



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>04/12/05</b>	Bill No:	<b>SB 860</b>
Tax:	<b>Administration</b>	Author:	<b>Bowen</b>
Related Bills:			

### BILL SUMMARY

This bill would prohibit any state agency or agent for a state agency from imposing a fee or charge for credit card or debit card payments.

#### Summary of Amendments

The April 12, 2005 amendments delete amendments to the Food and Agricultural Code, delete the effective date of May 1, 2006, and specifically include the University of California, the California State University, or an agent of one of these entities as prohibited from imposing any processing fee or charge for credit or debit card payments.

### ANALYSIS

#### Current Law

Under current law, Government Code Section 6163 (a)(1) requires that all state agencies accept payment made by means of a credit card or other payment device. Government Code Section 6163 (a)(2)(A) provides that a state agency may request that the director grant an exemption from paragraph (1) if the agency determines that its acceptance of payments by credit card or other payment device would have any of the following results: (i) It would not be cost-effective. (ii) It would result in a net additional unfunded cost to the agency. (iii) It would result in a shortfall of revenues to the State of California.

#### Proposed Law

This bill would add Section 6167 to the Government Code to provide that no state agency or agent for a state agency that accepts a credit card or debit card as payment for any state service or obligation shall impose any processing fee or charge for the use of that card that is not also imposed upon persons who pay for the same service or obligation by cash or check.

This bill would also make various conforming changes to other code sections which authorize credit card fees.

#### In General

In March 1998, the Board of Equalization (BOE) implemented a credit card program for sales and use taxes through the Department of General Services Master Service

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Agreement. A convenience fee (2.5% of the transaction amount) is charged by Official Payments Corp (OPC) through subcontract with our contract holder, First Data Merchant Services (FDMS). This fee is not revenue to the BOE. Transactions under \$40.00 are subject to a \$1.00 minimum.

### Background

**AB 1374 (Speier), Chapter 926, Statutes of 1995**, required all state agencies to accept payments made by credit card. AB 1374 didn't permit passing on the transaction fee, but did permit state agencies to ask for an exemption if accepting credit cards would not be "cost-effective" or would result in an "unfunded cost" or a "shortfall" to the agency [Government Code 6163 (a)(2)(A)].

There are a number of specific agencies permitted under current law to charge an additional fee for credit card payments:

- Section 6140 of the Business and Professions Code permits the *State Bar* to charge an additional fee to defray the costs of credit card payments. (SB 144, Chapter 342, Statutes of 1999)
- Section 1010.5 of the Code of Civil Procedure authorizes *state courts* to add a surcharge to court filing fees that are paid by credit card. (SB 1409, Chapter 339, Statutes of 1992)
- Section 11518 of the Food and Agricultural Code allows the *Department of Pesticide Regulation* to add a surcharge to credit card payments to help cover the cost of the credit card company transaction fee. (SB 828, Chapter 889, Statutes of 1999)
- Section 31255 of the Food and Agricultural Code allows *local animal control offices* (with approval from the county board of supervisors) to impose a surcharge on payments made by credit card for animal licenses, fees, and fines (SB 1599, Chapter 1020, Statutes of 1992)
- Section 1050.5 of the Fish and Game Code allows the *Department of Fish and Game* to impose a surcharge on credit cards payments to cover the cost of providing the service of accepting credit cards and to cover the cost of credit card company transaction fees. (AB 3727, Chapter 1681, Statutes of 1990)
- Section 6159 of the Government Code allows *courts and local agencies* to accept credit card payments for posting bail and allows a surcharge to cover credit card company transaction fees. [AB 145, Chapter 108, Statutes of 2001]
- Section 2511.1 of the Revenue and Taxation Code allows *counties* to accept credit cards for property tax payments and allows an extra fee for credit card use to cover fees paid by the county to the credit card issuer. Any fees have to be approved by the board of supervisors. [SB 1683, Chapter 523, Statutes of 1992]

### COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author, whose office states:

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“The goal of SB 860 is to save Californians and state and local government agencies money by encouraging people to use the Internet and other automated systems to make payments to public agencies instead of walking into government offices to be served, which is the most expensive way to provide government services. In addition, if agencies are required to cover the cost of credit card transaction fees instead of passing the fees on to customers, they will have an incentive to negotiate better rates in their contracts with credit card payment vendors. Clearly, credit card companies and vendors faced with losing the state’s business altogether are far more likely to come up with bids for lower rates. But as long as the law requires agencies to accept credit cards **and** permits transaction fees to be passed on to customers, there will continue to be no incentive on the part of credit card companies or government agencies to negotiate contracts with lower transaction fees.”

