

Happy May from your friends at CSAW Associates, LLC! As spring turns into summer, many WACO members are opening their doors to guests for the year. At convention during the closing Cracker Barrel gathering I brought up the subject of adding surcharges on credit card transactions. I promised a newsletter article and now that tax season is “over” here it is.

“Follow the rules” might sound like simple enough advice to follow. But staying compliant with all the surcharging regulations out there, on top of everything else you need to do, can be a challenge.

While surcharging might sound straightforward, adding fees to card transactions without violating your merchant agreement is complicated. Along with government regulations, each major credit card has their own set of guidelines, and you need to be familiar with all of them. In the state of Wisconsin, it is legal to charge a surcharge to credit cards as long as the customer is notified in writing prior to checking out. **It is against card brand rules to add a surcharge to sales completed by debit card, regardless of using the debit or credit card network.** You must also apply the same surcharge amount to all cards and cannot offer a cash discount in conjunction with surcharging. It has to be one or the other across all transactions.


There is a lot of confusion regarding cash discount and surcharge programs. A surcharge is a fee applied to a published price when paying with a card. The published prices are the price paid with cash. A cash discount is a published price when paying with cash. The published prices are the price paid with a card. Some merchants believe that by adding a service fee to all card transactions they are offering a “cash discount program.” However, these transactions are not excluded from Visa surcharge rules just because the merchant declared that a service fee is added to all transactions and a discount is applied for cash sales. Robert Johnson, Sr Director, Visa Rules Management states that “Any fee added to a purchase that is levied specifically for the use of a card is a surcharge, regardless of what the merchant calls it, and is governed by Visa’s surcharge rules.”

So, what are the rules?


- Merchants are required to notify their card processor and card brands 30 days prior to surcharging.
- **Surcharging is limited to credit cards.** It is prohibited to surcharge any debit, prepaid or gift card transaction. Even if you run the debit card as a credit, it is still prohibited to surcharge that card. Doing this wrong could result in a big fine.
- The amount that you surcharge on a credit card cannot exceed the effective merchant discount rate for that credit card. You cannot make a profit on surcharges. The current maximum cap is 3%.
- Your main entrance surcharge signage should be a minimum 32-point Arial font but no smaller than any surrounding text.
- Every checkout or payment station needs surcharge signage in a minimum 16-point Arial font.
 - The notice must include the exact amount or percentage of the credit card surcharge.
 - A statement that the credit card surcharge is being assessed by the merchant and is only applicable to credit transactions.

- A statement that the surcharge amount is no greater than the merchant's discount rate for credit card transactions.
- For restaurants, a notice must be printed on menus and on signage in the customer service area.
- For online transactions, the consumer must also be given the opportunity to cancel the transaction after the credit card surcharge disclosure.
- The surcharge amount must be listed separately on the receipt or invoice. **In Wisconsin, the surcharge amount is taxable.**

If you don't display proper signage, you will be violating consumer protection laws and regulations regarding transparency and fair trade which could lead to customer complaints and legal action.



Examples of Signage Wording



We impose a surcharge of 3% on the transaction amount on [Mastercard, VISA, Discover, Amex] credit card products, not greater than our cost of acceptance.

We impose a surcharge of 3% on credit cards, which is not greater than our cost of acceptance.

To our valued customers, Instead of raising our prices, your receipt now includes a 3% surcharge to cover the rising cost of credit card acceptance that we pay when cards are used. If you pay cash or with a debit card, you won't get surcharged. Thank you for your continued patronage!

2 Places You MUST Post in a Restaurant

1. Point of entry
2. Point of sale

A 3rd Recommendation

3. On your menu

A 3% credit card fee will be applied to all credit card transactions. Cash and debit card transactions are not subject to a surcharge.

Examples of What You Cannot Do

**CASH DISCOUNT
PRICING NOTIFICATION**

All prices posted and displayed
in this business represent
the cash discount.

1 3 Chicken Taco	\$8.00
Cash Discount (3.00%)	<u>\$0.24</u>
Subtotal	\$8.24
Tax	\$0.40
Total	\$8.64

Suggested Tip:

20%: (Tip \$1.60 Total \$10.24)
22%: (Tip \$1.76 Total \$10.40)
25%: (Tip \$2.00 Total \$10.64)

Tip percentages are based on the check
price before discounts and taxes.

As of July 10th 2023, there
will be a **4% credit card
convenience fee** to offset
some of the credit card
processing fees.

The fee will be
automatically added to the
guest check and will be
deducted for cash payments.

Greatly appreciate your continued support and
understanding.

The Management Team

The Bottom Line on the Surcharge Rules & Regulations

Businesses cannot profit from surcharge fees. They can only offset some of the fees they pay to credit card networks and processors. And cards have caps on what you can apply for a surcharge.

Mastercard and Visa are cracking down on merchants who are not following surcharge rules. The Wisconsin Restaurant Association reports that a Wisconsin restaurant recently was hit with a \$25,000 fine from Visa for non-compliance with surcharge rules. Visa is employing secret shoppers to proactively investigate if businesses are in violation of their rules. The breaches of conduct they can get you on include:

- Credit card surcharge amount exceeds the amount specified in Visa's rules.
- Credit card surcharge amount did not appear on the transaction receipt.
- Credit card surcharge was assessed on a transaction in a way that does not comply with Visa's rules.
- The credit card surcharge amount was not refunded.
- The credit card surcharge was assessed on a transaction where surcharging is not allowed such as debit card, gift card or prepaid card.
- The credit card surcharge was not disclosed.
- A convenience fee, service fee or other fee was applied on a transaction that also included a surcharge. Only one or the other is allowed.

If the worst happens, and you do find your business accused of committing a violation in one of these areas, whether from a cardholder complaint or a mystery shopper, here's what to expect:

- Visa will notify your payment processors and acquirer of the offense they believe you committed.
- Within that violation, Visa will provide a remediation timeframe. This is your chance to remedy the issue or correct the error. The timeline is usually 30/60 days from the date of notification, depending on the violation.
- If the violation is not remediated, then Visa will assess a non-compliance fee starting at \$1K or greater for most violations.
- If the violation is still not remediated, then they may assess stiffer non-compliance fees in the range of \$25K or even revoke your card processing privileges.

Even though it might feel like the last thing you want to do, it's important to act fast on remediation so you don't get hit with even bigger fines or penalties. If your business has already been visited by a secret shopper, audits will likely continue to ensure your ongoing compliance. Don't fall into the trap of thinking this is a one and done situation.

Bottom Line: What happens if you DON'T follow the rules?

Disregarding the rules means credit card companies can impose hefty fines and terminate your business's merchant account.