

INTERIM STUDY PROPOSAL 2015-078

1
2 State of Arkansas
3 90th General Assembly
4 Regular Session, 2015

As Engrossed: H3/13/15

A Bill

HOUSE BILL 1775

5
6 By: Representatives J. Mayberry, Branscum
7 By: Senator J. Hutchinson

8 Filed with: House Committee on Revenue and Taxation
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10
11 AN ACT CONCERNING TAXES RELEVANT TO BUSINESSES IN THE
12 STATE; TO CREATE THE ELECTRONIC PAYMENT TRANSACTION
13 PROTECTION ACT; TO PROHIBIT THE COLLECTION OF
14 INTERCHANGE FEES ON CERTAIN TAXES AND FEES; TO
15 DEDICATE CERTAIN TAX REVENUE FOR EDUCATIONAL
16 PURPOSES; TO AMEND THE LAW CONCERNING THE DISCOUNT
17 AVAILABLE TO TAXPAYERS FOR PROMPT SUBMISSION OF SALES
18 TAXES RETURNS AND PAYMENTS; AND FOR OTHER PURPOSES.

Subtitle

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22 TO PROHIBIT THE COLLECTION OF INTERCHANGE
23 FEES ON CERTAIN TAXES AND FEES; AND TO
24 AMEND THE DISCOUNT AVAILABLE TO TAXPAYERS
25 FOR PROMPT SUBMISSION OF SALES TAXES
26 RETURNS.

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29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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31 SECTION 1. Arkansas Code Title 26, Chapter 19, is amended to add an
32 additional subchapter to read as follows:

33 Subchapter 2 – Electronic Payment Transaction Protection Act

34
35 26-19-201. Title.

1 This subchapter shall be known and may be cited as the “Electronic
2 Payment Transaction Protection Act”.

3
4 26-19-202. Definitions.

5 As used in this subchapter:

6 (1) “Electronic payment transaction” means a transaction in
7 which a person uses a debit card, credit card, or other payment code or
8 device, issued or approved through a payment card network to debit an asset
9 account or use a line of credit regardless of whether authorization is based
10 on a signature, personal identification number, or other means;

11 (2) “Interchange fee” means a fee established, charged, or
12 received by a payment card network to compensate an issuer for its
13 involvement in an electronic payment transaction;

14 (3) “Issuer” means a person who issues a debit card or credit
15 card or the agent of a person who issues a debit card or credit card;

16 (4) “Payment card network” means an entity that:

17 (A) Directly or through licensed members, processors, or
18 agents provides the proprietary services, infrastructure, and software that
19 route information and data to conduct a debit card or credit card transaction
20 authorization, clearance, and settlement; and

21 (B) A merchant or seller uses in order to accept as a form
22 of payment a brand of debit card, credit card, or other device that may be
23 used to carry out debit or credit transactions; and

24 (5) “Settlement” means a transfer of funds from a customer’s
25 account to a seller or merchant upon electronic submission of a finalized
26 sales transaction to a payment card network.

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28 26-19-203. Interchange fees – Limitation.

29 (a) The following are excluded from the amount of an interchange fee
30 charged for an electronic payment transaction:

31 (1) A tax or fee levied by a state or local government that is
32 calculated as a percentage of an electronic payment transaction amount and
33 listed separately on a payment invoice or other demand for payment; and

34 (2) A tax levied under the Motor Fuel Tax Law, § 26-55-201 et
35 seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.

1 (b) This subchapter does not affect the amount of an interchange fee
2 established, charged, or received by payment card networks, issuers, or other
3 vendors for authorizing an electronic payment transaction to pay state and
4 local taxes, fees, child support, costs, fines, or any other payment to state
5 and local government agencies, boards, and commissions.

6
7 26-19-204. Alteration or manipulation of interchange fee prohibited.

8 A person shall not alter or manipulate the computation and imposition
9 of interchange fees by increasing the rate or amount of a fee applicable to
10 or imposed on the portion of an electronic payment transaction that is not
11 attributable to a state or local tax or fee in order to circumvent the effect
12 of this subchapter.

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14 26-19-205. Deduction or rebate – Settlement procedure.

15 (a) A payment card network shall either:

16 (1) Deduct the amount of a tax or fee levied as described in §
17 26-19-203 from the calculation of the interchange fees specific to each form
18 or type of electronic payment transaction at the time of settlement; or

19 (2) Rebate the amount of the interchange fee that is
20 proportionate to the amount attributable to a tax or fee levied as described
21 in § 26-19-203.

22 (b) A deduction or rebate under subsection (a) of this section shall
23 be given at the time of settlement when the merchant or seller is able to
24 capture and transmit the tax or fee relevant to a sale at the time of sale as
25 part of the finalization of the sales transaction.

26 (c) If a merchant or seller is unable to capture and transmit a tax or
27 fee relevant to a sale at the time of the sale, the payment card network
28 shall:

29 (1) Accept proof of the tax or fee collected on the sale subject
30 to an interchange fee upon submission of sales data by the seller or
31 merchant; and

32 (2) Promptly credit the merchant or seller's settlement account
33 for the amount of the rebate due under this section.

