provider. It is also highly unusual that some of the largest banks in the world blindly accept a third party telling them what their interchange rate should be. This system has squashed competition and has only led to fee increases year after year.

I appreciate your time this morning and hope that you will give SB 2217 a do pass recommendation.

#16750

Senate Bill 2217

Presented by:	Angie Olson, Director of Card Services ICB Services, Inc.
Before:	Senate Finance and Taxation Committee Senator Jordan Kannianen, Chairman
Date:	January 25, 2023

Chairman Kannianen and members of the Senate Finance and Taxation Committee (Committee), my name is Angie Olson, and I am the Director of Card Services for ICB Services, Inc., a sister company to the Independent Community Banks of North Dakota. ICB Services opposes SB 2217 and requests a "Do Not Pass" recommendation from the Committee.

ICB Services, Inc provides credit card program services to

- 43 Community Banks
- Within North Dakota, South Dakota, Minnesota, and Montana Regions

- 29,000 Accounts on File
- 2022 Aggregate Sales Volume 135MM

Merchants are under the impression that credit cards are a cash cow for issuers. To the contrary, at best many of our small community banks break even on their credit card programs. Most of our member banks offer cards as a service in rural underserved areas and do not expect to make a huge profit.

Small businesses do not want to put in the same bucket as Walmart or Amazon and in the same respect, Community Banks do not want to be classed with big corporate banks that you hear in the news.

I would like to go over a few of the costs that our community banks paid for their credit card programs in 2022:

- Transaction Fees: $119,956.51
- Incurred $123,309.24 Loan Losses
- $70,936.30 Fraud Losses

Those amounts do not include costs to submit fraud/dispute cases.

- Total of 310 Dispute Cases @ a cost of $4,687.20
- Total of 531 Fraud Cases @ a cost of $32,616.64

- Additional fees paid for Fraud Management/Security. These are the products and services that help protect your card.
    - In 2022 our member banks paid a total of $89,324.99 for those services

Additional costs our member banks pay:

- Daily Settlement fees
- Record Retention/Maintenance
- Authorizations
- Card Issuance/Plastics
- Statements/Inserts/Postage
- Notices/Letters
- Third Party Fees
- GUI (Graphical User Interface) access for banks
- Internet/Mobile Services
- Call Centers for 24/7 Customer Service
- Insurance
- Network/ATM/EFT Services (Tokenization)
- Rewards
- Visa Fees & Licensing Costs
- Employee Salaries
- Compliance
    - PCI Compliance (Payment Card Industry) – mandated to help ensure the security of credit card transactions in the payment industry. It means the systems are secure, and customers can trust you with their sensitive payment card information. 4 Levels of PCI (1 highest transactors to 4 the lowest)

Merchants will make you believe that this is just a simple programming change. That is false, there are no rails in the payment system today that separate sales from taxes. It's complicated a process and payment networks do not see data at the SKU level. Passing this legislation would mean that all card sales would need to be done in two transactions. The card would be used for the purchase of good/services and the consumer would have to pay for the tax separately with either cash/check. The burden would be on the business to collect tax, keep record, and submit to the tax department.

In respect to processing fees, the tax IS part of the sale, as it is processed through the payment network. Ask yourself this, as a business would you spend time and money on the infrastructure to process something for free? And if you had to invest in the infrastructure, wouldn't those costs be passed on to your customers, resulting in higher prices/fees??

For example, if this legislation were passed, gas stations would more than likely change the way they advertise gas prices with the inclusion of state and federal taxes. This would make it impossible for gas stations to offer pay at the pump for card payment. Most businesses have a standardized system, and this change would require complicated and expensive system upgrades and that do not exist today to my best knowledge. If this system could even be developed, how would it be paid for? Who would be responsible for those costs?

I would also like the committee to be aware that businesses can deduct 100% of their credit card processing fees from their taxable income. There are no limits on the amount a business can claim for processing fees. *Businesses must keep records of their processing fees

Processing fees are a cost of doing business. Since 2006 this legislation has been introduced 44x in at least 26 different states and over these 17 years it has never been passed or implemented. We do not know the full ramifications for both business and consumers if this legislation is passed. I am asking the committee to reflect on the information presented today and really think if this legislation will move North Dakota backwards or forward.

*Payment Network: Visa, MasterCard, American Express Discover

*Payment Processor: FIS WorldPay, TSYS, Fiserv, GPS (Global Processing Services) – the entity the authorizes transactions and routes them to the appropriate card networks, and settles funds to acquiring bank

*Merchant Acquirers: Bank that holds the merchant's account, accepting the deposits from the merchants' transactions. *Not every bank is a merchant acquirer

*Card Issuer: The FI that provides payment cards to customers

#16751

INDEPENDENT COMMUNITY BANKS of NORTH DAKOTA

NORTH DAKOTA BANKERS ASSOCIATION

A Long Line of Rejected Legislation

North Dakota SB 2217 unwisely proposes to prohibit the levying of interchange fees on any portion of a credit card or debit card sale representing any state or local taxes.

Following is a list of similar proposals that have been carefully considered in previous years in other states. Each proposal was uniformly rejected in its committee of reference due to harm to consumers, loss of sales tax revenue, legal deficiencies, and operational hurdles.

2006
Kentucky HB 592
New York AB 11193

2007
Florida SB 1724
Kansas SB 348
New York AB 1020
Washington SB 5884
Washington SB 5885

2008
Kansas HB 2862
Louisiana HB 673
Louisiana SB 516
New Jersey SB 1138
New Jersey AB 2261
Rhode Island HB 7509

2009
Connecticut HB 6311
Massachusetts HB 1025
Nebraska LB 186
North Carolina HB 1576

2010
New Jersey SB 1631

2012
Iowa HSB 666

2013
Arkansas SB 607

2014
Nebraska LB 991

2015
Arkansas HB 1775
Colorado HB15-1154

2016
Minnesota HF 302

2017
Nebraska LB 559

2018
New Jersey SB 2577

2019
New Jersey S 2577

2020
Tennessee HB 2500

2021
Alabama SB 316
Illinois SB 2083
Indiana HB 1493
Iowa HF 627
Maine LD 1544
Mississippi HB 1076
Mississippi SB 2856
Oklahoma HB 2181
Oklahoma SB 798
Tennessee HB 375
Tennessee SB 880
Wisconsin SB 572

2022
Idaho SB 1293
Mississippi HB 1428
Mississippi SB 2742
Virginia HB 152

INDEPENDENT COMMUNITY BANKS of NORTH DAKOTA

NORTH DAKOTA BANKERS ASSOCIATION

North Dakota SB 2217 would prohibit the levying of any portion of the merchant discount fee, including interchange, on the sales tax portion of a credit or debit card transaction.

This proposal will increase operational burdens and administrative costs for North Dakota retailers

- When a retailer makes a sale using a customer's electronic payment card, the system that processes the transaction recognizes only the final purchase amount, on which the merchant discount fee is based.
- In order to realize the sales tax portion of each item purchased – noting that some items are not even subject to tax – retailers would be required to create and implement new systems and operational mechanisms to ensure compliance with the legislation. Implementing such systems and operations would impose significant burdens to retailers and increase their administrative costs.
- Because the card issuer bears the credit risk for the entire transaction, retailers may see their costs increase for the underlying transaction.
- Smaller businesses that require the lowest overhead costs would be burdened most. In turn, these added overhead costs would likely raise overall prices for consumers.

North Dakota consumers will be harmed

- The creation of new operational systems will result in higher fees for retailers, which will result in higher costs at the register – something for which the consumer ultimately will have to pay.
- Consumers will be required to pay for a separate transaction— one for the sale of the product or service and the other for the tax portion of the sale.
- A separate cash or check transaction for the tax portion of a sale will be a huge burden to consumers when paying for large ticket items, such as computers and electronics.
- The increased costs associated with the requirements imposed by the legislation would lead small businesses to reconsider accepting electronic payments, thus reducing payment options for consumers.

North Dakota will lose sales tax revenue

- Consumers frustrated with having to pay cash for sales taxes may shift their purchases to merchants outside the state.
- The state would lose an important audit trail to ensure that merchants are remitting the proper amount of sales tax owed.

What the real plan is

- This legislation is nothing more than an appeal for government price controls on the electronic payments industry, including community banks and credit unions.
- Some retailers are attempting to shift the debate by making it look like interchange is a fee that consumers pay.
- The reality is that interchange is a retailer's cost of doing business—the cost of accepting payment cards.

Why North Dakota legislators should reject this plan

- Retailers reap huge benefits from accepting payment cards, including more sales, less fraud, and faster payment.
- Retailers welcome the opportunity to offer consumers the convenience of electronic payments, but now they want to shift their business costs to bolster their profits.
- The fact is that some retail groups are trying to use the government to shift costs from one industry to another, and in the end the consumer will lose.

ICBND
INDEPENDENT COMMUNITY BANKS of NORTH DAKOTA

NORTH DAKOTA BANKERS ASSOCIATION

INTERCHANGE

The Issue

A proposed bill supported by certain merchant trade groups would prohibit financial institutions from charging an interchange fee on the sales tax portion of credit and debit card transactions. Interchange is the fee merchants pay to transmit their payments electronically.

5 REASONS IT DOESN'T WORK

1. **Systems don't support it:** When a retailer makes a sale using a customer's electronic payment card, the systems that process the transaction recognize only the final purchase amount. U.S. infrastructure does not support a system where multiple amounts (taxes) can be excluded from the interchange fee.

2. **New systems are costly to business:** Because the structure to support this proposal does not exist, it would impose severe and costly burdens on all business, including retailers.

3. **Fraud/credit risks remain:** The financial institution must advance the total funds, including the tax portion, to the retailer regardless if the transaction is collectable.

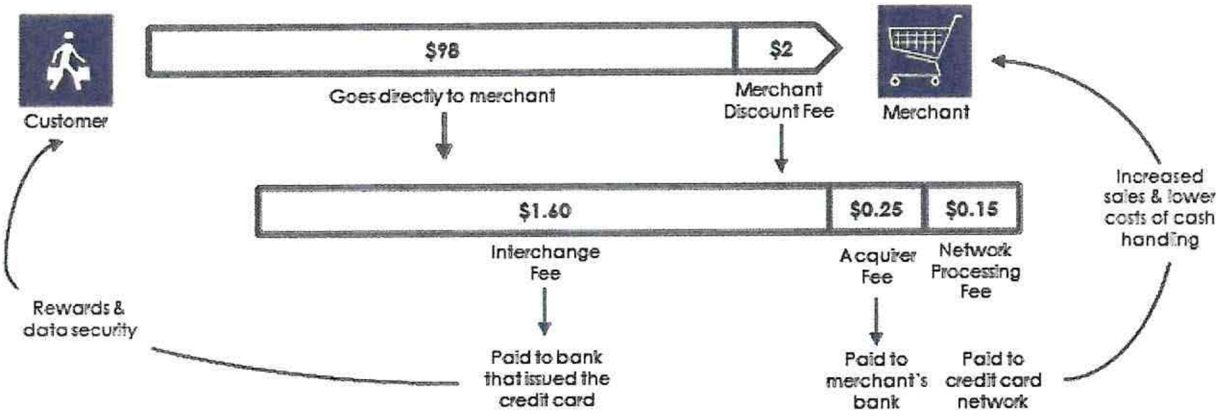
4. **Hurts small retailers:** Merchants will need specialized terminals and software to itemize and communicate segmented data to the card networks at the time of sale. Small retailers do not have sufficient volume to offset the costs the new system would impose.

5. **Consumers lose convenience:** If the bill passes, the best solution for the problems created would be to require consumers to pay in two transactions – one for the sale of the product or service and another for the tax portion of the sale, or to pay the tax with cash or check.

