THE CCCA, THE REVERSE ROBIN HOOD HYPOTHESIS, & IMPLICATIONS FOR AMERICAN TAX POLICY: WHAT BEN FRANKLIN, ROBIN HOOD, AND 18TH-CENTURY LIVERY OPERATORS HAVE TO DO WITH ECONOMIC JUSTICE AND THE TAXATION OF AMERICAN CREDIT CARD REWARDS

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ABSTRACT

High credit card swipe fees and their associated rewards have become politically contentious, raising prices across the economy. All consumers bear these higher costs, but only cardholders enjoy the rewards they fund. Critics argue that such programs create a "Reverse Robin Hood" effect, transferring wealth from merchants and non-card users to issuers, network providers, and affluent cardholders. As Congress considers the Durbin-Marshall Credit Card Competition Act (CCCA)[1] to reduce swipe fees through mandated competition, this paper examines the continued defensibility of exempting modern credit card rewards from taxation under the longstanding discounted purchase price rule. With congressional attention now focused on the credit-card fee market, it is timely to reconsider whether this exemption remains justified. Recent scholarship undermines the discounted purchase price rationale, suggesting the rewards' tax exemption may no longer be justified. While this paper takes no position on whether such rewards should be taxed, it concludes that the precedential basis for their exemption is no longer defensible and urges Congress to provide clear guidance, through statutory amendment or otherwise, on their proper treatment under U.S. tax law.

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I. INTRODUCTION

A. Congressional Reform & the Rewards Taxation

Congress is now focused on the bipartisan Credit Card Competition Act (CCCA), also known as the Durbin-Marshall Credit Card Bill, which seeks to improve the fairness and efficiency of the credit card swipe fee market by introducing competition into an under-regulated sector. Although the CCCA was not adopted under the Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (2025 GENIUS Act), the effort to pass it continues.[2] With the CCCA so present on the minds of legislators, an opportunity exists to review the associated and long-outdated body of credit card reward tax policy.

For many years, American tax policy has relied upon the discounted purchase price rule to exempt credit card rewards from taxation. This approach treats reward as a purchase price reduction rather than taxable income. Despite its long tenure, the discounted purchase price rule rests upon increasingly shaky legal ground, with many scholars and advocates now expressly calling for the taxation of credit card rewards,[3] arguing that "increased financial equity in this industry can be achieved by taxing the rewards that people earn from their credit cards as if those rewards were regular income."[4]

B. Changing Times, Changing Payment Methods

The Durbin-Marshall Credit Card Bill has become a subject of tremendous contention between card companies and merchants, for good reason. The CCCA proposes to disrupt long-dominant payment regimes by requiring platform providers to offer merchants the choice of at least two networks to process transactions. Through fostering competition, the CCCA seeks to break the stranglehold that dominant network providers currently hold by using market forces to reduce prices and increase efficiencies in the payment card marketplace.

Modern card rewards derive from transaction-dependent swipe fees. This origin is significant as credit card transactions comprise an increasingly large share of all transactions in the United States. In fact, a 2022 study by the Federal Reserve Bank of San Francisco determined

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2. Lynn Marek, *Credit Card Bill Crusade Persists*, PAYMENTS DIVE (June 16, 2025), https://www.paymentsdive.com/news/credit-card-network-legilsation-marshall-durbin-stablecoin-payments/750802/

3. Oz Shy, *Should Credit Card Rewards Be Taxed?*, 26 J. PUB. ECON. THEORY, 19, 20 (2024); *see* Hunter Davis, *Stay Schemin': Tax Court's Recent Ruling on Credit Card Rewards and the Impact this Ruling Has on Future Rewards Programs*, 57 GA. L. REV. 805 (2023).

4. Trevor H. Fry, *For Everything Else, There's Taxes: Why Credit Card Rewards Should Stop Being Priceless*, 66 B.C. L. REV. 121, 121 (2025).

that credit cards represent 31% of all payment transactions.[5] Merchants pay substantial fees to card issuers for these transactions. For example, in 2022, American merchants paid $160.70 billion in credit card processing fees for payment on goods and services sold.[6] In 2022, consumers earned approximately $41.1 billion in rewards, according to the Consumer Financial Protection Bureau.[7] To earn such rewards, one must possess the financial wherewithal to qualify for and support a rewards-based card.

Increasingly, Americans have switched to paying with cards instead of cash. As of 2024, Credit card transactions accounted for 36% of all consumer and business payments.[8] As credit-financed transactions have become more prevalent, so have associated swipe fees, which form the financial fuel that funds credit card rewards.

Consequently, American consumers pay some of the highest credit card swipe fees in the world. Among banks and card companies, the competition to earn these lucrative fees is fierce. It has stirred network providers, card-issuing banks, and acquiring banks to take extreme measures to acquire and retain new business. Aggressive marketing efforts have led to generous card-based reward programs offering airline miles, hotel points, and cash-back rebates. While appealing to consumers, these rewards come at a significant cost. Swipe fees must eventually be passed on to merchants and consumers through higher consumer prices.

C. The Development of High Swipe Fees and High Rewards

Establishing an international electronic payment system was a colossal undertaking requiring massive expenditures to develop and implement the system. There are also substantial ongoing costs to operate and maintain the system. Swipe fees must cover network costs and yield a profit. Nonetheless, over time, the Visa-Mastercard duopoly has been powerful enough to institute and maintain the highest swipe fees in the world, fueling the rapid growth of reward programs.

Credit card issuers and networks provide a valuable service to merchants and consumers by offering access to a secure, instantaneous, and non-cash payment network that instantly provides purchasing power anywhere in the world. Card issuers provide consumers with additional purchasing power, the convenience of not carrying cash, and

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5. Emily Cubides & Shaun O'Brien, FEDERAL RSRV. BANK S.F.: *May 2023 Findings from the Diary of Consumer Payment Choice.*

6. *Merchant Processing Fees in the United States—2022*, NILSON REP., Mar. 15, 2023, at 1, 7, https://nilsonreport.com/articles/merchant-processing-fees-in-the-united-states-2022/.

7. *See generally* CONSUMER FIN. PROTECTION BUREAU, *The Consumer Credit Card Market*, at 69 (2023), https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-card-market/.

8. Claire Greene, *New Fed Payments Study Details Card Use in the US*, FEDERAL RSRV. BANK ATLANTA (Nov. 18, 2024).

an automated record-keeping system. Over several decades, the global payment network has undergone a transformation; card issuers have significantly changed how Americans pay.

Credit card interchange fees are a significant yet often overlooked source of costs in every consumer transaction, including those involving non-credit card and cash payments. While the modern American credit card system relies on an electronic network that is not fully transparent to consumers, credit card interchange fees are a significant component of the average American's annual costs. Every time a consumer swipes a credit card, a portion of the price paid gets deducted from the total charged by a merchant. It is then transmitted to, and divided by, participants in the electronic payment network. In 2022, for example, Americans paid $120 billion in credit card fees.[9]

In the processing business, volume is the name of the game. As firms earn more customers, this drives more transactions, and with more transactions, they earn more interchange fees. In recent years, card issuers have taken increasingly bold steps to acquire and protect processing opportunities. Card issuers have turned to lavish credit card reward programs. In fact, "[y]ear after year, rewards got richer and more versatile . . . ."[10] While card issuers once feared that younger generations might turn away from using plastic, recent trends suggest that younger generations, including Generation Z, are becoming increasingly reliant on or even addicted to credit card reward programs.[11]

D. High Swipe Fees Draw Regulatory Attention

High rewards and high swipe fees go hand in hand. After all, to support high rewards, card companies must hold the financial wherewithal to pay them. In the United States, interchange fees are among the highest in the world and far eclipse those of comparable economies such as the European Union,[12] Australia, and Japan. Indeed, card issuers view developing, maintaining, and protecting continued access to such fees as crucial to financial success and profitability. While acquiring credit card processing businesses has become the subject of

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9. Ashwin Vasan & Wei Zhang, *Americans Pay $120 billion in Credit Card Interest and Fees Each Year*, CONSUMER FIN. PROTECTION BUREAU, (Jan. 19, 2022), https://www.consumerfinance.gov/about-us/blog/americans-pay-120-billion-in-credit-card-interest-and-fees-each-year/.

10. Claire Tsosie, *3 Major Ways Credit Cards Have Changed in the Past Decade*, FORBES (Dec. 15, 2020), https://www.forbes.com/sites/clairetsosie/2019/11/27/3-major-ways-credit-cards-changed-this-decade/.

11. Telis Demos, *American Express Zooms Ahead as Gen Z Gets Hooked on Card Rewards*, WALL ST. J. (May 31, 2024), https://www.wsj.com/business/credit-card-rewards-gen-z-american-express-ed257f70.

12. *See generally* Shy, *supra* note 3, at 3 ("[C]redit card interchange fees in the European Union and also in Andorra, Iceland, Liechtenstein, Norway, and Serbia are capped at 0.3% of the payment value in all merchant categories").

intense competition, elevated swipe fees have drawn the attention of legislators.

