

## **ANALYSIS:**

In our case, it becomes important to know what the store has negotiated with the credit card companies in order to determine whether the five percent ceiling has been reached. It is also important to keep this five percent ceiling in mind on small dollar purchases. Also, it is important to know if and how these charges are being passed on to the consumer. Thus, the ultimate answer must be determined, not only on a store by store basis, but a purchase by purchase basis as well.

Having said that, there are several general scenarios that may be applicable:

1. The store may be “eating” the cost and simply paying the credit card company  $x\%$  of whatever is charged. This would not be a surcharge. For example, one customer buys \$100 worth of product using a credit card and another customer buys \$100 worth of the identical product and pays cash. Here the store pays the negotiated rate to the credit card company, and in some sense, takes a loss on the credit card purchase. There is no issue of surcharge, because everyone is paying the same price. Thus, the store could pass along the transactional cost of the receipt without hitting the five percent ceiling, assuming the purchase is larger than \$5 or \$10 (where the 25 to 50 cent transactional cost represents 5%), or;
2. The store, instead of “eating” the cost associated with credit card users increases the price for all consumers whether or not they use a credit card. Here the store would reap any benefit from those paying in cash. This would not be a surcharge issue either, since again there is no price differential between those who use a credit card and those who pay in cash. Thus, the store could pass along the transactional cost of the receipt (again) assuming the purchase is greater than \$5 or \$10.

Given that there are not a lot of price differentials in the market, as far as I have experienced, stores are adhering to either scenario one or two as outlined above. This may be due to consumer taste (Hey, credit cards are cash too), or it may be attributed to efficiency of the workplace, i.e., it is too confusing for employees, employers, and their accountants to bother with sorting it out on a transactional basis. Lastly, given the penalty clause in the statute, and the potential for liability, again, it may be a management decision to forego collection of surcharges.

**Conclusion:** A store may pass these charges on to the consumer as long as the consumer is informed both orally and visually, and the surcharge does not exceed five percent of the total purchase, and if there are no other credit card surcharges already being passed through to the consumer.

If there are surcharges being passed along already, then the retailer will have to ensure that the surcharge does not put him over the limit, or he will be subject to a penalty.