The Bottom Line

If passed, these bills would make North Dakota an island in the nationwide payment system. The infrastructure these bills require does not exist, and it is uncertain if the many businesses involved in the electronic transfer of money, many of which are not located here, would even be required to support the requirements of North Dakota law – and if so, at what cost? With all the different tax iterations that exist around the country, one can only imagine the mess it would create.

WHAT IS INTERCHANGE?



5 BENEFITS RETAILERS RECEIVE FROM ELECTRONIC PAYMENTS

1. Accepting cards increases sales and profits for retailers.

2. Unlike checks, electronic transactions guarantee merchants are paid for purchases made.

3. Cards save consumers valuable time and make retail transactions more efficient.

4. Merchants benefit from accepting cards because their customers prefer to buy things using their cards.

5. Merchants pay less for accepting cards than for accepting cash or checks.

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

However, the real cost of handling cash ranges from 4.7 to 15 percent. If retailers were to automate some of the cash handling process, they could recapture between 100 to 500 labor hours a month per store.

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

The payment system today transfers most fraud losses from the merchant to the payment system.

The penalties in the bill are absurd and could easily amount to millions a week from a single merchant.

The bill does not take into account out-of-state merchants who are doing business in North Dakota. Will they have the burden of changing their systems to accommodate this standalone law?

INDEPENDENT COMMUNITY BANKS of NORTH DAKOTA

NORTH DAKOTA BANKERS ASSOCIATION

The Truth about Interchange and Card Acceptance

There are a lot of misconceptions about card acceptance, interchange fees, and the electronic payments system. It's important that legislators have the facts – straightforward and up front – in order to make the best decisions that will impact the people of North Dakota. Below, we take a look behind the curtain and reveal the truth behind some of the top myths about interchange fees and electronic payments.

Merchant Myth #1: Merchants can't negotiate their interchange fees.
FACT: Merchants can – and do – directly negotiate with the networks to lower their interchange costs through a variety of incentive arrangements, including deals in which the savings are rebated to the merchant. Some merchants prefer to handle the negotiation through their association or other group arrangement. Entire categories of merchants have obtained lower interchange rates based on their particular business needs.

> →For example, Visa and MasterCard capped interchange on gasoline sales and established lower interchange rates for categories of merchants such as grocery stores, utilities, and convenience purchases. Also, merchants routinely switch processors for a better package and price – and, therefore, have a much greater ability to negotiate card acceptance costs than they do for most other business services, such as electricity, postage, water, or trash collection.

Merchant Myth #2: Merchants can't offer a cash discount.
FACT: There is nothing prohibiting merchants from offering a cash discount. In fact, federal law allows merchants to offer cash discounts, and the card networks all make very clear in their rules that discounts for cash, checks, debit, or other credit cards are also allowed.

Merchant Myth #3: Merchants prefer all customers to pay with cash.
FACT: Merchants are increasingly moving away from cash and check acceptance because of the many benefits electronic payments offer over other forms of payment, including increased sales opportunities, higher profit, guaranteed payment and cash flow. Airlines, grocery stores[1], restaurants, and other industries have adopted this cashless model with success.

For instance, by accepting cards, the Salvation Army "cashless kettles" average donations went from $2 to around $15 when using credit or debit, a 650% increase. New York City cab drivers saw overall ridership and revenue increase and tips double over "pre-plastic" days.

Recent studies also show that many merchants prefer electronic payment over cash payment due to the high costs of handling cash. For instance, in 2017 alone, $96 billion was spent in the U.S. and Canada on cash-handling activities, greater than the annual GDP of Ukraine.[2] Simply closing out cash drawers cost $38.5 billion in 2017. The average cost of cash is 9.1% per transaction across all retail segments. In contrast, credit and debit cards cost approximately only 1% - 2.5% per transaction.[3]

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[1] *The News Observer.* "No Checks at the Checkout." October 20, 2011.

[2] IHL Group. 2018.

[3] Ibid.

Merchant Myth #4: Interchange fees are higher in U.S. than in any other country

FACT: The **total** amount merchants pay for the benefit of accepting credit or debit cards – the merchant discount fee – is, in fact, roughly the same in the U.S. and Europe. In some countries, the "interchange" portion of the merchant discount fee might be lower, but the total amount merchants pay still remains about the same. In some countries, these fees are lower than in the U.S. because the government has interfered with the market and imposed price controls on interchange. These countries consequently have less innovative debit systems – often relying on PIN debit, making online debit purchases impossible or at a merchant without a PIN pad.

Merchant Myth #5: The Durbin amendment impacted only large banks because small banks and credit unions are exempt from the fallout from these price controls on debit interchange fees.

FACT: The so-called "exemption" for small financial institutions does not work. In fact, studies have shown that credit unions have suffered erosion in their interchange revenues, as these smaller financial institutions were not exempted from the routing and exclusivity portions of the Durbin amendment – only the price caps. The cost of providing multiple networks falls most heavily on smaller institutions.

Written Testimony by Jared Scheeler, Partner and CEO

Senate Finance and Tax Committee
Hearing on SB 2217
January 25, 2023

I appreciate the opportunity to submit this testimony on behalf of The Hub Convenience Stores, Inc, a Dickinson-based, locally owned and operated convenience store chain founded in 2015. The Hub employs more than 80 people in four cities in North Dakota – Dickinson, Beulah, Hazen, and New England. My name is Jared Scheeler, and I am the Managing Partner of the business. I've been part of the convenience retailing industry since 1998, and this past October I completed my term as Chairman of the National Association of Convenience Stores.

Convenience stores play a vital role in all communities across North Dakota. We're a part of the fabric of American society. Right now there are 448 convenience stores in North Dakota, located in nearly every community across this great state. In many communities we're the only game in town. We collectively employ over 7,200 North Dakotans, which is nearly 1% of our entire state population. Perhaps the most staggering number? We conduct over 452,000 transactions per day in North Dakota, which is more than half of the state. As we like to say, if you haven't been in a convenience store today, we'll see you tomorrow!

In my stores, 85% of all transactions are paid by credit or debit cards. Attached to the back end of every one of these transactions is a fee to process the transaction, more commonly referred to as "swipe fees." Swipe fees in the United States are higher than any country in the industrialized world, mainly because these fees are anticompetitive. While banks issue cards to consumers around the country, they don't compete with other banks on the prices they charge merchants to accept those cards. Why? Because dominant payment card companies, principally Visa and Mastercard, fix these prices on behalf of the banks. It's an anticompetitive, duopolistic system, no different than the North Dakota Petroleum Marketers Assocation telling all of its members what to charge for a gallon of gasoline. Of course, that would never happen. Not just because it's illegal, but because it flies in the face of free-market competition. Somehow Visa and Mastercard have been getting away with it for decades. In 2022, my stores paid over $600,000 in swipe fees. $600,000!

The current system is inherently unfair to any retailer that collects taxes for North Dakota. As a convenience retailer, my stores collect many, many taxes on behalf of federal, state, and local governments. Think about the products we sell: Liquid fuels, foodservice, tobacco, alcohol, and retail packaged goods. On nearly all of these products, we are collecting taxes for a government entity. One study has shown that 23% of the dollars we collect in our stores are taxes that we collect and pass on. That means of the $600,000 that my company paid in swipe fees in 2022, approximately $138,000 were for taxes that we collected, many of them built in to the cost of the products, like tobacco and fuels. Of the many absurdities that exist about the current swipe fee market, this one may be the most infuriating.

According to the National Association of Convenience Stores, c-stores in North Dakota collected over $481,000,000 in taxes in 2022. Using this figure, the banks made over $12,000,000 on just the convenience industry in North Dakota from swipe fees on these taxes.

Senate Bill No. 2217 partly addresses this flaw by exempting state and local sales taxes from the transaction amount that is subject to swipe fees. In the current system, merchants are simply vessels used to collect money for federal, state, and local entities. We shouldn't be punished by paying a premium to the banks when we collect those taxes. For my five convenience stores, relief on swipe fees for state and local sales taxes would amount to nearly $11,000. Why should I have to forfeit a large portion of my already slim profit margins just for providing a service to the State?

From a technological standpoint, the credit card companies are already collecting sales tax data on card transactions from over 12 million merchants. Any assertion that it's not technologically possible is simply not true.

With all of this as a background, it's important to recognize that SB 2217 does not address the anticompetitive swipe fee system or seek to solve all of its large problems. Instead, it merely tries to protect North Dakota's system of taxation and the merchants the provide a service in collecting North Dakota taxes from some of the worst consequences that stem from the swipe fee system.

It's time that North Dakota common sense be introduced in to the broken credit card swipe fee system. Please support SB 2217 to take an important step towards ending swipe fees on taxes collected by businesses.

Thank you.

Jared Scheeler
CEO, The Hub Convenience Stores, Inc.
191 40th St W
Dickinson, ND 58601
(701) 483-3835
jared@hubconvenience.com

Kirkwood Ace Hardware

Chairman Kannianen and Members of the Senate Finance and Tax Committee:

My name is Jeff Hinz. I own and operate the Kirkwood Ace Hardware Stores in Bismarck, ND. I apologize for not being able to provide in-person testimony. Thank you for allowing me to submit written testimony on this very important retail issue. I Urge a **"DO PASS"** recommendation on SB 2217.

I will be brief and to the point on why SB 2217 is needed in the retail community.

Here are specifics on numbers relating to our operations and taxable sales collections. My numbers are for a rolling 12 months, November 2021 to November 2022. The results would be even more dramatic if we had the tabulation including December 2022 because of the blizzards and all the snow equipment I sold.

Sales tax collected and paid to the state: Over $617,000.
Percentage of my business done on credit cards: 79%
Cost of processing credit cards: 2.9%
Approximate credit card fees paid by Kirkwood Ace for the money given to the state: $14,600

I know there will be some question about the percentage we pay in processing fees. As a small, independent business with small dollar average purchases, this is what it is. There are the games with percentages, but adding all costs and swipe fees and charges, 2.9% is it. I can verify these numbers.

Please give a "DO PASS" recommendation to SB 2217.

#16759

Senate Bill 2217
Senate Finance and Taxation Committee
January 25, 2023
Jeff Olson, President/CEO
Dakota Credit Union Association

Mr. Chairman and members of the committee. My name is Jeff Olson and I am the President/CEO of the Dakota Credit Union Association, representing the interests of the 31 credit unions located in North Dakota.

I am here to respectfully oppose SB 2217 as proposed.

Credit unions support small businesses in North Dakota, however, we are concerned that the proposed bill will not have the result as intended by the sponsors of this bill.

The systems to support SB 2217 do not currently exist and therefore would need to be developed. Currently, when a retailer makes a sale using a customer's electronic payment card, the system that processes the transaction recognizes only the final purchase amount, on which the merchant discount fee is based. In order to realize the sales tax portion of each item purchased – noting that some items are not even subject to tax – retailers would be required to create and implement new systems and operational mechanisms to ensure compliance with the legislation.

SB 2217 creates an unnecessary regulatory burden and cost that will be placed on both financial institutions and retailers in North Dakota to develop a way to keep sales tax out of the initial transaction cost that is processed. These development and compliance costs will ultimately be passed on to the North Dakota consumer.

In situations of fraudulent transactions, the credit union still must advance the total funds, including the portion of that transaction that is a "tax or fee." SB 2217 defines "tax or fee" to mean a state or local tax or fee levied or imposed under state or local law, rule, ordinance, or resolution, which is calculated at the time a customer makes a payment to a merchant or seller. Cards save consumers valuable time and make retail transactions more efficient. The benefits to North Dakota businesses far outweigh interchange fee, such as guaranteed payment, fraud protection, cash flow, and increased sale opportunities.