The bipartisan CCCA aims to lower interchange fees through market competition. It seeks to do so by fostering the interaction of the opposing but complementary forces of competition and self-interest. To effectuate these aims, the authors of the CCCA propose amending key provisions of the Electronic Fund Transfer Act (EFTA) "to require the Board of Governors of the Federal Reserve System to prescribe regulations relating to network competition in credit card transactions, and for other purposes."[13] By giving merchants a choice, CCCA advocates hope to lower fees and prices nationwide.

E. High Rewards & High Fees Drive Important Tax & Equity Questions

While credit card rewards may seem relatively benign at first glance, they present serious equity and tax policy problems. Credit card rewards derive from swipe fees, which must be high enough to support such rewards. Swipe fees represent an additional merchant expense passed on to consumers. Some suggest that by forcing merchants to raise prices, high swipe fees harm people experiencing poverty. For low-income people, even a fractional price increase could be devastating. Thus, lavish rewards depend on what many see as an unfair fee structure benefitting 'lifestyle' borrowers to the detriment of poorer 'subsistence borrowers.'[14] This position has come to be known as the "Reverse Robin Hood Cross-Subsidy Hypothesis" (RRHCS)[15] and posits that modern reward programs benefit the rich at the expense of the poor.

Currently exempt from taxation,[16] credit card rewards rely on an outdated discount purchase price rule derived from cases unlike today's third-party transactions. Due to these differences, modern card rewards bear little resemblance to traditional purchase price discounts, raising serious questions about whether extending the discounted purchase price rule as a basis for exempting rewards from taxation should continue.

While lavish card rewards may seem harmless, they raise important policy questions for politicians, regulators, and scholars alike. The bipartisan CCCA presents an invaluable opportunity to examine and

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13. Credit Card Competition Act of 2023, S. 1838, 118th Cong. (2023).

14. Stephen Wilks, *Private Interests, Public Law, and Reconfigured Inequality in Modern Payment Cards Networks*, 123 DICK. L. REV. 307, 309 (2019).

15. *See generally* Steven Semeraro, *The Reverse-Robin-Hood-Cross-Subsidy Hypothesis: Do Credit Card Systems Effectively Tax the Poor and Reward the Rich?*, 40 RUTGERS L.J. 263, 263 (2009). Also note that this paper will generally refer to the Reverse Robin Hood Cross-Subsidy Hypothesis as the Reverse Robin Hood Hypothesis. The paper will also refer to the effects or perceived effects of this hypothesis as the Reverse Robin Hood Effect.

16. With notable exceptions, as discussed in Section VI.C.5. of this paper, *infra*.

review American credit card tax policy at a time when swipe fees are the subject of considerable interest. The CCCA aspires to counter card processing fees and price-gauging by the Visa-Mastercard duopoly by mandating competition in the interchange fee market. In particular, the CCCA will require merchants to have at least two networks to process credit card transactions.

Against the backdrop of the CCCA, this paper reexamines the continued viability of the discounted purchase price rule, a longstanding feature of U.S. tax policy, in a modern economic and legal context that may no longer support it. Part II traces the rise of credit card culture in America; Part III reviews prior regulatory efforts; Part IV analyzes market failure and the Reverse Robin Hood Hypothesis; Part V outlines current policy options; Part VI provides discussion and analysis; and Part VII concludes.

II. HISTORY & DEVELOPMENT OF AMERICAN CREDIT CARD CULTURE

The rise of credit cards in the United States reflects a century-long evolution shaped by shifts in commerce, legal frameworks, and consumer culture.[17] Early forms of installment credit, reinforced by state usury laws, constrained the growth of revolving credit until mid-twentieth-century innovations[18] by department stores, oil companies, and banks.[19] Landmark federal legislation and court decisions, notably those involving interstate banking and consumer protection, created an environment that encouraged rapid[20] national expansion.[21] Understanding this history is crucial for evaluating contemporary policy debates on credit-card taxation, regulation, and consumer welfare.[22] The following timeline highlights pivotal events that transformed cards from localized merchant credit instruments into the backbone of modern consumer finance.

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17. *See* Sean H. Vanatta, *Credit Card Nation*, AEON (Apr. 22, 2024), https://aeon.co/essays/how-did-america-become-the-nation-of-credit-cards.

18. *See* LEWIS MANDELL, THE CREDIT CARD INDUSTRY: A HISTORY, at xii (1990).

19. *See* Vincent D. Rougeau, *Rediscovering Usury: An Argument for Legal Controls on Credit Card Interest Rates*, 67 U. COLO. L. REV. 1, 4–5, 8–9 (1996).

20. *See* Vanatta, *supra* note 17.

21. *See* RONALD J. MANN, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS AROUND THE WORLD, 4 (2006); Wilks, *supra* note 14, at 315–16.

22. *See generally* David S. Evans, *The Antitrust Economics of Two-Sided Markets*, 20 YALE J. ON REGUL. 325, 376–79 (2003).

Table 1 – Milestones in U.S. Credit-Card Culture Development

Year / Period	Milestone / Event	Category	Significance
1930s–40s	Oil-company and department-store charge cards[23]	Private-label innovation	Introduced revolving store credit; familiarized consumers with non-cash payment
1950	Launch of Diners Club card[24]	First general-purpose charge card	Pioneered travel-and-entertainment card model and multi-merchant acceptance
1958	Bank of America issues BankAmericard in California[25]	Bank-issued national card	Prototype of modern Visa network; enabled bank-backed revolving credit
1966	Formation of Interbank Card Association (later Mastercard)[26]	Network collaboration	Created cooperative infrastructure for nationwide card clearing/settlement
1970	Fair Credit Reporting Act[27]	Federal consumer-protection statute	Set national standards for credit reporting; supported card-issuer risk-management
1974	Fair Credit Billing Act[28]	Federal consumer-protection statute	Provided billing-error resolution and limited cardholder liability
1978	Marquette Nat'l	Judicial	Allowed national

23. Christine Zumello, *The "Everything Card" and Consumer Credit in the United States in the 1960s*, 85 BUS. HIST. REV. 551, 552, 554, 564–65 (2011).

24. Vanatta, *supra* note 17; *see also* Jeffery C. Arnier, Jr., *Encouraging Surcharge: Toward a Market-Driven Solution to Supracompetitive Credit Card Interchange Fees*, 99 TEX. L. REV. 621, 624–25 (2021).

25. Zumello, *supra* note 23, at 552, 554, 564–65.

26. Peter Westberg, *Visa and Mastercard: The Global Payment Duopoly*, QUARTR (Nov. 21, 2025), https://quartr.com/insights/company-research/visa-and-Mastercard-the-global-payment-duopoly; *see* Arnier, *supra* note 24, at 625.

27. Vanatta, *supra* note 17; *see also* Arnier, *supra* note 24, at 653.

28. *See Fair Credit Billing Act*, FED. TRADE COMM'N, https://www.ftc.gov/legal-library/browse/statutes/fair-credit-billing-act.

	Bank v. First of Omaha[29]	decision	banks to export home-state interest rates; triggered interstate competition
1980–82	State-level deregulation led by South Dakota and Delaware [30]	Legislative change	Eliminated usury caps to attract card-issuing banks; drove national industry shift
1986	Tax Reform Act eliminates deduction for consumer-interest payments [31]	Federal tax policy	Raised after-tax borrowing cost; altered consumer revolving-credit behavior
1996	Smiley v. Citibank[32]	Judicial decision	Defined late-payment fees as 'interest' under National Bank Act; broadened permissible fee exportation
2009	Credit CARD Act [33]	Federal statute	Restricted repricing practices and improved disclosure; aimed at reducing abusive interest-rate hikes
2010s	U.S. EMV-chip adoption and rise of mobile-wallets [34]	Technologic al shift	Enhanced point-of-sale security and changed card-use habits

29. Sean H. Vanatta, *When South Dakota Became the New Cayman Islands for Banks and Finance*, WASH. POST (Oct. 14, 2021), https://www.washingtonpost.com/outlook/2021/10/14/when-south-dakota-became-new-cayman-islands-banks-finance/.

30. *See* Steven Mercatane, *The Deregulation of Usury Ceilings, Rise of Essay Credit and Increasing Consumer Debt*, 53 S.D. L. REV. 37, 41 (2008); Mark B. Riley, *Usury Legislation — Its Effects on the Economy and a Proposal for Reform*, 33 VAND. L. REV. 199, 228 (1980).

31. *See generally* Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986).

32. Smiley v. Citibank (S.D.), N.A., 517 U.S. 735, 745 (1996).

33. *See generally* Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (2009).

