

# 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:

1 Section 1. The general business law is amended by adding a new article  
2 42 to read as follows:

### ARTICLE 42

#### INTERCHANGE FEES

##### Section 1100. Definitions.

6 1101. Calculation of interchange fees.

7 1102. Rebate of fees on tax amount.

8 1103. Penalties.

9 § 1100. Definitions. For purposes of this article:

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

13 2. "Debit card":

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

19 (b) includes a general-use prepaid card, as defined in 15 U.S.C. §  
20 16931-1; and

21 (c) does not include paper checks.

22 3. "Electronic payment transaction" means a transaction in which a  
23 consumer uses a debit card, credit card, or other payment code or  
24 device, issued or approved through a payment card network to debit a  
25 deposit account or use a line of credit, whether authorization is based  
26 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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1 4. "Interchange fee" means a fee established, charged, or received by  
2 a payment card network for the purpose of compensating the issuer for  
3 its involvement in an electronic payment transaction.

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

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

7 (a) directly, or through licensed members, processors, or agents  
8 provides the proprietary services, infrastructure, and software that  
9 routes information and data to conduct debit card or credit card trans-  
10 action authorization, clearance, and settlement; and

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

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

17 § 1101. Calculation of interchange fees. The amount of a state or  
18 local tax or fee that is calculated as a percentage of an electronic  
19 payment transaction amount and listed separately on the payment invoice  
20 or other demand for payment must be excluded from the amount on which an  
21 interchange fee is charged for that electronic payment transaction. Such  
22 taxes and fees include, but are not limited to:

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

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

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

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

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

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

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

34 § 1102. Rebate of fees on tax amount. 1. A payment card network shall  
35 either:

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

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

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

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

51 § 1103. Penalties. A payment card network that violates this article  
52 is subject to a civil penalty of not more than one thousand dollars per  
53 violation and shall also refund the surcharge to each merchant or seller  
54 from whom such fees were collected.

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