NDGA

North Dakota Grocers Association

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www.ndgrocers.com

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

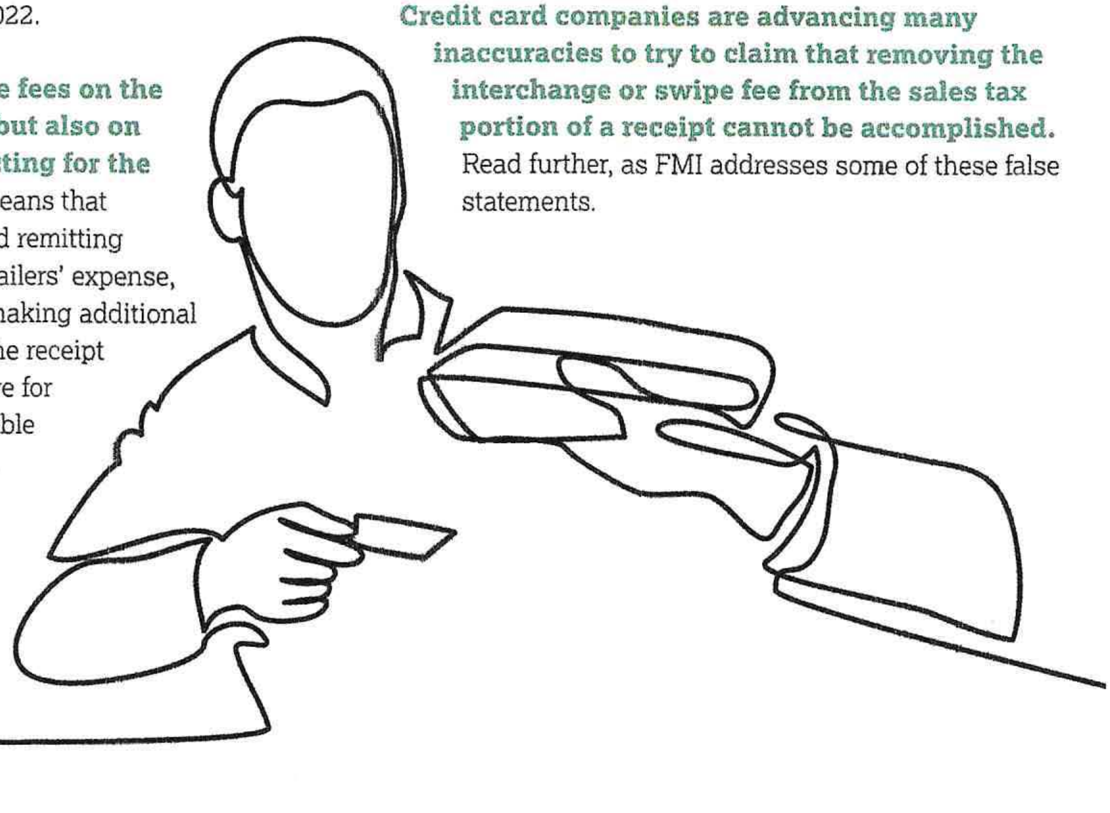
Retailers partner with the government on many issues. One way is how we act as the government's agent in the collection and submission of state and local sales and excise taxes. Retailers accept many forms of payment, including credit cards. Because of COVID, retailers in 2020 saw a seismic shift in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

Testimony of

Matthew Leiseth

President, Hornbacher's Foods

Before the North Dakota Senate Committee on Finance and Taxation

Hearing on SB 2217

January 25, 2023

Thank you, Chairperson Kannianen and members of the Committee, for the opportunity to testify in favor of Senate Bill (SB) 2217. My name is Matt Leiseth, and I am President of Hornbacher's Foods. We've been in operation since 1951 with six stores serving the Fargo and West Fargo communities. We currently have 838 North Dakota employees with a payroll of over $15 million. Hornbacher's is also a member of the North Dakota Grocers Association.

As a grocery retailer that paid $2.6 million dollars in interchange fees in 2022, and as a sales tax collector for the State of North Dakota, I support SB 2217, which provides some relief for my business by removing the interchange fee that is currently applied to the sales tax portion of every sales receipt.

Currently, we pay interchange fees on the sales tax, so that we can collect the tax and submit it to the state. In other words, retailers are subsidizing state sales tax collections and financial institutions are profiting from it.

Most grocers will tell you that credit card swipe fees or interchange fees are their second or third highest operating cost behind labor and rent. These swipe fees have skyrocketed since food price inflation has increased, and to add to this cost, Visa and Mastercard increased interchange rates last Spring. Credit card swipe fees have seen the highest rate increases because they are on average two to four percent of a transaction, compared to the historically one to two percent grocery store profit. The CEOs of both Visa and Mastercard have publicly declared that inflation benefits their business because higher prices mean higher swipe fees.

SB 2217 would provide much needed relief to grocers by either:

1. Deducting the amount of any tax or fee imposed from the calculation of interchange fees specific to each form or type of electronic payment transaction at the time of settlement; or

2. Rebating an amount of interchange fee proportionate to the amount attributable to the tax or fee.

Any grocer that accepts credit cards already has the equipment to deduct the amount, whether it is a check stand pin pad reader or a mobile credit card reader. Consider how restaurants today can enter a sales amount followed by a separate tip amount into their PIN pads. Merchants could enter a pre-tax purchase amount followed by a sales tax amount into their PIN pads. 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.

Removing swipe fees on sales tax can also be implemented via a rebate by the financial institution at the end of the month requiring zero impact on point of sale (POS) systems. This would require merchants to submit the tax information to the financial institution.

Prohibiting swipe fees on sales taxes will keep dollars in the state, stimulating economic activity, versus sending them to networks and banks in other states and even other countries. SB 2217 will help lift a costly burden on North Dakota grocers, at absolutely no cost to the state.

The profits of merchants will stay in the community in which they operate. Hornbacher's invests in local and regional food manufacturers and farmers and ranchers by selling their products in our stores. We contribute to our local food banks, the arts, local churches, schools, and charities. Our success is directly tied to the people we serve. When large Wall Street banks and the credit card duopoly takes more of every dollar we earn on grocery sales, that's money that gets taken away from your constituents.

Thank you for your consideration of our view and we urge you to support SB 2217.

#16776

ND Petroleum Marketers Association
ND Retail Association

Testimony SB 2217

Senate Finance and Tax Committee

January 25, 2023

Chairman Kannianen and Members of the Finance and Tax Committee:

For the record, my name is Mike Rud. I serve as the President of the ND Retail and Petroleum Marketers Associations. These associations comprise over 1100 retail store fronts across the state. I'm here urging a "DO PASS" recommendation on SB 2217.

I will be brief as there are a number of business owners and groups wishing to testify in support of SB 2217.

Simply put, I can think of no better way for the 68th Legislative Assembly to provide meaningful financial relief for the state's retail sector than passage of SB 2217. As Senator Vedaa said, SB 2217 would eliminate the imposition of credit card fees on the sales tax portion of a retail transaction. That's all this bill will do. The State and locals still receive all their sales tax dollars.

Retailers in ND collect and remit taxes to the state not because they want to, but because they have to. It costs retailers money to collect and remit taxes. Yes, retailers may deduct and retain a percentage of the taxes collected for reporting and remitting purposes. This fee is capped at $110 per return. However, retailers are paying substantially more on the swipe fee for sales taxes than the retailer discount provides.

This proposal would only apply to the state and local sales tax portion of a credit card transaction. It would not apply to debit card purchases.

Credit card companies and banks nonchalantly claim these fees only amount to "pennies" per transaction for retailers. Well, most retailers I work with will tell you they are in a

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"penny" business. This means every penny counts when it comes to operating a retail establishment, a business mantra magnified in these inflationary times. The business scenarios below illustrate this point:

Snowblower	$2000.00
State Tax 5%	100.00
Local tax 2.5%	50.00
Total tax	150.00
Tax swipe fee 3%	$4.50

Sold 100 snowblowers in month $450.00 credit card fees on sales tax

Dress Shirt	$80.00
State tax 5%	4.00
Local tax 2.5$	2.00
Total tax	6.00
Tax swipe fee 3%	.18

Sold 1000 shirts in month $180 credit card fees on sales tax

C-Store snacks	$20.00
State tax 5%	1.00
Local tax 2.5$	.50
Total tax	1.50
Tax swipe fee 3%	.05

Sold 6000 snacks in month $300 credit card fees on sales tax
Yearly credit card fee on tax on snacks $3,600

Senator Vedaa shared with you this exemption will conservatively save the ND retail community roughly 11 million dollars a year. Well that's 1 BILLION PENNIES! Bottom line, these pennies add up and Credit card companies are collecting that many "pennies" in one year off the backs of retailers and ultimately the consumers in ND.

Mr. Chairman and Committee Members, this bill is not novel to ND. There are about 15 other states with business associations pursuing similar language for their retail sectors. Please support eliminating the imposition of swipe fees on state and local sales taxes and help reduce the financial burden on ND retailers and consumers by voting for a **"DO PASS"** recommendation on SB 2217.

the provisions of this subsection must be paid by the commissioner to the state treasurer and must be credited by the state treasurer into a special fund to be known as the retail sales and use tax security trust fund. If any tax, penalty, or costs imposed by this chapter are not paid when due, by the person depositing moneys with the commissioner as security for the payment of tax, penalty, or costs imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the tax and penalties due. The commissioner, when in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, shall certify that information to the director of the office of management and budget who shall pay the unused money to the person entitled thereto.

4. Remittances on account of tax due under this chapter may not be deemed or considered payment thereof unless or until the commissioner has collected or received the amount due for such tax in cash or equivalent credit.
5. A retailer required to file monthly returns under subsection 1 shall file the returns by an electronic method approved by the commissioner. A retailer that does not comply with the requirement to file reports electronically is deemed to have failed to file the sales and use tax returns as provided in section 57-39.2-15 and is subject to the penalties provided in section 57-39.2-18. The commissioner may, for good cause shown, waive the filing requirements of this subsection.

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer registered to report and remit sales, use, or gross receipts tax imposed under chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed one hundred ten dollars per return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4. If a retailer fails to timely file a return or pay the tax due, the tax commissioner may, for good cause shown, allow the retailer to deduct and retain the compensation under this section.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records,

preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

57-39.2-13. Lien of tax - Collection - Action authorized.

1. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest must be determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
2. The lien aforesaid attaches at the time the tax becomes due and payable and continues until the liability for such amount is satisfied. For the purposes of this provision the words "due" and "due and payable" mean the first instant at which the tax becomes due.
3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
   a. The name of the taxpayer.
   b. The name "State of North Dakota" as claimant.
   c. The date and time the notice of lien was indexed.
   d. The amount of the lien.
   e. The internal revenue service taxpayer identification number or social security number of the taxpayer.

   The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.
5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the indexing of the notice of lien, or for its satisfaction.
6. Upon payment of the tax as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
7. The attorney general, upon the request of the commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien therefor in the manner provided for mortgages on real or personal property, and in such action shall have the assistance of the state's attorney of the county in which the action is pending.
8. It is expressly provided that the foregoing remedies of the state are cumulative and that no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.
9. The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to ensure payment of the taxes, including penalties, interest, and other costs, are self-explanatory.

57-39.2-14. Permits - Application fee for reissuance.

1. A person may not engage in or transact business as a retailer within this state unless a permit or permits shall have been issued to that person as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every

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

My name is Torry Reutter, I am part owner and General Manager of Miller's Fresh Foods. We own and operate ten retail grocery stores in smaller North Dakota towns.

I am asking that you give a "do pass" recommendation on SB 2217

We are independent retail grocery stores and serve several towns in ND that are affected by this Bill.

I have been in this business a short 18 years and understand the cost of accepting credit cards. In current times, it is a must for us to accept credit cards as not many of our customers carry cash or checkbooks anymore. I'm sure even all of you here listening to me have changed the way you pay for things today.

This change in payment options has placed these 2-4% fees on us as retailers.

This goes directly to the bottom line of a business.

Credit card companies and banks should not profit off of us for collecting sales tax for our state.