34. Abas Kadar, *The Evolution of EMV Payment Systems: Today's Technical Obstacles Solutions* (2017).

2020s	Growth of Buy-Now-Pay-Later fintech platforms [35]	Market innovation	Showed persistent consumer demand for short-term revolving credit alternatives

Merchant-issued charge cards in the 1930s–40s laid the foundation for consumer acceptance of non-cash payments.[36] Diners Club's 1950 launch proved that multi-merchant charge accounts were commercially viable,[37] while Bank of America's 1958 BankAmericard experiment transformed the concept into a scalable bank-issued product.[38] The 1966 formation of the Interbank Card Association, today's Mastercard, provided the cooperative infrastructure necessary for interoperable networks.[39]

Federal statutes in the 1970s (the Fair Credit Reporting Act and Fair Credit Billing Act) built nationwide consumer confidence by standardizing credit reporting and billing practices.[40] The Supreme Court's *Marquette* decision in 1978 fundamentally reshaped interstate competition by allowing nationally chartered banks to apply their home-state interest rates nationwide.[41] State-level deregulation in South Dakota and Delaware soon followed, eliminating local usury ceilings and cementing these jurisdictions as credit-card hubs.[42] Tax policy changes, such as the 1986 Tax Reform Act, which removed the deduction for personal-interest payments, altered consumer borrowing incentives and helped redefine household debt strategies.[43] Judicial clarification in *Smiley v. Citibank* (1996) extended the *Marquette* precedent to late-fee practices, boosting card-issuer profitability.[44] The 21st-century reforms, notably the 2009 Credit CARD Act, responded to

35. *See* Zhu Wang, *Buy Now, Pay Later: Recent Developments and Implications*, FED. RSRV. BANK RICH. (Feb. 2026).

36. *See* Robin Saks Frankel, *History of Credit Cards: When Were Credit Cards Invented?*, FORBES, (Sept. 24, 2025) https://www.forbes.com/advisor/credit-cards/history-of-credit-cards/#:~:text=The%20first%20iteration%20of%20store,store%20plates%20to%20their%20customers.

37. *Id*.

38. *Id*.

39. *See* MASTERCARD, *Brand History*, https://www.mastercard.com/brandcenter/us/en/brand-history.html (last visited Apr. 3, 2026).

40. *See* 15 U.S.C. § 1681; 15 U.S.C. § 1601.

41. Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp., 439 U.S. 299, 310 (1978).

42. Smiley v. Citibank (S.D.), N.A., 517 U.S. 735, 737–40 (1996) (extending the application of *Marquette* to card fees); *TJAGSA Practice Note: Legal Assistance Items*, 1996 ARMY LAW. 43 (Sept. 1996).

43. Frank L. Winfrey, *Tax Reform Act of 1986*, BRITANNICA (Oct. 15, 2025), https://www.britannica.com/topic/Tax-Reform-Act.

44. *See* Smiley v. Citibank (S. D.), 517 U.S. 735, 744 (1996).

mounting concerns about opaque repricing practices and borrower over-indebtedness.[45] Concurrent technological shifts, including EMV-chip migration and the growth of mobile-wallet transactions, have continued to influence both the security and convenience of card use[46], while the surge of Buy-Now-Pay-Later products in the 2020s reflects consumers' enduring appetite for flexible revolving credit.[47]

These developments show that U.S. credit card growth stemmed from a combination of innovation, regulation, and consumer demand.[48] Each milestone either lowered barriers to adoption or spurred new regulatory oversight aimed at balancing access to credit with consumer protection.[49]

This historical record demonstrates that U.S. credit-card culture developed at the intersection of technology, regulation, and market forces.[50] Legal decisions often created the conditions for innovation, while technological progress and competitive pressures frequently prompted new statutory or judicial responses.[51] The American experience, distinct from that of many other jurisdictions, continues to inform debates about the equitable taxation of rewards, interchange-fee regulation, and consumer protection strategies.[52] Recognizing this path dependency is crucial to shaping policies that respond to current challenges without repeating historical missteps.[53]

The emergence of South Dakota and Delaware as early havens for bank-card operations illustrates how deregulation redefined the

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45. LEGAL INFORMATION INSTITUTE, *Credit Card Accountability Responsibility and Disclosure Act of 2009*, https://www.law.cornell.edu/wex/credit_card_accountability_responsibility_and_disclosure_act_of_2009.

46. *See* Al W. King III & Pierce H. McDowell III, *A Bellwether of Modern Trust Concepts: A Historical Review of South Dakota's Powerful Trust Laws*, 62 S.D. L. REV. 266, 270–71 (2017).

47. *See* Joanna Stavins, *Buy Now, Pay Later: Who Uses It and Why*, FED. RSRV. BANK BOS.: CURR. POL'Y PERSPS. NO. 24-3 (May 23, 2024), https://www.bostonfed.org/publications/current-policy-perspectives/2024/buy-now-pay-later-who-uses-it-why.aspx; *see also* King & McDowell, *supra* note 46, at 271; Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion in American Credit Pricing Limits*, 92 MINN. L. REV. 1110, 1138–39 (2008).

48. *History and Evolution of Fintech*, STARTUP SYNDICATE (Oct. 15, 2024), https://startupsyndicate.pk/news-updates/history-and-evolution-of-fintech/.

49. *See* Robin Muir, *CFPB Increases Oversight of Credit Card Practices*, JD SUPRA (Dec. 23, 2024), https://www.jdsupra.com/legalnews/cfpb-increases-oversight-of-credit-card-7847334/.

50. *See* Kalena Thomhave, *Why the Superrich Are Flocking to South Dakota*, NATION (Oct. 25, 2021), https://www.thenation.com/article/society/south-dakota-trusts/.

51. David Wiltse & Filip Viskupič, *South Dakota's Wealth Is in Finance. South Dakotans Still Think It's in Farming*, WASH. POST (Oct. 14, 2021), https://www.washingtonpost.com/politics/2021/10/14/south-dakotas-wealth-is-finance-south-dakotans-still-think-its-farming/.

52. Debbie Cenziper & Will Fitzgibbon, *House Democrats Denounce South Dakota, Other U.S. States as Hubs for Financial Secrecy*, WASH. POST (Dec. 8, 2021), https://www.washingtonpost.com/business/2021/12/08/south-dakota-congress-hearing-pandora-papers/.

53. Amy Sullivan, *How Citibank Made South Dakota the Top State in the U.S. for Business*, ATLANTIC (July 10, 2013), https://www.theatlantic.com/business/archive/2013/07/how-citibank-made-south-dakota-the-top-state-in-the-us-for-business/425661.

boundaries of state authority rather than merely liberalizing interest rates.[54] In competing to attract national banks, legislatures dismantled usury limits and tax constraints, setting off what scholars described as a "hospitable climate" for finance.[55] The economic benefits, short-term job creation, and an expanded tax base, obscured the longer-term cost: an erosion of local control over consumer protection.[56] By the late 1980s, interstate competition produced a fragmented regulatory environment where the most permissive states dictated national credit terms.[57]

This deregulation transformed the structure of payment networks. Once state interest-rate ceilings disappeared, profitability shifted from the loan contract to the transaction system itself. The card industry evolved into a two-sided market, where issuers and merchants jointly generate value yet face asymmetric bargaining power.[58] Scholars noted that this model blurred the line between banking and commerce, forcing courts and regulators to address pricing and exclusionary rules through antitrust, not consumer-credit doctrine.[59] Scholars have noted that, while credit became more available, issuers captured interchange-fee revenue, while consumers absorbed rising costs through retail prices and revolving-balance interest.[60]

Analyses of "no-surcharge" rules and interchange-fee governance reframed the debate from one about rates to one about market power.[61] Scholars such as Levitin and Wang have argued that network pricing, rather than interest spreads, determines the effective cost of credit to consumers and small businesses. [62] Rather than signaling efficient

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54. Alison Muscatine, *Fourth Maryland Bank Plans Credit Card Operations Move*, WASH. POST, Mar. 26, 1982, at B1; *see also 2 Mich. Banks Hint Delaware Move, While Maryland National Does It*, AM. BANKER, Mar. 4, 1982, at 2.

55. Peterson, *supra* note 47, at 1138–45; *see* Jeff Gerth, *New York Banks Urged Delaware to Lure Bankers*, N.Y. TIMES, Mar. 17, 1981 (§ A), at 1B.

56. Vanatta, *supra* note 29; *see* Donald C. Langevoort, *Statutory Obsolescence and the Judicial Process: The Revisionist Role of the Courts in Federal Banking Regulation*, 85 MICH. L. REV. 672, 685–86 (1987).

57. Todd P. Stephenson, *The U.S. Dual Banking System and Interest Rate Exportation: Challenging the Valid-When-Made Doctrine in California v. Office of the Comptroller of the Currency*, 40 GA. ST. U. L. REV. 825, 840–41 (2024); *see also* Peterson, *supra* note 47, at 1138–42 (noting that while some states have deregulated completely, many still maintain usury laws with expanded upper-interest caps).

58. *See, e.g.*, Stephen V. Bomse & Scott A. Westrich, *Conference on Two-Sided Markets, Both Sides Now: Buyer Damage Claims in Antitrust Actions Involving "Two-Sided" Markets*, 2005 COLUM. BUS. L. REV. 643, 655, 662 (2005).

59. *See id*; Marius Schwartz & Daniel R. Vincent, *The No Surcharge Rule and Card User Rebates: Vertical Control by a Payment Network*, 5 REV. NETWORK ECON. 72, 72-73 (2006).