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35 26-19-206. Enforcement – Penalties.

1 (a) The Chief Fiscal Officer of the State shall bring the necessary
2 actions to enforce this subchapter.

3 (b) If a court finds in an action brought under subsection (a) of this
4 section that a person has intentionally violated this subchapter, the person
5 shall be subject to a civil penalty of at least one thousand dollars (\$1,000)
6 but not more than five thousand dollars (\$5,000) for each violation.

7 (c)(1) A person paying an interchange fee imposed in violation of this
8 subchapter may bring an action at law to recover the person's actual damages.

9 (2) In an action brought under subdivision (c)(1) of this
10 section, a court may order equitable relief, including temporary and
11 permanent injunctive relief, in addition to or in lieu of the person's actual
12 damages.

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14 26-19-207. Applicability.

15 This subchapter applies to:

16 (1) The computation of an interchange fee established, charged,
17 or received by a payment card network to compensate the issuer for the
18 issuer's involvement in an electronic payment transaction; and

19 (2) Electronic payment transactions processed on or after the
20 effective date of this subchapter.

21
22 SECTION 2. DO NOT CODIFY. Legislative findings and intent.

23 (a) The General Assembly finds that:

24 (1) The practice of compensating retailers for collecting sales
25 taxes originated in the 1930s;

26 (2) At the time that this practice originated, records were kept
27 mainly by hand, and as a result, it made sense to compensate retailers for
28 the costs associated with collecting and remitting sales taxes;

29 (3) Retailers today use electronic cash registers and computers
30 to track their gross receipts and sales tax collections, which reduces the
31 time and resources required to collect and remit sales taxes; and

32 (4) As a result, there is less need to compensate retailers for
33 the costs associated with collecting and remitting sales taxes.

34 (b) The General Assembly intends for this act to more appropriately
35 compensate retailers today for the costs associated with collecting and
36 remitting sales taxes while providing funding for:

1 (1) The College and Career Coaches Program, § 6-1-601 et seq.,
 2 which will help create a more skilled work force for businesses in the state
 3 to utilize in growing and expanding their businesses;

4 (2) Additional positions for school nurses;

5 (3) School nursing facilities and equipment; and

6 (4) The panic button alert systems required for public schools
 7 under § 6-15-1302.

8
 9 SECTION 3. Arkansas Code § 26-52-503 is amended to read as follows:

10 26-52-503. Discount for ~~prompt~~ early payment.

11 (a) At the time of transmitting the returns required under this
 12 chapter to the Director of the Department of Finance and Administration, the
 13 taxpayer shall remit with the returns to the director ~~ninety-eight percent~~
 14 ~~(98%)~~ ninety-eight and five-tenths percent (98.5%) of the state tax due under
 15 ~~the applicable provisions of this chapter and ninety-eight percent (98%)~~
 16 ninety-eight and five-tenths percent (98.5%) of the city and county gross
 17 receipts taxes collected by the director.

18 (b) Failure of the taxpayer to remit the tax on or before the
 19 twentieth day of the applicable month shall cause the taxpayer to forfeit his
 20 or her claim to the discount, and the taxpayer ~~must~~ shall remit to the
 21 director one hundred percent (100%) of the amount of tax plus any penalty and
 22 interest due.

23 (c)(1)(A) ~~For tax payments made on or after February 1, 1993, the~~ The
 24 ~~discount for prompt early payment of state tax shall not exceed one thousand~~
 25 ~~dollars (\$1,000)~~ fifty dollars (\$50.00) per month for a taxpayer filing
 26 monthly gross receipts tax reports.

27 (B) A taxpayer filing a tax report on a quarterly, annual,
 28 or occasional basis ~~shall be~~ is entitled to the discount for state tax, which
 29 shall not exceed ~~one thousand dollars (\$1,000)~~ fifty dollars (\$50.00) for
 30 each month included in the tax report.

31 (2)(A) The aggregate state tax discount available to a taxpayer
 32 who operates more than one (1) permitted business location within this state
 33 and who does not file a consolidated monthly gross receipts tax report for
 34 all locations shall not exceed ~~one thousand dollars (\$1,000)~~ fifty dollars
 35 (\$50.00) per month.

1 (B) In the case of a corporate taxpayer, parent
2 corporation, that holds fifty percent (50%) or more of the outstanding shares
3 of one (1) or more corporations, subsidiaries, that are subject to the tax
4 imposed by this chapter, the aggregate state tax discount available to the
5 parent corporation and all subsidiaries shall not exceed ~~one thousand dollars~~
6 ~~(\$1,000)~~ fifty dollars (\$50.00) per month.

7 (C) ~~There shall be no limitation~~ The limitations on the
8 discount for stated for state taxes under this section apply to prompt early
9 payment of city and county gross receipts taxes collected by the director.

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11 SECTION 4. EFFECTIVE DATE. Section 3 of this act is effective on the
12 first day of the calendar quarter following the effective date of this act.

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14 /s/J. Mayberry

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17 Referred by the Arkansas House of Representatives

18 Prepared by: VJF
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