What we are simply asking is that the sales tax portion we collect for the state of ND is not part of the credit card fees. Our state will still collect the taxes and we as retailers will not be penalized for being required to collect the sales tax.

In closing I would like to thank you all for allowing my testimony and would urge a "do pass" on SB 2217

March 6, 2023

Re: **Statement in Opposition to North Dakota SB. 2217**

Dear Chairman Headland, Vice Chair Hagert, and Members of the North Dakota House Finance and Taxation Committee:

Encouraged by large out-of-state retailer groups supported by big box merchants, SB. 2217 would prohibit the collection of interchange on the sales tax portion of electronic transactions.[1] This would come at the expense of North Dakota consumers and small businesses alike.

This fundamentally flawed legislation attempts to do what has never been done. No other state in the nation has ever implemented such a program, due to technical hurdles, consumer privacy concerns, and other barriers.

In fact, similar proposals have been considered in nearly 30 states over the past 15 years and, without exception, after full and careful consideration, no measure has successfully passed out of the committee of original reference.

To provide vendors remuneration for the collection of state sales tax, nearly 30 states offer a vendor collection discount.[2] In contrast to SB. 2217's proposal to upend the current well-functioning system, these states have chosen a workable policy that is more sound, practical, and fair in providing desired relief to small businesses from the burden of collecting and remitting state sales tax.

Despite retailer group false claims to the contrary, neither the software nor POS hardware exists to separate out sales tax from the underlying cost of goods or services sold. When a retailer makes a sale via electronic payment, the system that processes the transaction recognizes only the final purchase amount on which the merchant discount fee is based. The system transmits neither information regarding the product, nor services sold, nor the amount of sales tax collected.

Were SB.2217 enacted, North Dakota merchants (alone in the nation) would be faced with one of two options:

[1] Interchange is a small fee (an average of 1.8%) paid by merchants on electronic credit transactions to cover handling costs, fraud and bad debt costs, the risk involved in approving the payment, and the operation of the payment network. Assuming such a rate with a 6% sales tax, the interchange fee on a $100 transaction amounts to only $0.108.)

[2] Avalara. "Vendor discounts for filing sales tax on time, a state-by-state guide." July 20, 2022.

1. Collect sales tax as a separate transaction, essentially requiring *two* transactions for *every* taxable sale. This would force consumers to pay the sales tax portion via cash or check.

2. Merchants would send payment companies every detail of a person's shopping habits, creating an enormous consumer privacy issue. The current system is designed so that payment networks see very little of a consumer's personal information to process a payment. This bill would fundamentally change that, exposing consumer's private purchases through both intentional sharing – and worse – accidental exposure of sensitive consumer data through increasingly common data breaches.[3]

Should this proposal be enacted, both merchants and consumers would be negatively impacted because, as noted above, merchants would need new, yet-to-be developed, specialized terminals and software to itemize and communicate segmented data to the card networks at the time of sale. This would especially hurt small businesses which do not have sufficient volume to offset the costs any new system would impose.

Retailer claims that interchange rates have increased over recent years are also false. According to Verisk Financial Research, the average U.S. credit interchange rate has remained steady (1.8%) dating back to at least 2016.[4] In the same period of time, merchants and retailers have seen their sales volumes rapidly increase, resulting in an increase in total *volume*.

Recent retailer arguments referenced chargebacks on electronic payments. It's important to note that chargebacks are, of course, important consumer protections. The current chargeback rate is 2.55%.[5] That figure exceeds even credit interchange. In 2020, issuers were financially liable for more than $37 billion in charge-offs, making them, effectively, free sales to merchants, as issuers had to cover the entire portion of these costs, not just sales taxes.

For these reasons and more, the following groups joined in signing a letter opposing SB. 2217 and we urge you to do the same:

- North Dakota Bankers Association
- Independent Community Banks of North Dakota
- Dakota Credit Union Association
- American Bankers Association
- American Financial Services Association
- American Transaction Processors Coalition
- Card Coalition
- Credit Union National Association

[3] Law360. "Wawa Data Breach Is Warning On Swipe Payment Tech Risks." September 19, 2022.
[4] Electronic Payments Coalition. "EPC Q4 2022 Data Dashboard." January 25, 2023.
[5] Federal Reserve Bank of St. Louis. "Charge-Off Rate on Credit Card Loans, All Commercial Banks." February 21, 2023.

- Electronic Payments Coalition
- Electronic Transactions Association
- Independent Community Bankers of America
- Innovative Payments Association
- National Association of Federally-Insured Credit Unions
- TechNet

Simply put, government should not be in the business of interfering in a working, private market by intervening in private contracts between willing parties to pick winners and losers. The U.S. Department of Justice has conducted multiple exhaustive, multi-year reviews of the electronic payments system and concluded – retailer claims notwithstanding – that there was no anti-competitive behavior. And retailer legal arguments of similar claims have likewise been rejected by the U.S. Supreme Court no fewer than four times.

It should be noted that like electricity and other business expenses, interchange is deductible on taxes as a cost of doing business. Presumably, many retailers are already claiming these deductions.

Even were such an ill-advised proposal implemented, ultimately, consumers and small merchants would bear the brunt of the consequences of a less efficient, less secure, less private payments system. Safety and security have never been more important. Continuing to invest in secure payments technology is critical toward ensuring the U.S. economy and our North Dakota small business community are given the necessary resources they need to operate and thrive, especially during these particularly challenging times.

For the above stated reasons and more, we strongly encourage you to vote "no" on SB. 2217.

Sincerely,

Jeffrey A. Tassey

Jeffrey A. Tassey
Chairman, Electronic Payments Coalition

Testimony of

Matthew Leiseth President, Hornbacher's Foods

Before the North Dakota Senate Committee on Finance and Taxation

Hearing on SB 2217 March 6, 2023

Thank you, Chairperson Headland and members of the Committee, for the opportunity to testify in favor of Senate Bill (SB) 2217. My name is Matt Leiseth, and I am President of Hornbacher's Foods. We've been in operation since 1951 with six stores serving the Fargo and West Fargo communities. We currently have 838 North Dakota employees with a payroll of over $15 million. Hornbacher's is also a member of the North Dakota Grocers Association.

As a grocery retailer that paid $2.6 million dollars in interchange fees in 2022, and as a sales tax collector for the State of North Dakota, I support SB 2217, which provides some relief for my business by removing the interchange fee that is currently applied to the sales tax portion of every sales receipt.

Currently, we pay interchange fees on the sales tax, so that we can collect the tax and submit it to the state. In other words, retailers are subsidizing state sales tax collections and financial institutions are profiting from it.

Most grocers will tell you that credit card swipe fees or interchange fees are their second or third highest operating cost behind labor and rent. These swipe fees have skyrocketed since food price inflation has increased, and to add to this cost, Visa and Mastercard increased interchange rates last Spring. Credit card swipe fees have seen the highest rate increases because they are on average two to four percent of a transaction, compared to the historically one to two percent grocery store profit. The CEOs of both Visa and Mastercard have publicly declared that inflation benefits their business because higher prices mean higher swipe fees.

SB 2217 would provide much needed relief to grocers by either:

1. Deducting the amount of any tax or fee imposed from the calculation of interchange fees specific

to each form or type of electronic payment transaction at the time of settlement; or

2. Rebating an amount of interchange fee proportionate to the amount attributable to the tax or fee.

Any grocer that accepts credit cards already has the equipment to deduct the amount, whether it is a check stand pin pad reader or a mobile credit card reader. Consider how restaurants today can enter a sales amount followed by a separate tip amount into their PIN pads. Merchants could enter a pre-tax purchase amount followed by a sales tax amount into their PIN pads. 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.

Removing swipe fees on sales tax can also be implemented via a rebate by the financial institution at the end of the month requiring zero impact on point of sale (POS) systems. This would require merchants to submit the tax information to the financial institution.

Prohibiting swipe fees on sales taxes will keep dollars in the state, stimulating economic activity, versus sending them to networks and banks in other states and even other countries. SB 2217 will help lift a costly burden on North Dakota grocers, at absolutely no cost to the state.

The profits of merchants will stay in the community in which they operate. Hornbacher's invests in local and regional food manufacturers and farmers and ranchers by selling their products in our stores. We contribute to our local food banks, the arts, local churches, schools, and charities. Our success is directly tied to the people we serve. When large Wall Street banks and the credit card duopoly takes more of every dollar we earn on grocery sales, that's money that gets taken away from your constituents.

Thank you for your consideration of our view and we urge you to support SB 2217.

House Finance and Taxation Committee

03/07/23

SB 2217

Chairman Headland and committee members, my name is Don Larson and I am speaking today on behalf of the National Federation of Independent Business (NFIB). NFIB is a non-profit, non-partisan organization and is the nation's largest small business advocacy group. In North Dakota we represent more than 2,000 small businesses. Our average member has 10 employees.

I am here today to support the passage of Senate Bill 2217. Small businesses operate on thin profit margins, which have been cut further in recent years as credit card networks' swipe fees have increased. This problem has been exacerbated by pervasively high inflation, which acts as a multiplier since swipe fees are a percentage of each sale. Small business owners do not have the market power to negotiate with large credit card companies on swipe fees.

When a small business owner swipes a card for payment, they pay three main fees. The first is a processing fee which goes to the company providing the physical hardware to process the transaction. If a small business doesn't like their processor, they can find another company as the field has several competitors and pricing plans.

The second fee is the network fee which goes to the network, typically Visa and Mastercard who provide the service of transferring funds from the small businesses bank to the bank of the credit card issuing bank or credit union. Small businesses have no ability to negotiate these fees, it is take it or leave it. The fees, however, are much smaller than the third fee, interchange fees.

Interchange fees, also known as swipe fees, are the largest fees a small business pays and can be as large as 3% of a transaction. This fee is set by the credit card network (Visa or Mastercard) and dictates how much money a small business must pay the bank or credit union issuing the credit card. Small business owners cannot negotiate these fees either.

In April of 2022 both Visa and Mastercard, separate “rival” companies, announced increased interchange (swipe) fees at the same time. It is a highly unusual arrangement for a third-party service provider (credit card companies) to set the fee structure that two separate parties (small businesses and banks) pay each other independently of the service provider. It is also highly unusual that some of the largest banks in the world blindly accept a third party telling them what their interchange rate should be. This system has squashed competition and has only led to fee increases year after year.

I appreciate your time this morning and hope that you will give SB 2217 a do pass recommendation.

MAG
MERCHANT ADVISORY GROUP®
4248 Park Glen Road
Minneapolis, MN 55416
(952) 928-4648

March 6, 2023

The Merchant Advisory Group (MAG) appreciates the opportunity to comment on SB 2217.

Founded in 2008, MAG represents merchants in the payments field dedicated to driving positive change in payments through multi-stakeholder collaboration. The MAG represents 165 U.S. merchants which account for over $4.8 Trillion in annual sales at over 580,000 locations across the U.S. and online. Roughly $3.5 Trillion of those sales and over 100 billion card payments are electronic which represents approximately 62%[1] of total U.S. card volume. MAG members employ over 14 million associates.

The purpose of this statement is to help alleviate any misconceptions which might exist in implementing a procedure in which sales tax can be removed from any merchant fee calculation. While the MAG is supportive of any reduction in the cost of payments for merchants, we will let our other colleagues take up those points.

Once all of the rhetoric is removed from the conversation, the calculation to remove sales tax from the merchant fee is a simple equation which needs to take place before fees are applied: net sales amount equals total sales amount minus sales tax. Once this amount is known it can be used to calculate the new merchant fees and follow the current process in how these fees are deducted from the final settlement amount.

Now that we have defined the needed calculation, let's discuss how it can be achieved. The total amount of the sale is already known and used in the process today which means the only additional information needed is the sales tax. In certain transactions today, merchants are already required to pass the sales tax information to the networks in the transaction message. The networks created this process for business cards so they could provide this information back to the business that uses these cards. Merchants who do not provide the information are penalized by the networks and are required to pay a higher interchange when an amount is not provided.