60. *See* Craig K. Wildfang & Ryan W. Marth, *The Persistence of Antitrust Controversy and Litigation in Credit Card Networks*, 73 ANTITRUST L.J. 675, 691–707 (2006); *see also* Carol Benson, Scott Loftesness, & Russ Jones, PAYMENT SYSTEMS IN THE U.S.: A GUIDE FOR THE PAYMENTS PROFESSIONAL 86–95 (3d ed. 2017).

61. Arnier, *supra* note 24, at 627.

62. Adam J. Levitin, *Priceless? The Economic Costs of Credit Card Merchant Restraints*, 55 UCLA L. REV. 1321, 1333 (2008); Lulu Wang, *Regulating Competing Payment Networks* (Kilts Ctr. at Chi Booth Mktg. Data Ctr., Working Paper No. 5262161, 2025),

coordination, these mechanisms entrenched incumbent advantages: transaction-fee opacity limited price competition and loyalty-reward structures amplified cardholder dependency.[63] Deregulation had not eliminated regulation but had instead privatized it, transferring oversight from legislatures to network rulebooks.

By the 2010s, this privatized regime produced scale economies but also systemic concentration. Visa and Mastercard's global reach exemplified how two-sided network effects convert early mover advantage into durable market dominance.[64] [65] Litigation over merchant fees, culminating in major settlements and regulatory probes, reflected the difficulty of reconciling antitrust principles with platform economics.[66] Courts struggled to distinguish between efficiency and exclusion, revealing that competitive injury in network markets rarely appears as price fixing alone but as rule design.[67]

Comparative experience abroad further exposed the limits of U.S. laissez-faire. European and Australian regulators imposed interchange-fee caps and transparency mandates that lowered merchant costs without collapsing network participation.[68] Their success suggested that moderate oversight can coexist with innovation. Meanwhile, continuing enforcement actions in the United Kingdom and renewed scrutiny by American lawmakers underscore how global policy diffusion pressures domestic reform.[69]

Visa and Mastercard still process most consumer payments, yet emerging fintech and digital-wallet platforms demonstrate that

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https://ssrn.com/abstract=5262161; *see* Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets*, 1 J. EUR. ECON. ASS'N 990, 990–1029 (2003).

63. Bernard Caillaud & Bruno Jullien, *Chicken & Egg: Competing Matchmakers* (Ctr. for Econ. Pol'y Rsch., Working Paper No. 2885, 2001), https://ssrn.com/abstract=278562; Bruno Jullien, *Competing in Network Industries: Divide and Conquer* (Inst. D'Economie. Indus., Working Paper No. 9, 2001), https://ssrn.com/abstract=278167; Julian Wright, *Why Payment Card Fees Are Biased Against Retailers*, 43 RAND J. ECON. 761, 763 (2012).

64. Bomse & Westrich, *supra* note 58, at 655–57.

65. *See* Steven Semeraro, *Settlement Without Consent: Assessing The Credit Card Merchant Fee Class Action*, 2015 COLUM. BUS. L. REV. 186, 251 (2015); Schwartz & Vincent, *supra* note 59, at 73.

66. *See* Adam J. Levitin, *The Antitrust Super Bowl: America's Payment Systems, No-Surcharge Rules, and the Hidden Costs of Credit*, 3 Berkeley Bus. L.J. 265 (2005); *see also* Lynn Marek, *Visa Remains Cryptic About New Surcharge Cap*, PAYMENTS DIVE (Apr. 14, 2023) https://www.paymentsdive.com/news/visa-new-credit-card-surcharge-cap-payments-ISO-merchant/647695/ (noting Visa's surcharge fee cap reduction from 4% to 3% while Mastercard maintained a 4% cap); Jean-Charles Rochet & Jean Tirole, *Cooperation Among Competitors: Some Economics of Payment Card Associations*, 33 RAND J. ECON. 549 (2002).

67. *See* Erik Hovenkamp, *Platform Exclusion of Competing Sellers*, 49 J. CORP. L. 300, 302–03, 310 (2024); OECD, *Rethinking Antitrust Tools for Multi-Sided Platforms* 23–25 (2018).

68. TransAction Resources Pty Ltd., *Review of the Impact of Australian Payments Reforms* 6, 21 (Feb. 22, 2011).

69. Anu Bradford, *The Brussels Effect*, 107 NW. U. L. REV. 1, 3–5, 24–27 (2012); *see also* Lois R. Lupica, *The Consumer Debt Crisis and the Reinforcement of Class Position*, 40 LOY. U. CHI. L.J. 557, 578 (2009); Smiley v. Citibank S.D., 517 U.S. 735, 737–40 (1996) (extending *Marquette* to card fees).

technological disruption can challenge market power.[70] Although the share of credit card transactions has begun to decline, the basic economic logic of two-sided networks persists.[71] Scholars now view interchange-fee transparency and the potential taxation of rewards as tests of whether the system's governance will remain private or again become subject to public accountability.[72] Legislative proposals modeled on the Durbin Amendment continue this effort by linking competition, disclosure, and consumer welfare.[73]

The historical arc of credit-card regulation reveals a recurring tension: reforms intended to expand consumer access often entrench the institutions that supply it. From *Marquette* to modern network regulation, the system has relied on legal adaptation more than statutory design.[74] Understanding this trajectory is essential for evaluating today's proposals to tax, cap, or otherwise regulate credit-card transactions. Each is a contemporary iteration of the same struggle to balance innovation, fairness, and fiscal accountability.

III. ANTITRUST, THE CCCA, & POLICING THE PAYMENT MARKET

Understanding credit-card reward taxation first requires examining the payment-card market and the conditions that produced today's reward system. The dominance of major network providers has attracted global scrutiny from regulators, merchants, and lawmakers. With U.S. swipe fees among the world's highest, efforts continue to curb this market power and deter abusive practices.

A. Merchant Opposition & Antitrust Actions

For decades, persistent antitrust suits have defined the U.S. payment-card landscape. Consumer advocates and merchants have sued card issuers for alleged price fixing, "honor-all-cards" rules,

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70. Peter Westberg, *Visa and Mastercard: The Global Payment Duopoly*, QUARTR (Nov. 21, 2025), https://quartr.com/insights/company-research/visa-and-Mastercard-the-global-payment-duopoly.

71. *See* Sinziana Albu, *Visa and Mastercard Face UK Regulatory Action Over Lack of Competition*, PAYPERS (Mar. 7, 2025), https://thepaypers.com/fraud-and-fincrime/news/visa-and-Mastercard-face-uk-regulatory-action-over-lack-of-competition; Jack Caporal, *Credit and Debit Card Market Share by Network and Issuer*, MOTLEY FOOL (Feb. 14, 2025), https://www.fool.com/money/research/credit-debit-card-market-share-network-issuer/.

72. Joshua S. Gans & Stephen P. King, *Approaches to Regulating Interchange Fees in Payment Systems*, 2 REV. NETWORK ECON. 125, 126 (2003); *see* Dennis W. Carlton & Alan S. Frankel, *The Antitrust Economics of Credit Card Networks*, 63 ANTITRUST L.J. 643, 656, 667 (1995); *see also* Press Release, Office of Sen. Richard J. Durbin, Durbin Statement on His Debit Card Swipe Fee Amendment (May 13, 2010), https://www.durbin.senate.gov/newsroom/press-releases/durbin-statement-on-his-debit-card-swipe-fee-amendment.

73. *See* Press Release, Office of Sen. Richard J. Durbin, Durbin, Marshall Reintroduce the Credit Card Competition Act (Jan. 13, 2026), https://www.durbin.senate.gov/newsroom/press-releases/durbin-marshall-reintroduce-the-credit-card-competition-act.

74. *See* Westberg *supra* note 70.

surcharge bans, and other restraints that inflate costs.[75] Litigation totaling billions has been called the "Antitrust Super Bowl."[76]

Merchants have long opposed the current swipe fee system. Merchants pay about $138 billion in swipe fees annually, which represents their second-highest cost after wages.[77] Visa and Mastercard rank among the world's most profitable firms, with net margins of 51% and 46%, joining Intercontinental Exchange and CME Group as the only four S&P 500 companies to stay in the top twenty for profitability over the past decade.[78]

Recent litigation illustrates continuing challenges to the swipe-fee model. Merchants have filed repeated class actions to lower fees. In a key 2005 case, merchant groups alleged collusion and inflated fees that blocked access to cheaper processing options. A federal judge recently rejected the $30 billion settlement proposal, forcing renewed negotiation or trial.[79] The judge's failure to accept the settlement will require either that the parties further negotiate or that the case proceed to trial.

Another $5.6 billion settlement with 12 million retailers concluded 15 years of litigation.[80] Plaintiffs claimed Visa and Mastercard overcharged interchange fees and barred merchants from steering customers to cheaper options. The settlement bars further claims for five years, underscoring the ongoing conflict between merchants and dominant networks.[81] Cases such as these demonstrate the ongoing nature of litigation between members of the payment network and those served.

