STATE OF NEW YORK

7973

IN SENATE

January 4, 2024

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to the calculation of interchange fees charged by credit card networks

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 42 to read as follows:

ARTICLE 42
INTERCHANGE FEES

Section 1100. Definitions.
1101. Calculation of interchange fees.
1102. Rebate of fees on tax amount.
1103. Penalties.

§ 1100. Definitions. For purposes of this article:

1. "Credit card" means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

2. "Debit card":

(a) means a card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account, regardless of the purpose for which the account is established, whether authorization is based on signature, personal identification number, or other means; and

(b) includes a general-use prepaid card, as defined in 15 U.S.C. § 1693l-1; and

(c) does not include paper checks.

3. "Electronic payment transaction" means a transaction in which a consumer uses a debit card, credit card, or other payment code or device, issued or approved through a payment card network to debit a deposit account or use a line of credit, whether authorization is based on a signature, personal identification number, or other means.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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4. "Interchange fee" means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.

5. "Issuer" means a person issuing a debit card or credit card, or the issuer's agent.

6. "Payment card network" means an entity that:

(a) directly, or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that routes information and data to conduct debit card or credit card transaction authorization, clearance, and settlement; and

(b) a merchant or seller uses in order to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions.

7. "Settlement" means the transfer of funds from a customer's account to a seller or merchant upon electronic submission of finalized sales transactions to the payment card network.

§ 1101. Calculation of interchange fees. The amount of a state or local tax or fee that is calculated as a percentage of an electronic payment transaction amount and listed separately on the payment invoice or other demand for payment must be excluded from the amount on which an interchange fee is charged for that electronic payment transaction. Such taxes and fees include, but are not limited to:

1. sales and compensating use taxes under article twenty-eight of the tax law;

2. hotel and motel and occupancy taxes under article twenty-nine of the tax law;

3. taxes on alcoholic beverages under article eighteen of the tax law;

4. tax on gasoline and motor fuel under article twelve-A of the tax law;

5. tax on petroleum businesses under article thirteen-A of the tax law;

6. tax on fuel use under article twenty-one-A of the tax law; and

7. rental vehicle taxes under article twenty-eight-A of the tax law.

§ 1102. Rebate of fees on tax amount. 1. A payment card network shall either:

(a) deduct the amount of any tax imposed from the calculation of interchange fees specific to each form or type of electronic payment transaction at the time of settlement; or

(b) rebate an amount of interchange fee proportionate to the amount attributable to the tax or fee.

2. A deduction or rebate must occur at the time of settlement when the merchant or seller is able to capture and transmit tax or fee amounts relevant to the sale at the time of sale as part of the transaction finalization.

3. If a merchant or seller is unable to capture and transmit tax or fee amounts relevant to the sale at the time of sale, then the payment card network shall accept proof of tax or fee amounts collected on sales subject to an interchange fee upon the submission of sales data by the merchant or seller and promptly credit the merchant or seller's settlement account.

§ 1103. Penalties. A payment card network that violates this article is subject to a civil penalty of not more than one thousand dollars per violation and shall also refund the surcharge to each merchant or seller from whom such fees were collected.

§ 2. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.