Besides this example, the industry also works on an ISO standard format known as 8583. All the current electronic card payments are conducted on this standard which prescribes how data is transferred between the parties. Field 54 within this standard is currently used for the purpose of sending alternative amounts within the transactions. For instance, when a merchant provides the customer cash back as part of the transaction, it must include the specific portion of the transaction which is cash in this field. This process can be made easier with the adoption of the new ISO 20022 message speciation by the Global Card Networks "Networks." This specification will allow for easier and better identification of taxes and other items. The new

[1] *Source of Total U.S. card volumes: Federal Reserve Payments Study 2019*

specification has been delayed by the Networks and should be implemented as quickly as possible.

Another process already in place that would simplify this effort is when an issuer only approves the transaction for less than the requested amount. This may happen when an account only has a limited amount of funds remaining in it. As an example, the merchant requests $100 in order to complete the purchase. On receiving the request, the issuer identifies that only $65 is available for purchase in the customer's account. The issuer sends back the message with the field indicating only $65 was available, and the merchant needs to collect another tender for the remainder of the transaction. As a result, interchange is now only applied to the $65 and **not** the full $100 originally requested.

As you can see by this example, there is currently a process in place by which the amount of the purchase is reduced in order to recalculate a new merchant fee amount. We know through these examples the industry has both a process to collect sales tax information and the ability to run an alternate amount through the merchant fee calculation. To remove sales tax from the interchange calculation as simply as possible, a new indicator could be added to Field 54 specific to sales tax which can then be deducted before the merchant fee calculation.

Clearly, the process of removing sales tax from the total transaction amount for a purchase before applying merchant fees is technically feasible and can be done with minimal programming. In this case, changes can be made to result in lower prices for merchants. Historically, the networks have imposed fees changes which were greater in complexity and resulted in higher fees to merchants. A sample of those fees changes is below.

International Card Transactions Fees

In an international card transaction, not only do Networks have to recognize the card type and amount, but they also need to convert the currency to the proper fiat. In addition to calculating one of the hundreds of interchange rates to apply to the transaction, they are also able to collect **three** additional fees: an additional network fee because it is an international card, a fee for the currency conversion, and a fee for the acquirer.

Fixed Acquirer Network Fee

When Federal Regulation II took effect, the networks created an array of complicated fees to retain their debit volume, which required payments system stakeholders to put new procedures into place. They never once raised a concern about the burden the new fees and procedures placed on the industry. In this situation, networks created a fee based on the number of locations which accepted a card brand. A "by location" fee had never been created before, and networks reap the rewards of higher profits at the expense of merchants with this fee in place.

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Premium Card Interchange

Several years ago, the networks and the issuers created new levels of interchange based on the status level of a card. Yet again, all parties faced additional burdens to create systems that recognize the card type and pass it through the transaction process. Merchants pay higher fees due to the increased complexities the new levels of interchange created.

To add insult to injury, the issuers complained that the new levels of interchange required them to issue new cards in order to upgrade the amount of interchange charged. As a result, the networks added an indicator within the ISO specification in order to allow the higher interchange amount to be charged without requiring the reissuance of a card. Networks required merchants to implement this new indicator in settlement so the new interchange amount could be applied. The irony of the situation is while the merchants were required to do the work their only reward was paying a higher interchange rate to the issuers.

Conclusion

The removal of interchange from the sales tax portion of transactions **IS** technically possible, can be accomplished easily, and should be implemented without networks charging merchants new fees. This is not a matter of the ability to not charge interchange on sales tax but, instead, the desire of those who benefit from charging the merchants an additional amount to retain profits. MAG supports SB 2217 and the efforts of the North Dakota Legislative Assembly to remove interchange from the sales tax on transactions.

Re: Statement in Opposition to North Dakota SB. 2217

Dear Chairman Headland, Vice Chair Hagert, and Members of the North Dakota House Finance and Taxation Committee:

Scheels All Sports Inc, headquartered in Fargo, ND a retailer with 5 locations in North Dakota and 31 total locations in 11 states provide this testimony in opposition to SB2217.

We have a concern that SB2217 could negatively impact the consumer in retail stores. Today when a consumer makes a purchase only the total amount that will be charged to the customer is sent for authorization to the payment card networks. This single amount without detail provides for an efficient, fast, and seamless buying experience for consumers.

- This single total amount can be made up of many different items. These items can be both taxable and nontaxable items. This total can also include a variety of government fees (hunting & fishing licenses, federal waterfowl stamps, marriage license, state park licenses, ect). This single total amount can also include tips which are intended for an employee.

There is no system in place today to exclude any of these line items from the fee that is charged to process a credit card. If a single line item (in this case sales tax) is excluded from that fee there is a potential negative impact on the consumer. Why? Because there is no system in place to facilitate the sending of multiple pieces of data to the payment card networks. The process simply does not exist today.

However, let's say the system was built and multiple pieces of data (total without sales tax and sales tax) are required to be sent for authorization. A multitude of potentially negative scenarios could occur. The first and primary is the obligation will fall on the merchant to have their POS (point of sale, i.e. cash registers) setup and programmed to send the data to the payment card networks. The work to make that happen will likely be a significant effort. It is beyond the scope of Scheels to know that full effort. Because the system doesn't exist, but knowing what we know the effort will be costly and lengthy.

If the data was sent in the way SB2217 proposes here are a few examples of scenarios that highlight the challenge of sending multiple pieces of data to the payment card networks:

- What happens when a customer returns an item. The merchant would again have to process two pieces of information for the return.
- What happens when the sales tax changes and the original transaction had a separate sales tax. How does the merchant correctly communicate to the payment network the correct sales tax that would need to be restricted from the interchange fee?
- What happens in cross state returns? Many retailers have a presence in North Dakota and also in other states. How does the merchant from a state that is not North Dakota correctly process this transaction to exclude (or get credit) for the portion that SB2217 would impact.

Scheels second concern is the potential privacy implications of SB2217. Today payment networks are blind to all portions of a transaction. However SB2217 opens the door to providing specific information about transactions to the card networks. There is currently legislation proposed in North Dakota that would prevent payment networks from seeing information about Firearm purchases. The spirit of that legislation is that ND citizens should be free to make purchases as they want free from the payment networks knowing about those types of transactions. SB2217 potentially goes in the opposite direction. Yes, today it is only about sales tax, but why open the door to building a system that would allow the payment networks to know anything about a transaction. Payment networks should only see one single amount. The amount required for authorization of the charge.

Scheels third concern is that North Dakota should not be the first state in the nation to try and enact this change. The United States payment system is the greatest system in the world. We don't believe North Dakota should go it alone and try and institute this change. The potential disruption to the payment system could have far reaching unintended consequences. There are far too many unknowns at this time to try and institute this law.

Scheels therefore urges a do not pass on SB2217.

Thank you
Byron Snider
VP - IT
Scheels All Sports, Inc.

Written Testimony by Jared Scheeler, Partner and CEO

House Finance and Tax Committee
Hearing on SB 2217
March 7, 2023

I appreciate the opportunity to submit this testimony on behalf of The Hub Convenience Stores, Inc, a Dickinson-based, locally owned and operated convenience store chain founded in 2015. The Hub employs more than 80 people in four cities in North Dakota – Dickinson, Beulah, Hazen, and New England. My name is Jared Scheeler, and I am the Managing Partner of the business. This past October I completed my term as Chairman of the National Association of Convenience Stores.

Convenience stores play a vital role in all communities across North Dakota.

- We currently have 448 stores in North Dakota, employing 7,200 people
- We conduct over 452,000 transactions per day, which is more than half the state!

In 2022, my five stores paid over $600,000 in credit and debit card swipe fees. $600,000!

The current swipe fee system is inherently unfair to any retailer that collects taxes for North Dakota. As a convenience retailer, my stores collect many, many taxes on behalf of federal, state, and local governments. Think about the products we sell: Liquid fuels, foodservice, tobacco, alcohol, and retail packaged goods. On nearly all of these products, we are collecting taxes for a government entity. One study has shown that 23% of the dollars we collect in our stores are taxes that we collect and pass on. That means of the $600,000 that my company paid in swipe fees in 2022, approximately $138,000 were for taxes that we collected, many of them built in to the cost of the products, like tobacco and fuels. Of the many absurdities that exist about the current swipe fee market, this one may be the most infuriating.

Senate Bill No. 2217 partly addresses this flaw by exempting state and local sales taxes from the transaction amount that is subject to swipe fees. In the current system, merchants are simply vessels used to collect money for federal, state, and local entities. We shouldn't be punished by paying a premium to the banks when we collect those taxes. For my five convenience stores, relief on swipe fees for state and local sales taxes would amount to nearly $11,000. Why should I have to forfeit a large portion of my already slim profit margins just for providing a service to the State?

From a technological standpoint, the credit card companies are already collecting sales tax data on card transactions from over 12 million merchants. Any assertion that it's not technologically possible is simply not true. With a fully integrated Point of Sale system, sales tax data is already being captured by processors.

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www.hubconvenience.com
www.facebook.com/hubconvenience
@hubconvenience

With all of this as a background, it's important to recognize that SB 2217 does not address the anticompetitive swipe fee system or seek to solve all of its large problems. Instead, it merely tries to protect North Dakota's system of taxation and the merchants that provide a service in collecting North Dakota taxes from some of the worst consequences that stem from the swipe fee system.

It comes down to this question: Is it fair for merchants to pay a fee to collect sales taxes that we're required to collect? The answer should be a resounding no.

After that, it's not about challenges of implementation. Don't let the banks fool you. I've been in this game for over two decades. They'll provide you with misinformation. They'll leave out important facts. And I've heard many bold faced lies. What do you think is paying for all of these ivory towers going up all over Bismarck and other communities?

It's time that North Dakota common sense be introduced in to the broken credit card swipe fee system. Please support SB 2217 to take an important step towards ending swipe fees on taxes collected by businesses.

Thank you.

Jared Scheeler
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Opposition Testimony before House Finance and Tax
Senate Bill 2217
March 7, 2023
Kelvin Hullet, Chief Business Development Officer
Bank of North Dakota

Mr. Chairman and members of the Committee. I am Kelvin Hullet, chief business development officer for the Bank of North Dakota which is overseen by the North Dakota Industrial Commission. I am here today in opposition to Senate Bill 2217. Others have already provided an overview and issues related to this proposed legislation. Specifically, the intent of my testimony is to provide insight into the impact to Bank of North Dakota.

Per NDCC 54-06-08.2, Bank of North Dakota is the administrator for the State of North Dakota's merchant services program. This program enables state agencies, boards, commissions, and higher education institutions to accept credit cards for payment at 486 physical locations and online channels across the State.

In 2022, these locations processed 2.1 million transactions for state government. As with all government and businesses, consumers and taxpayers rely on the convenience of secure electronic payments.

As systems do not exist to exclude sales tax from the amount on which an interchange fee is charged, BND cannot estimate costs for state agencies to implement a compliant system.

Today, our request is for a do not pass on SB2217. I will stand for any questions.

Advancing Convenience & Fuel Retailing | convenience.org

Testimony of Anna Blom

Director of Government Relations, National Association of Convenience Stores

Before the

North Dakota House Finance and Taxation Committee

at the Public Hearing on SB 2217

March 7, 2023

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 <u>not</u> 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

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]

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[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

#22487

ND Hospitality Association

Testimony of Rudie Martinson
Executive Director of the North Dakota Hospitality Association
Before the House Finance and Taxation Committee
March 7, 2023

Chairman Headland and members of the House Finance and Taxation Committee,

My name is Rudie Martinson, and I submit my testimony today in my capacity as Executive Director of the North Dakota Hospitality Association. The ND Hospitality Association is the trade association for our state's restaurant, lodging, and retail beverage industries.