B. International Efforts to Reign in Duopoly

Visa and Mastercard's pricing power is a global concern. Other nations have adopted varied approaches to curb excessive interchange fees. For example, Canada relies largely on a voluntary competition-based model. In 2023, the government agreed to lower small-business

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75. *See* Robin Sidel, *Merchant Group Sues Visa Over Card-Use Fees*, WALL ST. J. (July 15, 2005) https://www.wsj.com/articles/SB112139165848386498.

76. Levitin, *supra* note 66, at 269.

77. *Can the Visa-Mastercard Duopoly be Broken?*, ECONOMIST (Aug. 17, 2022), https://www.economist.com/finance-and-economics/2022/08/17/can-the-visa-mastercard-duopoly-be-broken.

78. *Id.*

79. Elisabeth Buchwald & Parija Kavilanz, *Federal Judge Rejects $30 Billion Settlement between Visa, Mastercard and Retailers*, CNN BUS. (June 25, 2024), https://www.cnn.com/2024/06/25/business/federal-judge-denies-30-billion-settlement-visa-Mastercard/index.html.

80. Jonathan Stempel, *Visa, Mastercard $5.6 Bln Settlement with Retailers is Upheld*, REUTERS (Mar. 15, 2023), https://www.reuters.com/legal/visa-mastercard-56-bln-settlement-with-retailers-is-upheld-2023-03-15/.

81. *See* In re Payment Card Interchange Fee and Merchant Discount, 986 F.Supp.2d 207 (E.D.N.Y. 2013).

credit-card fees.[82] The deal reduced in-store interchange fees for small firms to 0.95% and online fees by 10 basis points.[83]

In the EU, regulators secured binding commitments from Visa and Mastercard for 40% fee cuts. The settlement covers EEA transactions, including foreign-issued cards.[84] The E.U. has also brought legal action to counter the dominance of the Visa-Mastercard duopoly. Regulators allege the firms earn excessive profits by stifling competition and maintaining closed networks.[85]

Other nations have implemented or are considering caps on fees for credit card transactions. For example, New Zealand's Commerce Commission is considering "capping some credit card payment fees."[86] Australia caps interchange fees at 0.8%; Europe at 0.3%.[87] Different nations have created nationalistic competitors to challenge the Visa-Mastercard duopoly. These programs have begun to make inroads. India's state-backed RuPay now holds major market share, breaking the Visa-Mastercard duopoly there.[88] India is not unique; China's Union Pay is the world's second-largest payment provider, surpassing Mastercard in 2017.[89] China has proposed cutting Visa and Mastercard's foreign-card fees to 1.5% from 2–3%, arguing the savings would lower consumer prices.[90]

Other nations are investigating Visa and Mastercard for antitrust violations. Japan, for example, is examining Visa for violations of harm

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82. Mark Katz, *Credit Cards in Canada: What Role for Competition Law?*, KLUWER COMPETITION L. BLOG, (Nov. 7, 2013), https://legalblogs.wolterskluwer.com/competition-blog/credit-cards-in-canada-what-role-for-competition-law/.

83. *Government of Canada Announces Finalized Agreements with Visa and Mastercard to Lower Credit Card Transaction Fees for Small Businesses*, Government of Can. (Dec. 5, 2023), https://www.canada.ca/en/innovation-science-economic-development/news/2023/12/government-of-canada-announces-finalized-agreements-with-visa-and-Mastercard-to-lower-credit-card-transaction-fees-for-small-businesses.html.

84. *Antitrust: Commission Accepts Commitments by Mastercard and Visa to Cut Inter-regional Interchange Fees,* E.C. (Apr. 29, 2019), https://www.eurobank.gr/-/media/eurobank/pdf/press-release-european-commission-29-04-19.

85. Tobias Buck, *MasterCard Charged over Antitrust Rules*, FIN. TIMES. (June 30, 2006), https://www.ft.com/content/505e5134-0792-11db-9067-0000779e2340.

86. Rob Stock, *Credit Card Fee Cap in Sights of Commission*, SOUTHLAND TIMES (July 24, 2024).

87. James Eyers, *Cards Stacked with Digital Payment Fees,* AUSTRALIAN FIN. REV. (Sep. 7, 2024) https://www.afr.com/companies/financial-services/the-great-surcharging-rort-where-nothing-costs-what-it-seems-20240904-p5k7of.

88. Saloni Shukla & Joel Rebello, *Why RuPay has Potential to End the Dominance of Visa and Mastercard in India*, ECON. TIMES (Nov. 18, 2015), https://economictimes.indiatimes.com/industry/banking/finance/banking/why-rupay-has-potential-to-end-the-dominance-of-visa-and-Mastercard-in-india/articleshow/49824091.cms; *see also* Clarist Zablan*, RuPay Ends Mastercard and Visa Duopoly in India*, ASIAN BANKING & FIN. (Oct. 29, 2019), https://asianbankingandfinance.net/cards-payments/news/rupay-ends-Mastercard-and-visa-duopoly-in-india.

89. Pallavi Rao, Charted: Visa, Mastercard, and UnionPay Transaction Volumes, Visual Capitalist (July 16, 2024), https://www.visualcapitalist.com/visa-Mastercard-unionpay-transaction-volumes/.

90. *China Asks Visa, Mastercard to Cut Card Fees*, *Bloomberg News Reports*, REUTERS, (June 21, 2024, 1:26AM), https://www.reuters.com/business/finance/china-asks-visa-Mastercard-cut-transaction-fees-bloomberg-news-reports-2024-06-21/.

to consumers and competitive markets. Japan's Fair Trade Commission is investigating Visa under antimonopoly laws barring dominant firms from imposing unfair terms. These laws prohibit coercing firms to use Visa exclusively. [91]

C. Market Participants Seek Alternatives in Emerging Technologies

New payment forms threaten incumbents by offering end users "cheaper rates, higher acceptance, and ease of use."[92] For example, more affordable and convenient digital payments represent a growing threat to long-dominant credit cards. These shifts could reshape long-term consumer spending habits and the broader payment ecosystem.[93] Once consumers switch from cards to digital wallets, they rarely revert.

Another emerging trend is mobile payments through smartphones. Mobile payments have experienced strong adoption in countries like Kenya and China. In the United States, such payments have lagged.[94] These developments have become a trend with emerging markets such as Thailand, Ghana, and India, leapfrogging developed nations in the digital payments race.[95]

Another rising threat to credit cards is the global growth of Buy Now Pay Later (BNPL). Apps like Afterpay, Affirm, and PayPal are transforming the payment landscape.[96] For example, in 2023, over 50% of consumers surveyed had been offered a BNPL method within thirty days of a study conducted by the Federal Reserve.[97] This number represented a jump from one-third of respondents in 2021.[98]

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91. *Visa Japan Unit Investigated for Alleged Antitrust Violations*, XINHUA, (July 17, 2024), https://english.news.cn/20240717/0247f4a724694046a5f40a9835a68721/c.html.

92. Narayan Sivaram, *Paying the Price — Disruption in the Cards and Payments Industry*, Infosys (last visited September 13, 2024), https://www.infosys.com/insights/other-insights/cards-payments-industry.html.

93. Nick Huber, *Emerging Markets 'Leapfrog' the West in Digital Payments Race*, FIN. TIMES (Nov. 30, 2021), https://www.ft.com/content/a5c17035-8ba8-4fa0-bc06-690f5949b174.

94. Pengfei Han & Zhu Wang, *Technology Adoption and Leapfrogging: Racing for Mobile Payments* 1-65 (Federal Reserve Bank of Richmond, Working Paper, Paper No. 21-05r, 2024), https://www.richmondfed.org/-/media/RichmondFedOrg/publications/research/working_papers/2021/wp21-05r.pdf.

95. *See* Huber, *supra* note 93.

96. Kate Fitzgerald, *How Buy Now Pay Later Fintechs Are Reframing Consumer Credit*, AM. BANKER (Oct. 9, 2023), https://www.americanbanker.com/payments/news/how-buy-now-pay-later-fintechs-are-reframing-consumer-credit.

97. Kevin Foster, Claire Greene, Joanna Stavins, *2023 Survey and Diary of Consumer Payment Choice*, FED. RSRV. BANK ATLANTA (2024), https://www.atlantafed.org/banking-and-payments/consumer-payments/survey-and-diary-of-consumer-payment-choice/2023-survey-and-diary.

98. Joanna Stavins, *Buy Now, Pay Later: Who Uses It and Why*, FED. RSRV. BANK BOS., 1, 1-6 (2024), https://www.bostonfed.org/publications/current-policy-perspectives/2024/buy-now-pay-later-who-uses-it-why.aspx.

Accordingly, BNPL payment methods represent another threat to the dominance of traditional credit cards.[99]

D. Federal Government Antitrust Efforts

Because Visa and Mastercard have held such dominant positions in the market for so long, some might wonder why the federal government has not done more to bring down fees. In the United States, both the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) Antitrust Division enforce federal antitrust law under Section 1 of the Sherman Act.[100] The agencies have undertaken efforts to help address problematic issues in the payment market space.

