

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1775

Bill Subtitle: TO PROHIBIT THE COLLECTION OF INTERCHANGE FEES ON CERTAIN TAXES AND FEES; AND TO AMEND THE DISCOUNT AVAILABLE TO TAXPAYERS FOR PROMPT SUBMISSION OF SALES TAXES RETURNS.

Basic Change : Sponsor: Representative J. Mayberry

The proposal would create the "Electronic Payment Transaction Protection Act" applicable to interchange fees established, charged, or received by payment card networks to compensate the card issuer's involvement in an electronic payment transaction. The proposal would require exclusion of state and local taxes and fees from the transaction amount when calculating the interchange fee amount that may be billed to the person or business accepting the card as the method of payment. Taxes levied under the Arkansas Motor Fuels Tax Law would also be excluded when calculating the transaction amount subject to the interchange fees.

The proposal establishes settlement procedures that payment card issuer may use when settling with the person accepting the card as payment and establishes penalties for intentional violation of the Act. The Chief fiscal Officer of the State may bring action to enforce the provisions of the Act against the payment card network provider. The bill provides that DFA would bring necessary court actions to enforce the act including issues related to the inclusion of tax in the interchange fees charged to the party accepting the payment card.

The proposal also amends Ark. Code Ann. § 26-52-503 which provides prompt payment discounts for retailers who report and remit the state and local sales taxes due by the 20th day of the month following the month of the sale. Under current law, a retailer who timely remits the sales taxes retains 2% of the tax amount with a maximum amount capped at \$1,000 per month. The proposal would limit the prompt payment discount on the state sales taxes due to 1½% of the tax amount and capped at \$50 per month. The proposal would become effective on the first day of the calendar quarter following the effective date of the act.

Revenue Impact :
FY16 Tax Increase

Total Impact to State Revenues + \$11,012,742
[8 Months of Reduced Discounts -- 10/1/2015 Effective Date]

+\$ 7,380,231 --- State General Revenue (4.5%)
+\$ 1,435,045 --- Educational Adequacy (.875% tax)
+\$ 820,026 --- Property Tax Relief Trust Fund (.5%)
+\$ 205,006 --- Conservation Tax (.125%)
+\$ 820,026 --- Highway Fund (.5%)
+\$ 0 --- Educational Excellence Trust Fund
+\$ 0 --- Educational Adequacy (GR transfer)
+\$ 242,280 --- State Central Services
+\$ 110,127 --- Constitutional Officers

FY17 Tax Increase

Total Impact to State Revenues + \$16,519,113

+\$ 9,366,620 --- State General Revenue (4.5%)
+\$ 2,152,567 --- Educational Adequacy (.875% tax)

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+\$ 1,230,039 --- Property Tax Relief Trust Fund (.5%)
+\$ 307,509 --- Conservation Tax (.125%)
+\$ 1,230,038 --- Highway Fund (.5%)
+\$ 1,565,347 --- Educational Excellence Trust Fund
+\$ 138,379 --- Educational Adequacy (GR transfer)
+\$ 363,420 --- State Central Services
+\$ 165,191 --- Constitutional Officers

[Impact based on 2014 actual discounts claimed of \$23,096,421 at 2% -
Capped at \$1,000]

Taxpayer Impact :

Retailers would receive reduced prompt payment discounts when making monthly sales tax payments.

Resources Required :

None

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Modifications to forms and the electronic tax report filing system.

Other Comments :

The bill provides that DFA would bring necessary court actions to enforce the Electronic Payment Transaction Protection Act. At present, DFA does not regulate the banking industry or other providers offering electronic payment cards and payment networks. For any complaints received by DFA from persons and businesses accepting the cards and not receiving the properly calculated interchange fees, DFA would be required to investigate the matter and bring action against the network provider if it is determined that the provider intentionally violated the Act. These financial institutions issuing the payment cards will be located throughout the U.S. DFA does not have the expertise or manpower to administer the interchange fee portion of this bill. Additional employees would be needed.

Legal Analysis :

The bill excludes excise taxes charged as part of an electronic payment transaction from the calculation of a credit or debit card issuer's Interchange Fee. The bill also reduces the amount of the sales tax prompt payment discount as well as the cap on the total amount of the discount that a taxpayer may receive per month.

The limits placed by the bill on Interchange Fees may be subject to challenge under the U.S. Constitution as an impediment or burden on interstate commerce. The bill's provisions on the sales tax prompt payment discount do not appear to raise any legal issues. The bill has no Emergency Clause and would therefore become effective 90 days after adjournment of the session.