



HB29 Electronic Payment Transactions - Interchange Fees - Calculation and Use of Data
Economic Matters Committee
January 21, 2025

Position: Favorable

Facts and Questions

Q1: Fraud – Don’t credit card companies need swipe fees on taxes to cover fraudulent charges?

NO. Retailers pay for significant amounts of credit card fraud. They don’t receive “Guaranteed Payment.”

- Merchants “pre-pay” to protect against fraud by paying swipe fees, which includes at least \$0.01 to cover the risk of fraud. 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).
- But when fraudulent purchases happen, the merchants lose the product, which was purchased fraudulently, must still remit tax on the stolen goods to the State, and generally has to pay “chargebacks” to the bank card issuer (as well as fees to the networks) to cover the cost of the fraud.
 - Swipe fees on purchases far exceed card companies’ fraud expenses.
- The idea that retailers should pay limitless fees to the big banks because payment is “guaranteed” makes no sense when most fraud costs simply get charged back to retailers.

Q2: Technology – Does existing equipment and technology need to be replaced to ensure HB29 can go into effect?

NO. HB29 would not require any new systems – for banks or retailers.

- 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.
 - Also, similar legislation was passed in Illinois (see Q12 below).
- Credit card companies charge swipe fees (interchange) today – not processors or banks. Today, merchants pass 3 data fields – (1) purchase amount, (2) tax amount, and (3) total – to 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. And if they can’t, HB29 provides for swipe fees on sales tax to be refunded to the retailer after the fact.

- To support tax-exempt business-to-business sales, banks already require that merchants collect sales tax data.¹ In fact, the “Level 2” data transmitted with each transaction already has sales tax separated from the purchase amount. Visa and Mastercard mandate system updates twice per year, so any changes required can be implemented during those updates.
- Not only do the card companies collect this and other Level 2 data, they also try to sell it back to merchants (Visa calls this service “IntelliLink”).² This service includes “Local tax support including VAT and GST.”
- In the event that a retailer is unable to separate sales tax information at the point of sale, HB29 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. This means no investments in new systems are necessary. Retailers can just send the tax information and get a rebate later. In short, sending card companies information will trigger the same settlement process that happens today (merchant to bank) and its reverse (bank to merchant).

Q3: 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 two times in order to make a purchase.

- There is no need for two transactions – and claiming a card will need to be swiped twice just doesn’t make sense.
- Do customers pay in two transactions when they leave a tip at restaurants? No, they don’t. The card is only swiped one time.
- When swipe fees are collected on State-mandated 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.

Q4: When a fraudulent transaction occurs and a merchant gets “charged back” (and has lost the goods), does the State still get to keep the sales tax that the merchant has remitted to them?

YES.

Q5: 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.

¹ For example, 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>

- A PIN debit transaction is “real time” with zero risk to banks, despite the swipe fee associated with a PIN debit transaction, and the bank is guaranteed payment.
- A signature debit transaction is guaranteed payment since it is drawn from actual funds in an account.
- A credit payment is payment extended on credit. Banks evaluate a consumer’s risk before extending them a credit card, and they protect against that risk by charging consumers high rates of interest. In the U.S., the average credit card interest rate is 24.08%.³
- Finally, in addition to the interchange fee, merchants pay a fee for “fraud” that covers the risk of nonpayment.

Q6: Won’t Visa/Mastercard just raise their rates to recoup lost profits if HB29 passes?

That is a possibility. But whether or not HB29 passes, the networks routinely raise their rates.

- In fact, the last time the networks raised their rates was Spring 2022, during record inflation. They did this despite a bipartisan group of federal lawmakers writing to them to ask them not to so.⁴
- In early 2022, Visa’s CEO and CFO stated on earnings calls that, “historically, inflation has been positive for us.”⁵

Q7: If HB29 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.

³ Michelle Black and Robin Saks Frankel, *What Is The Average Credit Card Interest Rate This Week? February 21, 2023*, <https://www.forbes.com/advisor/credit-cards/average-credit-card-interest-rate/>.

⁴ See <https://www.durbin.senate.gov/newsroom/press-releases/durbin-marshall-welch-van-duyne-urge-visa-and-mastercard-to-call-off-planned-swipe-fee-increases-on-vulnerable-american-families-and-businesses>.

⁵ Q2 April 26, “And then, the last thing I’d say, net-net, historically, inflation has been positive for us.” Al Kelly – CEO; <https://investor.visa.com/events-calendar/Event-Details/2022/Q2-2022-Visa-Inc-Earnings-Conference-Call/default.aspx>; Q1 Jan 25th, “So, net-net, we’re a beneficiary of inflation” Vasant Prabhu - Vice Chairman and Chief Financial Officer, <https://investor.visa.com/events-calendar/Event-Details/2022/Q1-2022-Visa-Inc-Earnings-Conference-Call/default.aspx>

Q8: Vendor's Compensation – Don't retailers get fully reimbursed by the State of Maryland for collecting taxes?

NO. Merchants only receive a fraction of their tax collection costs, especially compared to the cost of swipe fees on sales taxes.