In 2022, the FTC ordered Mastercard to cease using illegal business tactics that blocked competing debit card payment networks.[101] This order, which required Mastercard to begin providing competing networks with the customer account information necessary to process payment, became final in May of 2023.[102] While further examination of antitrust issues is beyond the scope of this paper, what is clear is that this area will continue to be the subject of litigation and regulatory attention for many years to come.

E. The CCCA: Lobbying Efforts Shape Congressional Debate

The proposal of the CCCA has become a contentious issue, dividing retailers and consumers on the one hand, and banks, credit card issuers, and credit unions on the other. In 2022 alone, for example, credit card issuers charged merchants approximately $93 billion in credit card fees.[103] As such fees lead to higher prices, Senator Durbin (D) and Marshall (R) have proposed the CCCA. Against this backdrop, examining the position of critically impacted stakeholder groups is helpful.

1. Small Business Groups Generally Support Lower Interchange Fees & the CCCA

Interchange fees are particularly problematic for smaller firms as "[l]arger retailers are more likely than mom-and-pop stores to be able

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99. Jackie Greig, *Wallet Wars: Why Credit Card Loyalty Is Under Threat*, RFI GLOBAL (June 16, 2025), https://rfi.global/wallet-wars-why-credit-card-loyalty-is-under-threat/.

100. 15 U.S.C. §§ 1–7 (2018) (the Sherman Act is codified as 15 U.S.C. §§1-7).

101. *FTC Orders an End to Illegal Mastercard Business Tactics and Requires it to Stop Blocking Competing Debit Card Payment Networks*, F.T.C. (December 22, 2023), https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-orders-end-illegal-Mastercard-business-tactics-requires-it-stop-blocking-competing-debit-card.

102. *FTC Approves Final Order Requiring Mastercard to Stop Blocking the Use of Competing Debit Payment Networks*, F.T.C. (May 30, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-approves-final-order-requiring-Mastercard-stop-blocking-use-competing-debit-payment-networks.

103. Helcim, *Are Credit Card Fees Going to Rise and What Does It Mean for Businesses?*, TECHHQ, https://techhq.com/news/credit-card-transaction-fees-rise-impact-businesses/.

to negotiate for lower interchange fees because of their high transaction volume."[104] While large companies like Costco and Starbucks have exerted influence to keep swipe fees low (with some resulting estimates lodging this number at only 0.4% for Costco), small businesses do not possess such leverage. Instead, they must pay fees of 3 or even 4%.[105] For this reason, many small companies support efforts to reduce modern swipe fees.

In recent years, merchant groups have achieved some victories. For example, merchants obtained fee concessions from Visa and Mastercard through class-action lawsuits.[106] Nonetheless, many merchants believe that bringing competition to the market will help drive down interchange fees and prices along with them. In this regard, a statement offered by Senator Durbin's Office provided, in pertinent part:

> "[b]ringing real competition to credit card networks will help reduce swipe fees and hold down costs for Main Street merchants and their customers."[107]

Echoing such sentiments, Representative Zoe Lofgren (D-CA-18) suggested that the lack of competition in the American credit card space harms consumers and merchants. In this regard, Representative Lofgren provided:

> [R]ight now, our country's credit card landscape does not reflect a competitive market, with just two major credit card issuers setting prices for the nation's largest banks. The current system harms consumers and small businesses. Our Credit Card Competition Act changes that by fostering competition. Like when Congress enacted an alternate network option for debit cards, this reform will increase incentives for innovation, enhance payment security, and, most importantly, ease burdensome fees by allowing for credit card choice.[108]

This statement implies that the current system unfairly transfers wealth from consumers and small businesses to the card issuers and

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104. Emma Kinery, *Illinois Lawmakers Vote to Delay Interchange Fee Implementation*, PLURIBUS NEWS, June 3, 2025, https://pluribusnews.com/news-and-events/illinois-lawmakers-vote-to-delay-interchange-fee-implementation/.

105. *See generally* Aaron Klein, *What the Fight Over the Capital One-Discover Merger Misses about our Terrible Credit Card System*, N.Y. TIMES (Mar. 28, 2024), https://www.nytimes.com/2024/03/15/opinion/capital-one-discover-credit-cards-rewards-swipe-fees.html.

106. Frank Gargano, *Visa, Mastercard Agree to Lower Credit Card Interchange Fees*, AMERICAN BANKER (Mar. 26, 2024), https://www.americanbanker.com/news/visa-mastercard-agree-to-lower-credit-interchange-fees.

107. Office of Rep. Zoe Lofgren, *Bipartisan, Bicameral Lawmakers Introduce the Credit Card Competition Act*, (June 7, 2023), www.https://lofgren.house.gov/media/press-releases/bipartisan-bicameral-lawmakersintroduce-credit-card-competition-act.

108. *Id.*

network providers. Card companies have also been accused of "triple-dipping" by increasing credit card interest rates, annual fees, and swipe fees simultaneously.[109] In fact, according to the Consumer Financial Protection Bureau, "credit cards have never been this expensive."[110] As provided by Representative Lance Gooden (R-TX-05):

> "[l]arge credit card firms have consistently demonstrated prioritizing self-interest over our constituents . . . The Credit Card Competition Act serves to address this imbalance and restore a healthy, competitive free market that operates in the interest of consumers."[111]

Merchants and their representatives have also expressed their support for the CCCA. National Federation of Independent Business Inc. (NFIB) President Brad Close provided:

> [C]urrently, small business owners do not have the market power to negotiate with large credit card issuers on 'swipe fees,' which have more than doubled since 2012. By allowing owners to choose between multiple credit card network options, they can select the one that best suits their business needs. We applaud the reintroduction of this legislation and urge Congress to pass it quickly.[112]

Merchant groups contest card company allegations that savings will not be passed along to customers as grossly misleading. Merchants also contend that the CCCA will help hold the line against price increases during periods of inflation.[113] Just a few years removed from a pandemic, and in a time of heavy inflation, some note that swipe fees have doubled over the last few years due to a lack of competition in the processing market.[114] Accordingly, many merchant groups support the CCCA.[115]

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109. *New Data Shows Banks 'Triple Dipping' By Increasing Credit Card Interest, Annual Fees and Swipe Fees*, MERCHANTS PAYMENTS COALITION (February 24, 2024), available at: https://merchantspaymentscoalition.com/new-data-shows-banks-triple-dipping-increasing-credit-card-interest-annual-fees-and-swipe-fees.

110. Dan Martinez & Margaret Seikel, *Credit Card Interest Rate Margins at All-Time High,* CONSUMER FINANCIAL PROTECTION BUREAU (Feb. 22, 2024), https://www.consumerfinance.gov/about-us/blog/credit-card-interest-rate-margins-at-all-time-high/.

111. Office of Rep. Zoe Lofgren, *supra* note 107.

112. NAT'L FED'N INDEP. BUS. WORKERS, *Small Businesses Support Credit Card Competition Act Re-Introduction*, (Jun. 7, 2023), https://www.nfib.com/news/press-release/small-businesses-support-credit-card-competition-act-re-introduction/.

113. Peter Lucas, *The MPC Fires Back at Claims Merchants Won't Pass Along CCCA Savings to Consumers*, DIGITAL TRANSACTIONS (May 24, 2024), https://www.digitaltransactions.net/the-mpc-fires-back-at-claims-merchants-wont-pass-along-ccca-savings-to-consumers/.

114. *The Credit Card Competition Act-Lowering Costs for Restaurant Operators and Consumers*, NATIONAL RESTAURANT ASSOCIATION (July 26, 2023), https://restaurant.org/education-and-resources/resource-library/the-credit-card-competition-act/.

115. Taylor Giorno, *Retailers Slam Visa, Mastercard Settlement on Swipe Fees*, THE HILL (Mar. 26, 2024), https://thehill.com/business/4556451-visa-mastercard-to-lower-swipe-fees-in-merchant-antitrust-suit-settlement/.

2. Banking Groups Oppose the CCCA

Credit card issuers, banks, and credit unions are aggressively opposed to the CCCA. These groups argue that the bill will prove poorly suited to the needs of card issuers, merchants, and consumers. Such groups suggest that the CCCA will create many significant problems that may not be obvious initially. For example, they contend that by allowing merchants to choose the network on which to process transactions, the CCCA increases cybersecurity and privacy risks to the entire economy. The rationale is that merchants may choose cheaper, less secure networks.[116]

Opponents further reject that the CCCA will benefit consumers as merely a mirage. They suggest that the CCCA will primarily benefit big box retailers such as Target, Home Depot, and Walmart at the cost of small businesses and consumers.[117] Banks, payment processors, and credit card networks also note that the CCCA will negatively impact card benefits and rewards. As asserted by Electronic Payments Coalition Executive Chairman Richard Hunt, potential downsides of the CCCA are that it "would undercut the services that are offered, including the rewards programs tied to the cards."[118]

Finally, some argue that the CCCA represents an unwarranted Federal intrusion into a private and open marketplace. These objections argue that the CCCA constitutes government intervention in open two-sided markets intermediated by a payment platform. Rejecting claims that government intervention is needed to address a duopoly in the payment market, critics argue that the CCCA improperly authorizes federal interference in private contracts and is unnecessary given metrics like the Herfindahl-Hirschman Index showing a competitive market.[119]

3. Consumer Groups Split on Support or Opposition to

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116. Sterling Nielsen, *Opinion: The Credit Card Competition Act (CCCA) is a Big Box Bailout in Disguise*, MOUNTAIN AMERICA CREDIT UNION (2023), https://www.macu.com/newsroom/2023/opinion-the-credit-card-competition-act.