2. **The credit card companies (Discover/Novus, MasterCard and American Express) charge merchants a processing (convenience) fee for accepting their credit cards.** While retail establishments have the ability to build the cost of accepting credit cards into the price of their merchandise, the BOE is unable to do that with tax payments. Since the implementation of the credit card program for sales and use taxes in March 1998, the BOE has passed along the convenience fee to taxpayers as does our sister agency, the Franchise Tax Board. The convenience fee is charged by the credit card processing vendor, Official Payments Corp. and is not revenue to the BOE. The convenience fee is 2.5% of the transaction amount. Transactions under \$40.00 are subject to a \$1.00 minimum.
3. **This bill would have an impact on taxpayers and the BOE since it prohibits any state agency from imposing a processing fee or charge for use of a credit card that is not imposed upon persons who pay the same obligation by cash or check.** While the BOE does not directly impose processing fees on taxpayers, a third party vendor (Official Payments Corporation) is acting on our behalf and, as such, falls within the provisions of this bill.

This measure would require the BOE to terminate the Credit Card Payment Program since the cost of the program would be prohibitive. If the BOE were required to bear the cost for the acceptance of credit cards, the usage among taxpayers would most likely increase dramatically. The BOE is not funded to pay for the fees associated with accepting credit cards.

Since current law requires state agencies to accept payments by credit card or other payment device, the BOE would have to apply for an exemption from accepting payments by credit card as provided in Government Code Section 6163(a)(2)(A). This would eliminate a service to taxpayers and could decrease or delay revenue to the state’s general fund. Taxpayers who would normally take advantage of making their payments by credit card may not make a payment at all or may pay a lesser amount than due.

4. **Effective July 1, 2004, the Department of Motor Vehicles (DMV) began absorbing the convenience fee for vehicle owners who pay their registration by credit card.** According to DMV, the average convenience fee is \$3.00 which equates to an average payment of \$120.00. Although DMV does not claim any personnel year or other savings from absorbing the fee, by achieving a higher rate of credit card use, they would likely realize shorter lines in field offices, and lower costs by not having to process as many incoming registration payments (if a vehicle owner pays by credit card, no paper is required to be sent back to the DMV).
5. **The BOE would not realize savings similar to DMV, since the BOE must still process paper returns from taxpayers.** The major processing costs for the BOE result from processing the paper tax return, rather than the check. Even taxpayers who currently pay by credit card must still file their paper tax return. Costs for processing returns are the same whether paid by cash, check, electronic funds transfer or credit card.
6. **Shouldn't there be a distinction between using a credit card to pay a tax liability and paying for state services?** Sales taxes are generally regarded as "fiduciary taxes" or "trust taxes." The customers perceive the tax reimbursement they pay to retailers as the State's money, not the retailer's. While the true liability for the tax falls on a retailer, customers who pay sales tax to the retailer expect businesses to send it to the state; otherwise they would have no obligation to pay it. When sales tax reimbursement is collected from a customer, the customer's perception is that the business is, in effect, acting as the agent for the state or local government, collecting the government's money from the customer and then paying it over to the government on a periodic basis. A failure of the business to do so should be recognized as fraudulent. Therefore, it is legitimate to make an exception for imposing a convenience fee on a taxpayer who remits their tax liability by credit card as differentiated from accepting payment for services by credit card from a person who pays a fee to the DMV for registering their car.

## COST ESTIMATE

Should the BOE absorb the convenience fee, the potential cost related to current credit card transactions (sales and use tax program) is detailed as follows:

	<b>Total Credit Card Dollars Received</b>	<b>Convenience Fee (2.5%)</b>	<b>Number of Transactions</b>	<b>Average Payment</b>
Fiscal Year 2001-02	\$36.3 million	\$907,500	12,621	\$2,876
Fiscal Year 2002-03	\$38.9 million	\$972,500	13,276	\$2,930
Fiscal Year 2003-04	\$44.6 million	\$1.1 million	13,258	\$3,364
Fiscal Year 2004-05 (through 3/05)	\$36.1 million	\$902,500	12,979	\$2,781

It stands to reason that if no convenience charge were imposed, more taxpayers would choose to pay by credit card, either as a convenience to them, or to earn

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promotional points from the credit card company. If the BOE were forced to absorb the 2.5% that taxpayers currently pay to the credit card vendor, using fiscal year 2002-03 as an example, there would have been the potential for a total of \$8.2 billion to be paid by credit card (the BOE collected \$35.5 billion in sales and use tax revenue from 853,373 taxpayers of which \$27.3 billion was paid by taxpayers who were required to, or volunteered to, pay by electronic fund transfer resulting in \$8.2 billion in sales and use taxes that could have been paid by credit card). Although unlikely, if the entire \$8.2 billion would have been paid by credit card, the BOE would have had to absorb \$205 million in convenience fees.

If the BOE were required to absorb the associated fees, a significant General Fund budget augmentation would be required and would have to be approved by the Department of Finance.

In addition, some administrative costs would be incurred in rewriting computer programs. A detailed estimate of these costs is pending; however, these costs are anticipated to be moderate (over \$50,000 and under \$250,000).

## REVENUE ESTIMATE

There is a potential for some impact to the state's revenues if the BOE could no longer accept credit card payments. Processing and clearing time for checks causes a revenue delay as opposed to the immediate availability of funds through the credit card process.

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