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March 12, 2024

The Honorable Paul Bailey
Chair of the Senate Committee on Commerce and Labor
Tennessee State Capitol
425 Rep. John Lewis Way N.
Suite 736 Cordell Hull Bldg.
Nashville, TN 37243

Re: Comments in Opposition of SB0132

Dear Chair Bailey, Vice-Chair Swann, and Distinguished Members of the Committee,

On behalf of the Electronic Transactions Association ("ETA"), the leading trade association representing the payments industry, I appreciate the opportunity to share our broad concerns with SB 132. The payments industry has remained at the forefront of developing innovative payment technology, providing merchants and consumers with safety, security, speed, and ease for transacting electronic payments, not to mention increasingly numerous options for doing so.

Unwise governmental intervention in such a complicated ecosystem, such as a prohibition on collecting interchange on the sales tax portion of electronic payment transactions, threatens innovation and system security, that is funded in part, through the collection of interchange. The unworkable nature of the proposal is emphasized by the fact that over 40 similar proposals to prohibit interchange on the sales tax portion of electronic transactions have been considered between 2006 and 2023 and none have passed their respective state legislature. The result of the implementation of this legislation would make Tennessee an island in a nationwide payment system.

The threat of the potential prohibition on collecting interchange on the sales tax portion of an electronic payment is troubling for the reasons outlined below:

New Infrastructure Required: It is critical to emphasize the technically unworkable nature of the proposal. SB 132 would upend the current payments infrastructure and place new undue burdens on small business and 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. The system transmits neither information regarding the product, nor services sold, nor the amount of sales tax collected.

However, SB 132 would possibly force the creation of a second payment system to process sales tax separately from the original payment transaction. This new sales tax payment system would not only be a burden for consumers, but also for retailers, who would find it highly cumbersome to maintain. Moreover, retailers would have to account for sales tax on cash or check purchases separately from electronic payments made by credit or debit card because there are no direct fees on cash or check purchases.

Creation of Privacy Issues: To meet the requirements of the bill, specific purchase information must be known and acquired by the payments industry. This is information we do not currently collect. If SB 132 is implemented, each transaction purchased would have to be itemized and audited to determine the correct application of a state sales tax exemption or local tax. This specific purchase information or SKU level data would be required to determine with certainty that the correct state and local sales tax has been applied or exempted to the correct items by the retailer. Therefore, consumers would lose the existing privacy related to their specific purchases.

<u>Impact to Retailers</u>: Small and large retailers would be required to create and implement new payments systems and operational mechanisms to ensure compliance, which would be both costly and burdensome. The cost of installing new terminals or processes to implement the new payments system implemented by SB 132 would impose a substantial burden to all retailers in the state. Additionally, determining that the correct sales tax has been applied to the correct items is often an arduous process that retailers would have to verify.

<u>Impact to Small Businesses</u>: The cost of installing new terminals to implement the new payments system implemented by SB 132 would impose an extreme burden on small businesses to rebuild their current payment systems. Increased costs related to such requirements would force small businesses to reconsider accepting electronic payments, which may limit their potential customer base. The ability for small businesses to offer a multitude of payment options is critical to their ability to compete with big-box retailers, give their customers the options they desire, and remain flexible in times of crisis.

<u>Impact to Consumers</u>: Newly required operational systems would lead to additional administrative costs and burdens for retailers, which would be passed along to consumers in the form of higher prices. Consumers could be required to pay for multiple transactions – one for the sale of the product or service and another for the tax portion of the sale. The need to pay the sales tax portion of electronic transactions with cash or a check would be especially burdensome when paying for large ticket items like a computer or television.

<u>Conclusion</u>: 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. The creation of this new payment network would result in negative implications for both small businesses and consumers. Small business owners would bear the brunt of the burden of implementing the new requirements and consumers would end up paying increased prices to pay for the implementation of a new payment network.

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We appreciate you taking the time to consider these important issues. If you would like to discuss any aspect of our comments, please contact me or ETA Executive Vice President Scott Talbott at Stalbott@electran.org.
Respectfully Submitted,

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