117. Peter Lucas, *A Card Issuer Trade Group Turns Up the Heat in Its Anti-CCCA Campaign,* DIGITAL TRANSACTIONS (July 12, 2024), https://www.digitaltransactions.net/a-card-issuer-trade-group-turns-up-the-heat-in-its-anti-ccca-campaign/.

118. Lynne Marek, *Trade Group Girds for 2024 CCCA Fight*, PAYMENTS DIVE (Dec. 22, 2023), https://www.paymentsdive.com/news/credit-card-competition-act-congress-epc-banks-retailers-battle/703342/.

119. *Banks and Credit Unions Strongly Oppose Credit Card Competition Act of 2023*, BANK POLICY INSTITUTE (July 14, 2023), https://bpi.com/banks-and-credit-unions-strongly-oppose-credit-card-competition-act-of-2023/; for a discussion of the Herfindahl-Hirschman Index, how it is calculated, and how it is interpreted, *see* Antitrust Div., *Herfindahl-Hirschman Index*, U.S. DEP'T OF JUSTICE (2024), https://www.justice.gov/atr/herfindahl-hirschman-index; *see also* U.S. DEP'T OF JUSTICE & THE FED. TRADE COMM'N, *Merger Guidelines*, 5, 1-50 (Dec. 18, 2023), https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf.

CCCA

Consumer groups diverge in their support or opposition to the CCCA. Some evidence suggests that consumers wish for lower swipe fees and believe the CCCA would help.[120] Such support finds its roots in the hope of driving down swipe fees and expenses.[121] These proponents suggest the CCCA is necessary to address "market failure in the credit card payment network, which has long been dominated by the Visa-Mastercard Duopoly."[122]

Opponents argue the CCCA will remove power from the consumer and give it to the merchant. Some consumer advocates assert that the CCCA will permit merchants, not consumers, to select a payment network. In this regard, some have queried:

> "[w]ould you like to spend your time when you make a purchase begging to do it on the network that you paid to be a part of? It will be the retailer's choice. This bill is taking the choice from the consumer."[123]

CCCA opponents worry the Act will harm consumer interests as "more than $60 billion in rewards that consumers receive every year would largely disappear."[124] For instance, Americans for Tax Fairness opposes the CCCA, arguing it would end credit card rewards, weaken cybersecurity and fraud protections, limit access to credit, and enrich large retailers at consumers' expense.[125]

4. State-Level Efforts to Constrain the Growth of Interchange Fees

State governments, concerned about high swipe fees, have begun implementing measures to limit or prohibit interchange fees on certain types of transactions. Illinois, for example, passed the Interchange Fee Prohibition Act of 2024, which bars interchange fees on tips or taxes.[126]

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120. *Survey: Consumers Want Lower 'Swipe' Fees, Believe CCCA Would Help*, NAT'L SPORTING GOODS ASS'N (July 28, 2025), https://nsga.org/news/survey-consumers-want-lower-swipe-fees-believe-ccca-would-help/.

121. *In Survey Sponsored by Merchants Group, Americans Express Support for Credit Card Competition Act*, CU TODAY (July 31, 2024), https://www.cutoday.info/Fresh-Today/In-Survey-Sponsored-by-Merchants-Group-Americans-Express-Support-for-Credit-Card-Competition-Act.

122. *Letter in Support of the Credit Card Competition Act of 2023*, AMERICANS FOR FINANCIAL REFORM (Sept. 14, 2023), https://ourfinancialsecurity.org/wp-content/uploads/2023/09/Letter-Supporting-Credit-Card-Competition-Act.pdf.

123. Craig Colgan, *The Points Guy says no thanks to the Credit Card Competition Act*, ABA BANKING JOURNAL (Mar. 27, 2024), https://bankingjournal.aba.com/2024/03/the-points-guy-says-no-thanks-to-the-credit-card-competition-act/.

124. Eli Lehrer, *Coalition Opposes Credit Card Competition Act*, R STREET (Aug. 22, 2022), https://www.rstreet.org/outreach/coalition-opposes-credit-card-competition-act/.

125. Bryan Bashur, *ATR Opposes Reintroduction of Credit Card Competition Act,* AMERICANS FOR TAX REFORM, (June 7, 2023), https://www.atr.org/atr-opposes-reintroduction-of-credit-card-competition-act/.

126. Kinery, *supra* note 104.

The implementation date has been pushed back from July 1, 2025, to July 1, 2026. Many other states, including Alaska, New Jersey, Iowa, and Texas, have introduced similar bills.[127] For example, New Mexico introduced HB 476, Arizona introduced HB 2629, and New York introduced SB 5587.

State and local governments have good reason for concern, as transactions once made by cash or check now incur credit card swipe fees that reduce public revenue. For example:

> Parking meters that used to run on coins now rely on credit-card-powered apps, which charge transaction fees that can be over 20%, such as 45 cents on $2. Public transit agencies can lose 7% of the money they generate in fares in card-processing fees.[128]

Additionally, card industry practices apply swipe fees not just to sales prices but to any state sales taxes incurred in processing a transaction. For this reason, card issuers profit from tax and fee assessments. The merchant first shoulders the swipe fee paid on the sales tax. Because swipe fees are deducted from total sales proceeds, merchants often receive insufficient funds from the sales tax portion of a transaction to remit the full tax owed. Accordingly, the merchant must pass these costs on to all consumers, including non-card users, through higher prices.[129]

While state-level efforts apply a largely patchwork form of interchange fee regulation, some in the banking industry fear these efforts represent something more. In particular, supporters of the payment card industry caution that "[w]hat may seem like a minor tweak to transaction fees is, in reality, a sweeping effort to regulate the financial system through backdoor price controls . . ."[130] In sum, the CCCA emerges as the revenue model supporting generous rebate and reward programs faces growing scrutiny, raising doubts about whether the discounted purchase price rule should continue to exempt such rewards from taxation.

IV. MARKET FAILURE & THE REVERSE ROBIN HOOD HYPOTHESIS

The dominance of key players in the payment market has drawn significant interest from regulators and Congress. Complaints have alleged that high interchange fees derive from "market failure in the credit card payment network, which has long been dominated by the

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127. *Id.*

128. Klein, *supra* note 105.

129. Kenneth R. Gosselin, *Businesses Must Pay in Order to Collect Sales Tax 'Just feels wrong.': Says a Lawmaker who wants it Changed*, HARTFORD COURANT, Mar. 30, 2025.

130. Paul M. Brenner, *Death by a Thousand Caps: State Laws Could Kill Credit Card Rewards*, AM. BANKER (Mar. 28, 2025), https://southwestpolicy.com/american-banker-death-by-a-thousand-caps-state-laws-could-kill-credit-card-rewards/.

Visa-Mastercard Duopoly."[131] While many are concerned with high fees, others have suggested that high swipe fees are a natural consequence of how credit card markets work. In this view, high fees are necessary to support losses associated with fraud, non-payment, and the initial interest-free period provided by some companies.[132]

Some asserted that high fees derive from market failure. These advocates argue that the absence of true competition has prevented Adam Smith's invisible hand from working to produce an economic equilibrium.[133] In this light, some scholars have contended "that (1) market dysfunction has permitted credit card networks to set supracompetitive interchange fees for the benefit of their issuers and (2) issuers then primarily draw on this stream of revenue to fund credit card rewards that reinforce the status quo."[134] In turn, this has led to excessive swipe fees, with fee structures generally helping cardholders and members of the payment network.[135] Against this backdrop, we now examine claims forming the basis of market failure.

A. United States Holds Some of the Highest Swipe Fees in the World

When assessing the American swipe-fee market, it is essential to recognize that the United States holds the distinction of having some of the world's highest credit card swipe fees.[136] In fact, "[t]he interchange fees for credit card transactions in the United States are the highest of any industrialized nation."[137] Swipe fees in the U.S. are not just percentage points higher than comparable economies, but are multiples higher. For example, some estimates place them at least seven times higher than in comparable economies, such as those in the EU.[138]

This high swipe fee environment did not emerge by accident. Instead, it evolved due to market conditions, legislative developments, judicial rulings, and the influence of the two most powerful players in

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131. Letter in Support of the Credit Card Competition Act of 2023, *supra* note 122.

132. Christopher DeMuth, *The Case Against Credit Card Interest Rate Regulation*, 3 YALE J. REG. 201, 203, 216, 228 (1986).

