

# SENATE BILL REPORT

## SB 5884

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As of February 21, 2007

**Title:** An act relating to creating a sales tax exemption for retail sellers for the state sales tax on interchange fees.

**Brief Description:** Protecting consumers by requiring the state to reimburse a retail seller for the state portion of any sales tax paid on interchange fees.

**Sponsors:** Senators Jacobsen and Weinstein.

**Brief History:**

**Committee Activity:** Financial Institutions & Insurance: 2/20/07.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Staff:** Vanessa Firnhaber-Baker (786-7471)

**Background:** When a consumer uses a debit or credit card to pay for goods or services, the retailer relays a payment request to its bank. The retailer's bank then forwards that request to the bank that issued the card to the consumer. The issuing bank then pays the retailer's bank and the retailer's bank pays the retailer. Both the issuing bank and the retailer's bank keep some portion of the payment. The portion those banks keep are typically called "interchange fees." Financial institutions charge interchange fees based on the total amount of the transaction, including sales tax.

The banks use associations (most commonly Visa and MasterCard) to convey the transaction information regarding the cards. For this service, the associations also retain some portion of the consumer's payment for each transaction.

Therefore, the end payment that the retailer receives for the credit card payment is less than the actual amount that the consumer was charged. There are no current regulations, either federal or state, addressing interchange fees.

**Summary of Bill:** Retail sellers are entitled to a credit on their state tax return equal to the amount of the interchange fees that were charged by a financial institution on the portion of the retailer's sales that were sales tax.

Sellers must keep adequate records to enable the Department of Revenue to verify their eligibility for this credit.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Interchange fees are defined as the fee a merchant's financial institution pays to a cardholder's financial institution when a cardholder uses a credit card or a debit card as payment during a retail transaction.

**Appropriation:** None.

**Fiscal Note:** Requested on February 5, 2007.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Merchants pay interchange fees in order to process transactions that include sales tax paid to the state; the state should make them whole for this expenditure. Retailers' have lower profit margins because of interchange fees and this bill provides some relief. The retailing community would prefer to simply be able to negotiate interchange fees with the credit card companies; however, those companies will not negotiate so we must resort to this tax break. Small business owners currently pay more each year in interchange fees than they do in state business & occupation tax. Independent grocers operate in a very competitive market; therefore, any tax credit they received would be passed along in savings to the consumer.

CON: This bill creates a credit against the sales tax that offsets merchants' routine costs of doing business. Using a sales tax credit in this way is a slippery slope; it creates a precedent of giving businesses sales tax credits for routine costs of doing business. This tax credit is paid for by consumers; businesses are permitted to offset their expenses by receiving taxes that are paid by the consumer and the consumer is given no notice.

OTHER: This is a helpful gesture; however, it does not get at the major issue, which is merchants' inability to negotiate interchange fees. The state Legislature should pass a joint resolution to Congress to request that it regulate these fees. Consumers aren't aware of interchange fees, and there needs to be more disclosure to consumers.

**Persons Testifying:** PRO: Senator Jacobsen, prime sponsor; Trent House, Washington Restaurant Association; Jan Gee, Washington Food Industry.

CON: Gil Brewer, Department of Revenue.

OTHER: Jan Gee, Washington Food Industry.