We stand in support of our fellow retail business to urge a "Do Pass" motion on HB 2217. Our bars, restaurants, and hotels act as a tax collecting agent for the state whenever we swipe a credit card, and pay the swipe fee for the tax collected on top of the cost of services rendered or goods sold. This bill seeks to remove the state and local tax collected on those transactions from the swipe fee – effectively eliminating an added cost incurred by our members to credit card companies for collecting and remitting this tax.

As you know, the past three years have been uniquely challenging for all sectors of business, and particularly so for businesses in the hospitality industry. This bill will provide relief from an undue and possibly unintentional burden.

Restaurants, hotels, and bars are the cornerstones of the social fabric of our communities. We host the anniversary or graduation dinner, the big conference that became a turning point in your career, and the time you need to wind down after a tough day at work. We ask that you give this bill your favorable consideration so we do not have to continue to pay an additional fee to private companies because we dutifully assist the state and local governments in collecting taxes.

On behalf of the North Dakota Hospitality Association and the restaurant, lodging, and retail beverage industries, I urge a "Do Pass" vote

Thank you for your consideration.

Sincerely,

Rudie Martinson
Executive Director
North Dakota Hospitality Association

Mr. chairman and members of the House Tax and finance committee. SB2217 is that bill to correct a wrong that has slowly been building over the last several years. North Dakota retailers since 1935 have been collecting sales tax for the state of North Dakota and have been remitting it monthly to fulfill that obligation for the citizens of this great state. Back when I first started doing retail, sales tax was collected through checks and cash and there's a simple form that was filled out at the end of the month when you sent that dollar amount into the state of North Dakota. Over the years we have seen the shift of cash and checks go to credit and debit cards and with those credit and debit cards comes a fee and that fee is what's causing a problem for many of our retailers. In fact the 17 years that I owned a grocery store towards the end of my tenure it was the largest fixed cost in my grocery store. As I was collecting the sales tax for the state of North Dakota I realized that I was also paying a fee for the transactions that were taking place in my store and that fee could be anywhere from 2 ½ to 5% depending upon the type of the card I was taking. Many rewards cards which many of us probably have in our wallets right now have a higher fee because of the reward. That's right your retailer pays for those fees for your reward card. I'm pretty sure if we were just developing a sales tax in North Dakota right now with the situation that we have of almost 100% credit cards being taken that this would be addressed as an unfair process for the retailers because of the fee it would create. But since this has evolved overtime it's kind of been swept under the rug but now many retailers are beginning to wake up and as we started looking at this, we realized that this is a $17 million take from retailers through the process of collecting taxes. You're gonna have people behind me that are talking against this bill and many of them are going to tell you that this can't be done, the fact of the matter is it can be done. It can be done right in our retail establishments, our Point Of Sale technicians can set this up to separate tax and send that information in with the credit card transaction. EBT , Snap Benefits must have the tax removed, our candy and soda are taxed and can be purchased with snap benefits. Many are going to tell you that the banks are going to lose because of this bill and that is possible that they would lose 5-8% of this fee but I say there is more retailers in this state that are going to lose way more than the banks who get to keep 92-95% of this fee. You're going to be told that North Dakota is the only state that is doing this and that's not true there are over 15 other states that are working this through their legislature probably as we speak. North Dakota is unique because every bill gets a hearing and that's why you see so many people behind me because we have woken up the industry and they don't want this can of worms opened for the country or possibly the world to see. I believe the over $2 billion that North Dakota retailers collect in sales tax every biennium is important to this state but the retailers should not be paying a fee to collect that and I ask everybody on this committee to put yourself in the shoes of a retailer and asked if you would want to pay your kids tuition for college or pay this unfair forced fee because that's what it amounts to to many retailers. I'm not exaggerating its college tuition for their children. Mr. chairman that concludes my testimony and I'll stand for any questions.

TESTIMONY IN REGARD TO SENATE BILL NO. 2217

March 7th, 2023

To*: Committee Chairman Craig Headland and members of the Finance and Taxation committee*

From: ***Jeff Olson, President/CEO Dakota Credit Union Association***

Consumers across the country rely on credit and debit cards to make life happen, from paying for groceries and school supplies to covering emergency car repairs or medical expenses. Accepted nearly everywhere, credit cards offer robust security, fraud protection, and access to credit that may not otherwise be available.

Interchange fees cover the cost of fraud detection, credit monitoring, and fraudulent purchase protection that make consumers and merchants whole when bad actors attack.

Accessible credit for North Dakota's 214,000 credit union members.
Consumers rely on credit cards to build credit and gain access to funds that otherwise may not be available to them, something not available with debit cards. Credit unions work with their members to address their needs.

Changes to interchange mean changes to credit.
The robust security features that make credit cards so appealing to consumers come at a cost. Interchange fees cover those costs, but increasing fraud and the possibility of reduced interchange fees pose a real threat to data security.

The bill's supporters claim that they are acting on behalf of the state's retailers and small businesses. However, what about the consumers? The reality is that this bill would be a damaging, costly tax on those small businesses that they are trying to help, and a tax that would certainly be passed on to North Dakota consumers.

From data breaches to skimmed cards, electronic payments are a prime target for bad actors. The rate — and cost — of criminal activity is on the rise. When a merchant's systems are breached, or a card is otherwise compromised, financial institutions - including credit unions - absorb a significant portion of the cost.[3] Today, merchants and retailers aren't liable for these breaches.

Today when any debit or credit card is used, the transaction gets processed as a full amount, including all taxes. That amount is transferred across the payment network (payment exchange networks owned by Visa, Mastercard, American Express, or Discover) to the financial institution that issued the customer's credit card. That financial institution or card issuer then transfers the payment in full across the same payment network to the Financial institution that the merchant uses. There is no structure in place to separate the sales tax from the main transaction amount as transactions are processed between financial institutions.

1 CUNA, Operating Ratio and Spreads, YE 2021 report (CUNA-Credit Union National Association)
2 CUNA, Operating Ratio and Spreads, YE 2021 report
3 Consumers use credit cards for their ease-of-use, robust security, and fraud protection

Some retailers claim that the software used in their point-of-sale hardware has the capability to separate the sales tax from the main transaction amount. Even so, the point-of-sale systems do not communicate with the various financial institutions involved in making sure that the customer's money ends up in the pockets of the retailer.

Major changes would have to be made to the existing electronic payments infrastructure at a significant, unknown cost. Ultimately, those costs would be passed on to the small businesses and consumers in North Dakota.

This bill is part of a broader effort by mega retailers across the country to reduce interchange fees and process credit card transactions across less secure alternative networks. If successful, consumers will bare the full burden additional costs and expenses added to the exchange networks.

For our credit union members – they rely on credit cards to build credit and gain **access to funds that otherwise may not be available to them.**

Here is a sample of the cost of running a debit card program at Credit Union.

- The Median margin per account at a CU is $30 on Debit Cards.
- On average, fraud costs reduce debit card margins by 18% per account.
- Interchange revenue for debit cards is small and barely covers program costs.

According to a recent study conducted by the Credit Union National Association and Fredrick polling on CU credit card accounts, from 2020 to 2021:

- Fraud costs increased 24% ($2.50).
- Total program costs, including fraud, grew 14%
- Non-interchange revenue decreased nearly 7%.
- Margins on CC programs decreased nearly 11%.

Interchange Revenue Doesn't Pay For a credit union credit cards programs either and the credit union average margin is just $90 per card annually.

Credit union credit card costs are $0.23 higher per transaction than the interchange revenue. Meaning Credit Union credit card programs are under water… as Interchange revenue does NOT cover card expenses… card profits come from interest on outstanding balances.

If successful, consumers will ultimately take on the full burden of additional costs and expenses either on increase pricing or fees added to the exchange networks.

Also, what's behind the curtain? Big box retailers stand ready to make billions on the backs of the small retailers who are fronting this fight and who want customers on their own CC programs.

The bottom line is that interchange works. Consumers win with easy access to easy-to-use credit/debit cards; merchants win with guarantee and immediate payments; and financial institutions win with safe and secure products for their customers. This fraction of a cent keeps credit available to consumers, while protecting them-and merchants – from fraud.
We respectfully ask you to give SB 2217 a do not pass.

Respectfully submitted,

Jeff Olson

DakCU President/CEO

4 National Voter Survey, CUNA/Frederick/Cygnal Polling, January 2023 (Credit Union National Association)

5 CUNA/Frederick polling, July 2021.

#22542

Brucker, Mary

From:	Headland, Craig A.
Sent:	Monday, March 6, 2023 1:07 PM
To:	Brucker, Mary
Subject:	Fwd: Coalition of 16 Center-Right Groups: Reject SB 2217

Can you print and provide for all committee members please?

From: Grover Norquist, Americans for Tax Reform <ggn+atr.org@ccsend.com>
Sent: Monday, March 6, 2023 11:25 AM
To: cheadland@nd.gov <cheadland@nd.gov>
Subject: Coalition of 16 Center-Right Groups: Reject SB 2217

March 6, 2023

To: Members of the North Dakota House Finance & Taxation Committee
Re: SB 2217

Chair Headland, Vice Chair Hagert, and Members of the Committee,

The undersigned organizations write in opposition to Senate Bill 2217. This legislation would prohibit interchange fees on the sales tax portion of electronic payment transactions in North Dakota. **The government would be interfering 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.**

(View a printable PDF version of this letter HERE.)

The state has created a sales tax burden that affects multiple parties in a transaction. The electronic payments system has been developed to accommodate this to best serve consumers and businesses. Currently, that system accounts for the final, total cost of a transaction. It does not parse out local or state sales tax, the network only sees that total.

Visiting Faculty Fellow
North Dakota State University

Steve Pociask
President & CEO
American Consumer Institute

David Ridenour
President
National Center for Public Policy Research

John Berlau
Senior Fellow and Director of Finance Policy
Competitive Enterprise Institute

Jerry Theodorou
Director, Finance, Insurance & Trade Program
R Street Institute

Seton Motley
President
Less Government

Phil Kerpen
President
American Commitment

Daniel J. Mitchell
President
Center for Freedom and Prosperity

Americans for Prosperity North Dakota

North Dakota Retail Association

ND Petroleum Marketers Association
ND Retail Association

NDPMA

Testimony SB 2217
House Finance and Tax Committee
March 7, 2023

Chairman Headland and Members of the Finance and Tax Committee:

For the record, my name is Mike Rud. I proudly serve as the President of the ND Retail and Petroleum Marketers Associations. These associations comprise over 1100 retail store fronts across the state. I'm here urging a "DO PASS" recommendation on SB 2217.

I will be brief as there are a number of business owners and groups wishing to testify in support of SB 2217.

Simply put, in these inflationary times, our business coalition can think of no better way for the 68th Legislative Assembly to provide much needed financial relief to ND businesses and consumers than the passage of SB 2217.

In a survey commissioned by NDRA/NDPMA, research numbers based off of 2020 credit processing information show Passage of SB 2217 would put about **$17 Million Dollars** back in the pockets of ND retailers and consumers **AT NO COST TO THE STATE!**

Retailers in ND collect and remit taxes to the state not because they want to, but because they have to. It costs retailers money to collect and remit taxes. Yes, retailers may deduct and retain a percentage of the taxes collected for reporting and remitting purposes. This fee is capped at $110 per return. However, retailers are paying substantially more on the swipe fee for sales taxes than the retailer discount provides.

I have attached a penny to each of your testimonies. As a former partner in a 5th Generation family business, I was taught we operated in a "penny" business. Every penny counts towards the bottom line. In today's inflationary period this operations mantra is shared by all the businesses our Associations represent, and just as importantly, the state's shoppers.

