
Coates' Canons Blog: Assessing Surcharges on Credit Card Payments

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UPDATE August 2013: For more recent information on this topic, click [here](#).

True or False — State law prohibits a local government or public authority from assessing surcharges on customers who remit payment of taxes, assessments, or fees by credit card, charge card, or debit card?

It may surprise you to learn that the answer is False.

Applicable State Law

In fact, **G.S. 159-32.1** expressly authorizes local governments, public hospitals, and public authorities to impose surcharges on any person who pays taxes, assessments, or fees with a credit card, charge card, or debit card. (I will refer to the different cards interchangeably.) A credit card company typically assesses on a merchant (including a government entity) several fees for the privilege of accepting credit card payments, including a discount rate—which is typically between 1 – 3 percent of each transaction obtained through a credit card—and an interchange rate—which is a flat per-item charge for each transaction. State law, thus, allows a local unit or authority to pass-on these fees or charges to their “customers.”

Credit Card Company Requirements

So, why are most local units and public authorities not taking advantage of this authority and assessing surcharges on credit card payments? The answer lies in the “contractual fine print”—many credit card companies contractually prohibit a local unit or public authority from assessing such surcharges on their customers, except under certain circumstances.

But, the “fine print” is not as restrictive as many local officials believe. Since 1996, the major credit card companies have allowed governments to charge a “convenience fee” to customers who pay by credit card on the Internet or through an automated phone system.

And, in 2007, MasterCard began allowing qualifying governments to charge a convenience fee to customers who pay by credit card in face-to-face transactions, under certain conditions. (American Express adopted a similar policy in 2008.) MasterCard’s program is described [here](#).

One of the conditions of both MasterCard’s and American Express’s programs, is that a convenience fee may not be assessed on their brands and not on other brands accepted by the government unit. Because the other major credit card companies still have not followed suit with this change, the practical implication is that government entities that want to charge a convenience in face-to-face transactions must only accept MasterCard or American Express. In other words, if a government accepts Visa cards, then it cannot charge a convenience fee on any credit card in face-to-face transactions.

Finally, Visa does allow a government to assess a “service fee” on certain face-to-face *tax* payments. A description of the program, and its restrictions, is available [here](#). The service fee must be processed as a separate transaction and is capped at \$3.95 per tax payment.

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