Restaurant Association of Maryland

House Bill 29

Electronic Payment Transactions - Interchange Fees - Calculation and Use of Data

January 21, 2025

Position: **SUPPORT**

Mr. Chairman and Members of the Economic Matters Committee:

The *Restaurant Association of Maryland* strongly supports House Bill 29 with the sponsor's forthcoming amendments, and we appreciate Delegate Morgan and Vice Chair Crosby introducing this legislation to help our businesses avoid the costly burden of paying interchange fees (a.k.a. payment card swipe fees) on the sales tax and gratuity portions of customer electronic payment transactions.

When customers pay for products and services by credit or debit card, businesses pay swipe fees on the total amount charged for each payment transaction. These swipe fees usually range between 2% to 4% of the transaction total. Swipe fees include: an *interchange fee* which is set by the card network/credit card company (Visa, Mastercard, American Express, Discover) and is paid to the bank that issued the card to the customer; an *acquirer/processor fee*; and a *network fee*. The interchange fee is the largest portion of swipe fees, and the fastest growing. Credit card interchange fees in the United States have more than doubled over the past decade. And the United States has the highest interchange fees in the industrialized world.

Swipe fees now rank among the highest operating costs for many restaurants – often right behind labor and food costs. Refusing to accept credit cards is no longer a viable option for businesses.
To help recoup these growing costs, businesses are forced to figure these expenses into the price of products/services sold, which contributes to inflation that ultimately further benefits the card payments ecosystem. Some businesses have resorted to imposing surcharges on credit card sales.

Given these out-of-control costs, it is particularly unfair that businesses must pay swipe fees on the sales tax and gratuity portions of payment transactions that get passed on (either to the State or to employees). Moreover, collecting/remitting sales tax is required by State law. According to estimates provided by CMS Payments Intelligence (CMSPI), $157 million was paid in interchange fees on sales tax collected in Maryland in 2023. Our businesses should not have to pay interchange fees for the role they play as the State's tax collector.

House Bill 29 provides two options for merchants to avoid interchange fees on sales tax and gratuities:

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1. It would require an issuer (banks that issue payment cards to consumers), a payment card network (e.g., Visa, Mastercard, American Express, Discover), acquirer bank, or processor to exclude the sales tax and gratuity portions of an electronic payment transaction from the amount on which an interchange fee is charged, if the merchant transmits the tax and gratuity documentation as part of the electronic payment transaction authorization or settlement process; *or*

2. If a merchant does not transmit the tax and gratuity documentation as part of the transaction authorization or settlement process, the merchant may later submit (within 180 days after the date of the transaction) the tax and gratuity documentation for the transaction to the acquirer bank (or its designee); *and*

   Within 30 days after a merchant submits the tax and gratuity documentation, the issuer shall credit to the merchant the amount of interchange fees charged on the amount of tax and gratuity included in the electronic payment transaction.

This would save the average Maryland full-service restaurant an estimated $2,500 in sales tax interchange fees and $6,200 in gratuity interchange fees annually. Limited-service restaurants would save about $1,700 in sales tax interchange fees annually. These savings would allow restaurant owners to invest more in growing their businesses, increasing their payrolls, and contributing more to the local communities they serve.

It is important to note that Maryland law provides a sales tax vendor timely filing credit. Sales tax vendors (restaurants, retailers and other businesses that collect/remit sales tax) who file their returns on time receive a filing credit of 1.2% on the first $6,000 collected and 0.9% on the amount of sales tax collected above $6,000 (up to a maximum of $500 for each sales tax return). Sales tax vendors may keep this portion of the collected tax. The purpose of the credit is to compensate businesses for costs associated with collecting/remitting sales tax. While appreciated to cover some of the associated costs, this credit is only a fraction of the cost of swipe fees businesses pay on sales tax collection.

The average pre-tax profit margin for large money center banks is about 27%. Average profits for Visa and Mastercard are 50% or more. The average restaurant pre-tax profit margin is just 3% to 5%. Banks and credit card companies with significantly larger profit margins are benefiting from interchange fees on the sales tax collection mandate at the expense of Maryland businesses. And they also benefit from interchange fees on gratuities that are passed on to employees. This is unjustified.

We respectfully request a favorable report for House Bill 29. Thank you for your consideration.

Sincerely,

Melvin R. Thompson
Senior Vice President
Government Affairs and Public Policy