- Maryland compensates retailers for only 1.2% of the first \$6,000 in tax collected, and 0.9% of any amount collected over \$6,000. For example, if a retailer collected \$10,000 in taxes, the retailer's compensation would be only \$108.
- 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. At the average rate, swipe fees amount to \$222 on \$10,000 in sales tax collected – more than twice the amount the retailer currently receives in vendor compensation.
- Collectively, Maryland merchants paid an estimated \$156,911,374 in swipe fees on state taxes in 2023 – 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. This "compromise" would counteract the revenue-neutral status of HB29.
- Asking Maryland 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.

Understanding Swipe Fees

Q9: How much of the fee on the sales or excises tax actually trickles down to a local bank or credit union?

100% of interchange goes to the bank or credit union.

Q10: Won't this legislation ultimately hurt small businesses?

No. This legislation will reduce the costs that small businesses foot to collect taxes for the state.

Q11: Why do I see gasoline offered for a cash discount?

- Merchants fully understand their cost of goods sold and offer prices to consumers based on these costs.
 - Fuel retailers know what it costs them to accept plastic payments (hint: it is expensive). Thus, many retailers will offer a cash discount, which accounts for the lower cost of processing a cash transaction compared with a payment card, in order to incentivize consumers to pay with the less expensive payment option (i.e., cash).
 - The cash price is a discount (in other words, the more expensive credit price is not a surcharge.)

Other States

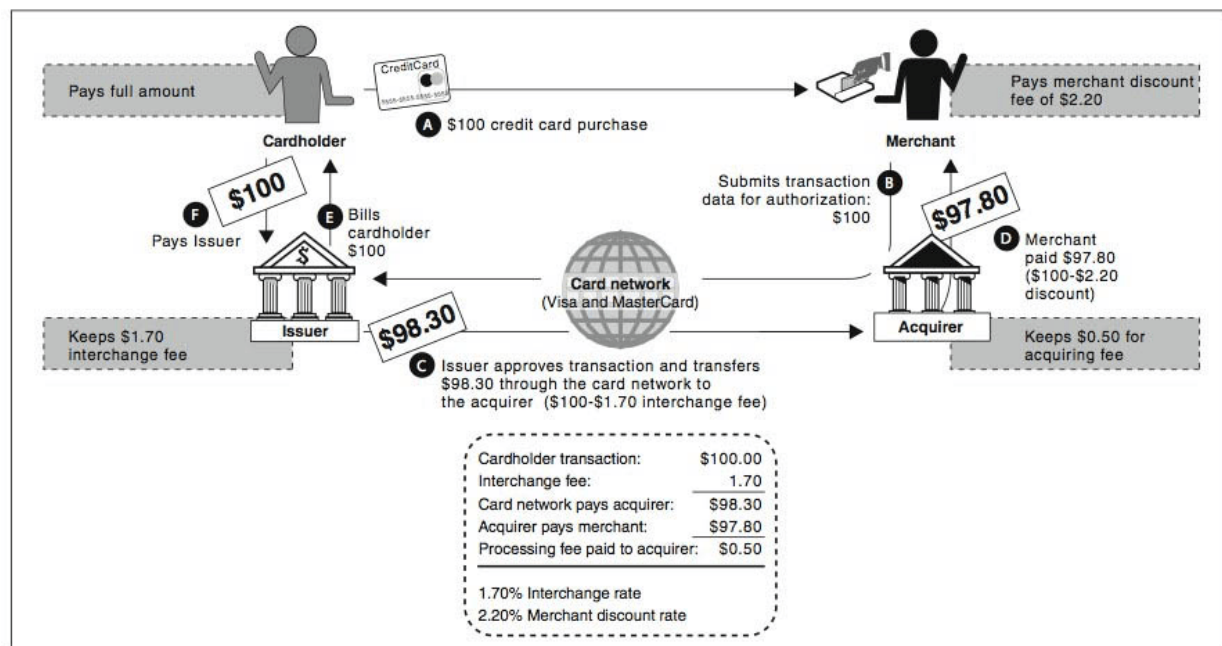
Q12: Do any other states prohibit the collection of swipe fees on state mandated taxes?

YES. In May 2024, Illinois passed the Interchange Fee Prohibition Act that prohibits swipe fees on sales taxes, state excise taxes and gratuities/tips. The Act will go into effect in July 2025 and will, at that time, apply to Visa, Mastercard, and non-national banks.⁶

Final Thoughts

- Credit card companies argue the “sky is falling” every time someone wants to make common-sense changes to the world of swipe fees.
- They argued that debit cards would go away when the U.S. Congress decided to regulate them. That was more than 12 years ago – do you still have a debit card?
- They argued credit cards would enter a “death spiral” when the Reserve Bank of Australia and the European Competition Commission investigated them and limited swipe fees. Nonetheless, credit card usage is up in both locations and credit card rewards are still plentiful.
- When simple facts are against them, credit card companies have nothing left to sell but fear.

Figure 2: Transfer of Fees in a Credit Card Transaction



Sources: GAO (analysis); Art Explosion (images).

⁶ See Section 150-10 of the Illinois revenue billed, <https://legiscan.com/IL/text/HB4951/id/3007342>, Signed on June 7, 2024 by Gov. Pritzker; see also <https://www.supermarketnews.com/news/illinois-swipe-fees-will-no-longer-apply-taxes-tips/>