Yet, credit card companies and banks callously proclaim credit card swipe fees only amount to "pennies" per transaction for retailers. The statement below taken from a Federal survey paints a different picture:

"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."**

Keeping that discovery in mind, let's talk about a $100 retail purchase. A merchant pays 3% processing fees on a sale paid with a credit card. That's $3. He collects and remits state and local sale taxes totaling 7%. That's $7, which the merchant is then charged another $.21 by the credit card firms for processing.

Are we missing something here? A retailer pays a total of $3.21 to credit card companies for a transaction costing $04-.08 to process? **This bill still allows the credit card companies to collect the $3.00.** SB 2217 would simply allow the retailers not to pay the additional swipe fees relating to state and local sales taxes.

It would appear to me the credit card companies and banks have the numbers and roles reversed when it comes to who is only paying "pennies" per transaction. Bottom line, these pennies add up and Credit card companies are collecting upwards of **2 Billion "pennies"** in one year off the backs of retailers and ultimately the consumers in ND.

Mr. Chairman and Committee Members, in closing, you are going to hear that this bill has been tried in about a dozen other states and has never passed. What you won't hear is that in nearly all of those the states, the legislative process does not allow for a full floor vote on every bill. So, for whatever reason a Committee Chair in another state can hold a hearing and then never let the bill see the light of day. And despite all of that, a growing number of business associations in other states continue to push this legislation.

And Committee, you are going to hear from the bill's opposition the sky will fall with the passage of this bill, it will lead to increased costs for retailers and consumers and financial Armageddon will be upon us. Keep in mind, these folks said the same thing about debit cards, chip and pin technology on credit cards and currently are using the same logic to prevent regular credit cards from having another processing platform added to them. All designed to discourage competition in the credit card industry.

We all know the ND legislative process is different and that's good. You have the ability to pass groundbreaking legislation. You have a chance to make a difference for retailers and consumers alike. I urge a "DO Pass" recommendation on SB 2217.

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

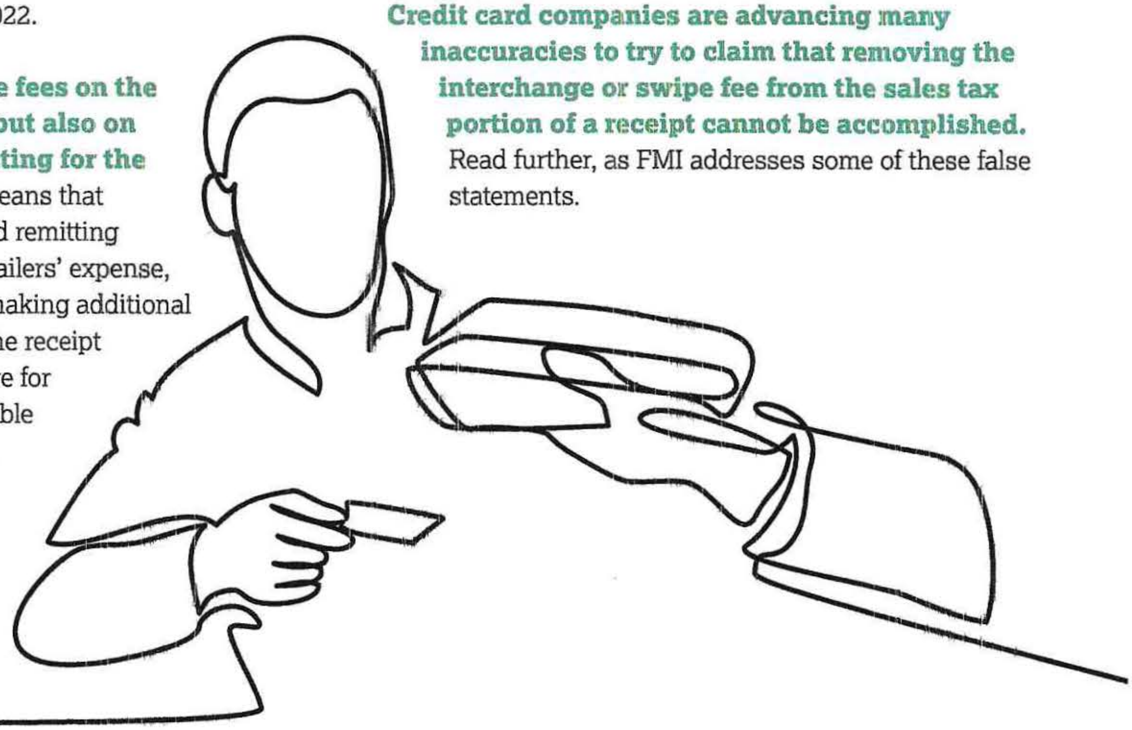
Retailers partner with the government on many issues. One way is how we act as the government's agent in the collection and submission of state and local sales and excise taxes. Retailers accept many forms of payment, including credit cards. Because of COVID, retailers in 2020 saw a seismic shift in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

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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/

Kirkwood Ace Hardware
Bismarck, ND

Testimony SB 2217
House Finance and Tax Committee
March 7, 2023

Chairman Headland and Members of the Finance and Tax Committee:

Hello, I'm Adam Hinz from Kirkwood Ace Hardware in Bismarck North Dakota. Our family operates two hardware stores in Bismarck with 100% local ownership.

Collecting sales tax for the state is part of being in business. The state provides a small amount of compensation, a maximum of $110 per month, and though we appreciate this gesture, it doesn't cover the hard cost of collecting the state's money.

In the 12 months between November 2021 to November 2022 we collected over $600,000 in sales tax revenue for the State of North Dakota. 79% of our business is done on credit cards and our processing fees run nearly 3%. That means that we paid about $15,000 of the credit card fees out of our pocket for the state's sales tax.

If I would choose to pay my North Dakota income tax with my credit card, the state adds the credit card processing fees to the amount owed (it's called a "convenience fee"), yet we businesses are supposed to absorb those fees on the money that we do the service of collecting for you.

To clarify, under the present system, we are actually paying you more than we take in. We are being penalized for collecting the state's money. This is actually an additional tax without any revenue to support it. We retailers are not asking for handouts or even compensation for collecting your money, but it is a matter of fairness that we not owe you more than we actually collect.

There will need to be a discussion of how to measure compensation, but any normal business program can tell a retailer how much volume went on credit cards, and every credit card statement will tell the retailer the processing rate and percentage. A two line form would provide the correct reimbursement.

We are in a challenging business environment, but we have been blessed to be in a business friendly state with common sense leadership in these chambers. I hope that my testimony is able to illustrate the unfairness of the present system and that we can reach a solution together.

CROWLEY | FLECK PLLP
ATTORNEYS

Blaine T. Johnson
100 West Broadway, Suite 250
PO Box 2798
Bismarck, ND 58502-2798
701.223.6585

March 7. 2023

RE: Testimony in Opposition to North Dakota SB 2217

Dear Chairman Headland, Vice Chair Hager and Members of the North Dakota House Finance and Taxation Committee:

I represent Bread Financial in OPPOSITION to Senate Bill 2217 pertaining to credit card interchange fees. Bread Financial is a tech-forward financial services company that many of you probably recognize by its former name, Comenity Bank. Bread Financial offers a number of products including private label and co-branded credit cards, SplitPay™ or buy now, pay later options, and a variety of offerings designed to benefit merchants through loyalty programs and benefit customers by providing access to a variety of financing options.

The current system of sales tax collection is and has been from the very start inherently unfair to merchants that collect sales taxes on behalf of the State of North Dakota. Without the work of these merchants, it would be much more difficult for the State of North Dakota to realize those revenues. It has been argued that credit card companies benefit from price increases and inflation as the interchange fee is calculated as a percentage of the overall transaction. Inflation does not make credit card companies and the associated financial intuitions bad actors. The charges they may are directly corollary to the risk that they are exposed to. In fact, they are in the exact same position as the State of North Dakota who collects greater revenue from its sales tax as prices increase. Despite inflation and an overall very healthy North Dakota economy, the deduction that the State of North Dakota offers to merchants that have been conscripted into North Dakota's tax collection department has not kept pace. In fact, the cap on the deduction in NDCC 57-39.2-12.1 and 57-40.2-07.1 was last increased in 2013 from $93.00 to a whopping $110.00 per return and has not been touched since. If you really want to make an impact on small businesses, raise the cap.

Senate Bill 2217 does not offer a solution to this inherent unfairness, it merely shifts the financial burden to someone else, while the merchants continue to receive the deduction from the State of North Dakota, and continue to happily display credit card decals in their windows to attract customers and generate more business.

First, from Bread Financial's perspective, not all credit cards are the same. Merchant specific cards, that cards that you find at our local furniture stores, and flooring centers, and a number of other businesses, are negotiated between the card servicer and the merchant specifically to enhance the payment options that the merchant may provide. This helps those small, often family run businesses, compete with their national competitors. The contractual arrangements between merchants and branded cards are different than the run of the mill transaction. They may include unique fees associated with such a contractual arrangement that would currently fall under the proposed definition of "interchange fee." If this proposal proceeds any further, these cards should be specifically omitted from the definition of interchange fee. This is just one way in which this "one-size fits all" mentality interferes with the free-market system that this country is founded upon.

There are a number of unintended consequences that result from this bill, and state legislators in almost 30 different states over the last 15 years have rejected similar proposals in the committee of origin. Adopting this legislation would make North Dakota an island in a nationwide payment system. Retailers would be required to create and implement new payment systems and operational mechanisms to ensure compliance, which would be both costly and burdensome. While the proponents are saying its possible the question is when is it possible and at what cost is it possible?

The card network is a transmitting system that does not change rapidly, and there is good reason for that. Completing the transaction safely, securely, quickly, with ease, and perhaps most importantly correctly far outweigh the risk of demanding a change to the method in which transactions are completed for the sake of a few North Dakota merchants. Ultimately it is the constituents of North Dakota that reap the benefit from a well-run, secure system provided by fintech companies, card networks, banks and credit unions and the significant investments that have made to insure that those transactions occur seamlessly.

As proponents of this proposal have indicated there are a variety of different POS systems, with different operating systems and software programs. They appreciate the competition that exists in that market and it allows them to find a system that works for them at a cost they can live with. This proposal would require all systems to make updates to hardware, operating systems and software in order to be compliant. Not just the few that have testified "it's possible." No one that has testified in favor of this bill has specifically laid out how exactly this is going to be accomplished. It becomes someone else's problem to figure out. We would be foolish to believe that this can be accomplished without cost to those that will need to use it.

Should this proposal be enacted, both merchants and consumers would be negatively impacted. Merchants would need new, yet-to-be-developed, specialized terminals and software to itemize and communicate segmented data to the card networks at the time of sale. This would be especially hard on small businesses which do not have sufficient volume to offset the costs the new system would impose.

Currently, to accomplish this transaction the sales tax would have to be collected as a separate transaction. Imagine receiving your credit card statement reflecting a purchase and a number of small denomination corresponding sales tax charges. How does a consumer look at that statement and confirm that some scam artist hasn't been charging your card five or six dollars at a time. This opens pandoras box when it comes to fraud.

This proposal will negatively impact the cost of doing business in North Dakota. Attempts to displace revenue from card providers for the services which they provide will only result in the interchange fees being raised for all merchants in North Dakota. Instead of an average of 2%, it will become 2.25% or 2.5% to make up for the lost revenue.

Payment card networks are highly specialized and operate under national processing rules to facilitate almost instantaneous acceptance. To change these processing rules for solely one state and establishing a precedent of designating that certain types of payments must be handled in a unique way increases costs to the financial institution and the consumer, and has the potential to extend to other types of transactions beyond sales tax. It will result in higher compliance costs when new regulatory requirements are imposed.

Bread Financial strongly recommends that this committee recommend a DO NOT PASS.

