



## JOINT LETTER RESPONDING TO STATE LEGISLATION THAT WOULD PROHIBIT INTERCHANGE ON THE SALES TAX PORTION OF ELECTRONIC TRANSACTIONS

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As state legislative sessions across the United States proceed, legislation that would prohibit interchange on the sales tax provision of electronic payment transactions is once more being considered. Such proposals are not only unworkable but come at a time of great economic uncertainty and serious financial challenges.

The prime victims of this proposal would be consumers and small businesses. The backbone of our economy, [according to the Small Businesses Administration](#) there are approximately 33.2 million small businesses employing as many as 61.7 million Americans throughout the nation.<sup>1</sup> However, since the onset of the public health crisis in 2020, tens-of-millions of Americans have lost their jobs, left the labor force, and tens-of-thousands of storefronts have been shuttered. A vibrant small business sector is essential to the economic recovery of the United States, and that is why the electronic payments industry represented by the undersigned along with small businesses must work hand in hand to ensure healthy levels of job creation, innovation, and growth moving forward.

As we look towards the future and how to rebuild our economy, the threat of the potential prohibition on collecting interchange on the sales tax portion of an electronic payment is troubling. First and foremost, it is critical to emphasize the technically unworkable nature of the proposal. 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.

The result of the implementation of this legislation would make North Dakota an island in a nationwide payment system. Second, retailers would be required to create and implement new payments systems and operational mechanisms to ensure compliance, which would be both costly and burdensome.

Furthermore, 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

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<sup>1</sup> Office of Advocacy, U.S. Small Business Administration. 2022 Small Business Profile.

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. Increased costs related to such requirements would force small businesses to reconsider accepting electronic payments, the lifeline that kept so many in business during the recent health crisis.

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 2022 and none has passed out of the committee of original reference.

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 the new system would impose.

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. The rise in contactless payments has accelerated during in recent years.

This shift to contactless would not have been possible without the significant investment fintech companies, card networks, banks, and credit unions made in technological innovation over the years. A wide array of authentication technology such as EMV, tokenization, and end-to-end encryption have allowed customers to limit their personal interaction at stores, and make purchases online and from mobile devices, all while providing peace of mind for customers and merchants alike that they're protected from cyber threats and fraud.

The payments industry has remained on the forefront of developing innovative payment technology, providing merchants and consumers alike 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.

Ultimately, consumers and small merchants will bear the brunt of the consequences of a less efficient, less secure 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 small business community are given the necessary resources they need to operate and thrive, especially during these particularly challenging times.

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

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