Sincerely,

CROWLEY FLECK PLLP

Blaine T. Johnson
ND Lobbyist 1462

#22695

the provisions of this subsection must be paid by the commissioner to the state treasurer and must be credited by the state treasurer into a special fund to be known as the retail sales and use tax security trust fund. If any tax, penalty, or costs imposed by this chapter are not paid when due, by the person depositing moneys with the commissioner as security for the payment of tax, penalty, or costs imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the tax and penalties due. The commissioner, when in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, shall certify that information to the director of the office of management and budget who shall pay the unused money to the person entitled thereto.

4. Remittances on account of tax due under this chapter may not be deemed or considered payment thereof unless or until the commissioner has collected or received the amount due for such tax in cash or equivalent credit.
5. A retailer required to file monthly returns under subsection 1 shall file the returns by an electronic method approved by the commissioner. A retailer that does not comply with the requirement to file reports electronically is deemed to have failed to file the sales and use tax returns as provided in section 57-39.2-15 and is subject to the penalties provided in section 57-39.2-18. The commissioner may, for good cause shown, waive the filing requirements of this subsection.

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer registered to report and remit sales, use, or gross receipts tax imposed under chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed one hundred ten dollars per return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4. If a retailer fails to timely file a return or pay the tax due, the tax commissioner may, for good cause shown, allow the retailer to deduct and retain the compensation under this section.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records,

preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

57-39.2-13. Lien of tax - Collection - Action authorized.

1. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest must be determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
2. The lien aforesaid attaches at the time the tax becomes due and payable and continues until the liability for such amount is satisfied. For the purposes of this provision the words "due" and "due and payable" mean the first instant at which the tax becomes due.
3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
    a. The name of the taxpayer.
    b. The name "State of North Dakota" as claimant.
    c. The date and time the notice of lien was indexed.
    d. The amount of the lien.
    e. The internal revenue service taxpayer identification number or social security number of the taxpayer.

    The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.
5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the indexing of the notice of lien, or for its satisfaction.
6. Upon payment of the tax as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
7. The attorney general, upon the request of the commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien therefor in the manner provided for mortgages on real or personal property, and in such action shall have the assistance of the state's attorney of the county in which the action is pending.
8. It is expressly provided that the foregoing remedies of the state are cumulative and that no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.
9. The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to ensure payment of the taxes, including penalties, interest, and other costs, are self-explanatory.

57-39.2-14. Permits - Application fee for reissuance.

1. A person may not engage in or transact business as a retailer within this state unless a permit or permits shall have been issued to that person as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every

ICB SERVICES, INCORPORATED

Senate Bill 2217

Presented by: Angie Olson, Director of Card Services
ICB Services, Inc.

Before: House Finance and Taxation Committee
Representative Craig Headland, Chairman

Date: March 7, 2023

Chairman Headland and members of the House Finance and Taxation Committee (Committee), my name is Angie Olson, and I am the Director of Card Services for ICB Services, Inc., a sister company to the Independent Community Banks of North Dakota. ICB Services opposes SB 2217 and requests a "Do Not Pass" recommendation from the Committee.

I have worked for ICB Services for over 23 years. Our company works specifically with community banks, and we service over 43 agent credit card banks in the North Dakota, South Dakota, Minnesota, and Montana regions.

Merchants are under the impression that credit cards are a cash cow for all issuers. Many of our smaller community banks offer cards as a service to rural and underserved areas. At best, those smaller issuers break even on their credit card programs.

You may have been told that excluding the sales tax portion from the calculation of interchange is a simple backend process. To the contrary, there is no payment infrastructure which exists today that can support the separation of sales tax from the calculation of interchange.

The payment system is complex ecosystem and contains several wheelhouses which include both brick and mortar and e-commerce companies. It would take several years and hundreds of millions of dollars to implement a system that would be able to exclude sales tax effectively and efficiently from interchange calculation. Payment terminals would need to be recertified and some may even need to be replaced, which would be at the businesses cost. The impact of this change would have significant impacts to both small businesses and consumers.

If SB 2217 is passed, North Dakotans would be required to make two separate transactions for card payments, one for the sale (Debit/Credit/Prepaid) and the second for the tax portion (cash or check). Here are some questions you may want to ask yourself:

- What happens if a customer does not have cash/check to cover the tax portion?
- Will wait times in line increase because there are two different transactions?
- Will North Dakotans be able to make online transactions if this bill passes?
- Even if an e-commerce merchant is willing to accept a check for online transaction, it would greatly slow down the payment and order process.
- Will there be auditing implications if taxes are collected via cash/check?

Processing fees are a cost of doing business. Currently, businesses can deduct 100% of their credit card processing fees from their taxable income. The IRS recognizes credit card fees are an essential operating cost. There are no limitations on the amount a business can claim on their processing fees.

Since 2006, this legislation has been introduced over 44x in at least 26 different states and in this timespan, it has failed to pass or be implemented. I am respectfully asking the committee to reflect on the information presented today and ask for a Do Not Pass on SB 2217.

Respectfully,

Angela Olson

Angie Olson
Director of Card Services
ICB Services, Inc.

INDEPENDENT COMMUNITY BANKS of NORTH DAKOTA

Senate Bill 2217

Presented by:	Barry Haugen President Independent Community Banks of North Dakota ("ICBND")
Before:	House Finance and Taxation Committee Representative Craig Headland, Chairman
Date:	March 7, 2023

Chairman Headland and members of the House Finance and Taxation Committee (Committee), my name is Barry Haugen, and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals over 50 independent community banks throughout our state. In addition, ICBND's sister company, ICB Services, Inc., administers a credit card program primarily for smaller banks that wouldn't otherwise be able to economically offer a credit card program of their own. Angie Olson is the Director of Card Services and is also here to testify in opposition.

ICBND opposes SB 2217 and requests a "Do Not Pass" recommendation from the Committee. Similar legislation has been carefully considered nearly 50 times since 2006 in 29 states and has been rejected including just last week in Idaho and Georgia.

Our member banks and the community banking industry in North Dakota favor a robust electronic payments environment and we have concerns that this legislation would disrupt the ease and convenience of utilizing credit and debit cards for payment purposes. Senate Bill 2217 would prohibit financial institutions from charging an interchange fee on the tax or fee portion of credit and debit card transactions. Interchange of course is part of the fee merchants pay to transmit their payments electronically. This is a cost of doing business for merchants for accepting debit or credit cards which is completely voluntary by the merchant. They don't have to accept credit or debit cards but there are clearly advantages to the merchant for doing so including:

- Accepting cards increases sales.
- Unlike checks, electronic transactions guarantee merchants are paid for purchases made. And in a very timely way.
- Avoids risks and time of cash handling processes.
- Card transactions save consumers and retailers valuable time. I think we can all say that at one time or another we've been annoyed when a person checking out in front of us writes a check or pays with cash - it's slow.
- Consumers increasingly desire to use their card payment options.

So let me touch on some reasons this proposal doesn't work:

- First, the systems just don't support it – when a retailer makes a sale using a customer's payment card, the systems that process that transaction recognize only the final purchase amount. The payments system infrastructure does not support a system where multiple amounts (taxes in this case) can be excluded from the interchange fee.
- New systems that would be required will most certainly be costly to business – because the structure to support this proposal doesn't exist, it would impose severe and costly burdens on all businesses, including retailers and most certainly consumers.
- Cardholders' privacy would be placed at risk. In order to track sales tax, payment companies would have to track SKU-level data from every purchase. They would know exactly what customers buy, where and how often.
- Fraud and credit risks remain – the financial institution must advance the total funds including the tax portion to the retailer whether the transaction is collectible or not.
- We think it could hurt small retailers. Merchants will need specialized terminals and software to itemize and communicate segmented data to the card networks at the time of the sale. Small retailers may not have sufficient volume to offset the costs the new system would impose.
- These increased costs associated with the requirements imposed by this legislation could lead small businesses to reconsider accepting electronic payments which would reduce the payment options for consumers.
- We believe consumers would lose convenience. If this bill passes, the best solution for the problems created may be to require consumers to pay in two transactions – one for the sale of the product or service and another for the tax portion of the sale with cash or check.
    - It seems unlikely that the electronic payments system would process a component of a sale for which they receive no compensation.
    - This seems very problematic for the consumer.

There are a number of questions to be answered at this point as to how new systems would work that could be harmful to consumers and the use of credit and debit cards. The bill does not take into account out-of-state merchants who are doing business in North Dakota. Will they have the burden of changing their systems to accommodate this stand-alone law. And how would this affect on-line purchases?

To conclude, if passed this bill would make North Dakota an island in the global payments ecosystem. The infrastructure that this bill would require does not exist and it is uncertain if the many businesses involved in the electronic transfer of money, many of which are not located here, would even be required to support the requirements of North Dakota law. And if so, at what cost? With all the different tax iterations that exist, implementation of this bill would be complex at best.

ICBND respectfully requests you give Senate Bill 2217 a "do not pass" recommendation. Thank you!

23.0929.01001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2245

Introduced by

Senator Luick

A BILL for an Act to amend and reenact subsection 13 of section 53-06.1-01, subsection 3 of section 53-06.1-10.1, and ~~subsection~~subsections 2 and 5 of section 53-06.1-11 of the North Dakota Century Code, relating to allowable expenses, a manufacturer of an electronic device, electronic fifty-fifty raffle tickets, and monthly rent for electronic pull tab devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab dispensing device, electronic pull tab device operating system, bingo card marking device, or ~~a fifty-fifty~~electronic raffle system, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device or system to operate.

SECTION 2. AMENDMENT. Subsection 3 of section 53-06.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

3. An organization permitted to conduct raffles in this state may conduct ~~a~~an electronic fifty-fifty raffle either by manual drawing or by using a random number generator. ~~Fifty-fifty~~Electronic fifty-fifty raffle tickets must be sold and drawings held onsite at the location of and on the date of the event. ~~Fifty-fifty~~Electronic fifty-fifty raffles may not be conducted online over the internet.

SECTION 3. AMENDMENT. Subsection 2 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable expense limit is ~~sixty~~:

a. Sixty percent of the adjusted gross proceeds per quarter if the total adjusted gross proceeds for the quarter are more than one hundred thousand dollars; and

b. Sixty-three percent of the adjusted gross proceeds per quarter if the total adjusted gross proceeds for the quarter are equal to or less than one hundred thousand dollars.

SECTION 4. AMENDMENT. Subsection 5 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

5. For a site where bingo is not the primary game:

   a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed ~~two~~three hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to ~~one~~two hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving only a jar bar, the monthly rent for pull tabs may not exceed an additional ~~one~~three hundred ~~seventy-five~~ dollars. If pull tabs is conducted involving only a dispensing device or a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional ~~three~~five hundred ~~twenty-five~~ dollars.

   b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving either a jar bar or dispensing device, the monthly rent may not exceed ~~four~~five hundred dollars.

   c. If pull tabs is conducted using one or more electronic pull tab devices, the monthly rent may not exceed an additional ~~one~~two hundred dollars per machine ~~for the first five machines in the same venue. For each additional machine in the same venue beyond five, the monthly rent may not exceed an additional fifty dollars per machine up to a maximum of one thousand oneseven hundred twenty-fivefifty dollars per month for all electronic pull tab devices in a single venue~~. However, monthly rent may include an additional one hundred dollars per machine for bar staff assistance if no gaming employee is onsite to administer the proceeds.

23.0579.01003
Title.

Prepared by the Legislative Council staff for
Senator Vedaa
March 13, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2217

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of interchange fees charged to merchants or sellers for electronic payment transactions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ELECTRONIC PAYMENT TRANSACTION INTERCHANGE FEES. During the 2023-24 interim, the legislative management shall study interchange fees charged on electronic payment transactions and the effect on merchants or sellers of applying interchange fees on electronic payment transactions to state and local taxes imposed at the point of sale. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

Douglas Kellogg

State Projects Director

Americans for Tax Reform

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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