133. *See generally* Lawrence M. Ausubel, *The Failure of Competition in the Credit Card Market*, 81 AM. ECON. REV. 50, 56–64 (1991).

134. Arnier, *supra* note 24, at 641.

135. *See generally* Wright, *supra* note 63.

136. Dr. Robert Marshall (@RobertMarshallMD), X (June 3, 2025, 8:40 A.M.),https://x.com/RogerMarshallMD/status/1929880881314836899.

137. Roger P. Alford, *Breaking the Visa-Mastercard Duopoly: Bringing Competition and Lower Fees to the Credit Card System, Hearing Before the S. Comm. on the Judiciary*, 118th Cong. 3 (Nov. 19, 2024), (citing *Credit and Debit Card Interchange Fees in Various Countries*, FED. RSRV. BANK KAN. CITY (Aug. 2021),
https://www.kansascityfed.org/documents/8288/CreditDebitCardInterchangeFeesVariousCountries_August2021Update.pdf).

138. *A Good Lesson for the U.S.: Europe Votes to Slash Credit- and Debit-Card Fees to Less than a Seventh of What American Merchants Pay*, BUS. WIRE, (Apr. 04, 2014).

the game. Visa and Mastercard account for a majority of the U.S. credit card network market, and exercise decisive influence over the conditions under which it operates and the terms under which electronic payments are made. Some contend that these two, acting as an effective duopoly, influenced market conditions and prices in a way that stifles competition and keeps fees high.[139]

B. Uncompetitive Markets Inflict Harm on Cash Consumers & Merchants

Depending on the price elasticity of the good or service, such fees generally derive from higher operating costs borne by merchants, higher prices paid by consumers, or some combination of the two.[140] In the United States, interchange fees comprise a substantial fraction of every card-processed transaction. From a merchant's perspective, if market conditions are competitive, merchants may not be able to pass on swipe fee costs to end-users without losing sales. This is no small matter, as such fees amounted to over $172 billion and $160 billion in 2023 and 2022.[141] For this reason, hefty American interchange fees have been so contentious that they have led to what some call the "interchange wars" between merchants and card issuers.[142]

As interchange fees have risen, so have prices. In fact, some estimates suggest that swipe fees have increased prices by 1.4% economy-wide in recent years.[143] Such numbers lead to the clear and unmistakable conclusion that high swipe fees drive consumer prices higher for all Americans, including the most vulnerable.[144] From a tax policy standpoint, high swipe fees carry broad implications for all Americans, as their externalized effects extend beyond individual transactions and challenge the legitimacy of exempting card rewards from taxation under the discounted purchase price rule.

Most consumers remain unaware of card swipe fees charged on any particular transaction. They will also remain unaware of the role of

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139. Dick Durbin, *Short Summary of the Credit Card Competition Act of 2023*, (2023), https://www.durbin.senate.gov/imo/media/doc/The%20Credit%20Card%20Competition%20Act%20of%202023%20-%20one-pager.pdf.

140. *See generally* Arnier, *supra* note 24, at 632 ("[e]ither the merchant must absorb the cost, keeping prices for goods and services the same. Or, if the market will permit, the merchant can raise its prices and offset the costs associated with accepting credit cards").

141. Amanda Koprowski, *Visa & Mastercard Swipe Fees Hit $100B in 2023*, CONVENIENCE STORE NEWS (Mar. 19, 2024), https://csnews.com/visa-Mastercard-swipe-fees-hit-100b-2023.

142. *See generally* Missy Baxter, *Interchange Wars: Merchants Tug Networks for Change*, ATM MARKETPLACE (Feb. 10, 2006), https://bankwatch.ca/2006/04/22/interchange-fees-are-under-pressure; *see also* Semeraro, *supra* note 65, at 251.

143. Mike Davies, *Visa and Mastercard Duopoly: Time to Go?*, DISRUPTION BANKING (Mar. 9, 2023), https://www.disruptionbanking.com/2023/03/09/visa-and-Mastercard-duopoly-time-to-go/.

144. Benjamin Edelman & Julian Wright, *Price Coherence and Excessive Intermediation* 130(3) Q. J. OF ECON., 1285, 1283–1328 (Aug. 2015).

high swipe fees in driving up prices. Moreover, "even if consumers could appreciate the cost increases associated with processing credit card transactions, credit card payers lack a strong incentive to seek lower interchange fees because these consumers benefit from cross-subsidization by non-credit card users."[145] For such reasons, significant structural economic barriers exist to consumer-initiated downward pressure on swipe fees.

C. Rewards Incentivize Irresponsible Spending Behaviors

It is essential to recognize the effect lavish reward programs may have on individual consumers and the American economy. High credit card rewards may negatively influence human behavior on a mass scale, as evidenced by data showing that two-thirds of indebted Americans actively seek to maximize such rewards. For individuals unable to pay in full each month, pursuing credit card rewards can lead to severe debt accumulation. Policy makers need to recognize that the enticement of card rewards can bring on an impossible cycle of debt and eventual bankruptcy for millions of Americans.

Card issuers have been accused of exploiting card-user irrationality and lack of perfect information to drive transaction volume, revenue, and profitability.[146] In fact, reward "programs, according to both consumers themselves and industry insiders, influence consumers to do more of their spending on credit cards rather than use less costly alternative payment methods."[147] Card issuers have also encouraged spending through advertising, such as Mastercard's famous and long-running "priceless" campaign.[148]

While understanding the true nature of credit card rewards is necessary for tax policy analysis, it is also crucial to acknowledge that millions of Americans value credit card reward programs.[149] The American love affair with rewards cards is for good reason, as they provide incredible benefits, including airline miles, hotel stays, and more. Some cards, such as the Wells Fargo Active Cash Card, provide 2% or more rewards on all purchases with no annual fee. While reward programs are not free from problems,[150] responsible consumers can

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145. Arnier, *supra* note 24, at 633.

146. *See generally* Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1, 46-52 (2008).

147. Arnier, *supra* note 24, at 652.

148. *See generally* Kristina Monllos, *Why Mastercard Is Adding a Charitable Aspect to Its Long-Running 'Priceless' Campaign*, ADWEEK (Jan. 19, 2018), https://www.adweek.com/brand-marketing/why-mastercard-is-adding-a-charitable-aspect-to-its-long-running-priceless-campaign/; *see also* Arnier, *supra* note 24, at 624.

149. Matt Carmichael, *A Majority of Americans Value Their Credit Card Rewards*, IPSOS (May 3, 2024), https://www.ipsos.com/en-us/majority-americans-value-their-credit-card-rewards.

150. *See generally* Ellen Cushing, *The Problem With Rewards Credit Cards*, ATL. ONLINE, (July 24, 2025), https://www.theatlantic.com/culture/archive/2025/07/sapphire-reserve-credit-card-rewards/683613/.

accumulate substantial rewards that could enhance their quality of life. It is easily conceivable that responsible consumers may earn thousands of dollars per year in rewards, whether in airline miles, cash back, or other benefits, by simply planning their transactions effectively.

For financially unstable card users, the results can be altogether different. Enticed by generous rewards, some may stray from responsible spending practices by making unnecessary purchases without the ability to pay the balance in full. Consequently, consumers of low financial stability can fall into a cycle of debt replete with recurring finance and interest charges on purchases they may not have otherwise made. For these reasons, policymakers must be concerned with credit card company programs that encourage irresponsible spending.

Policymakers must recognize that consumers have a natural aversion to credit. [151] For this reason, given an equal choice between debit and credit cards, consumers will choose debit cards unless given an incentive. This credit aversion is justified for good reason, as reducing credit card usage helps consumers avoid debt, mitigates harmful social costs, and enhances overall consumer welfare.[152] Credit card incentive programs aim to overcome natural consumer aversion to credit by modifying the decision-making process.[153] In fact, card executives have admitted that "[R]ewards are obviously a key determinant in customers' use of the credit cards, so the behavior of the customers that have rewards is that they tend to spend more and use the card more frequently."[154] Accordingly, card rewards are structured to encourage consumers to spend more than they otherwise would have by altering the mix of perceived benefits and costs associated with a transaction.

Incentivizing credit card transactions became especially important to banks after the decline in debit card swipe fees following the Durbin Amendment of 2010. Since "the implementation of regulations limiting interchange fees on debit cards, large banks have worked to push consumers toward credit cards and away from debit cards."[155] This card-issuer push "is problematic because debit card usage likely imposes lower social costs than does credit card usage."[156] To counter this trend, policymakers must ensure that consumers do not overuse

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151. *See* Wang, *supra* note 62, at 2.

152. *See* Wang, *supra* note 62, at 2; *see generally* Sumit Agarwal et al., *Regulating Consumer Financial Products: Evidence from Credit Cards*, 130 Q. J. ECON. 111, 111-164 (2015)

153. *See* Wang, *supra* note 62, at 2.

154. H. Michael Jalili, *New Approaches Advised to Cure 'Rewards Fatigue*,' AM. BANKER (May 21, 2007), https://www.americanbanker.com/-312658-1.html; Levitin, *supra* note 62, at 1346; Samuel J. Merchant, *Merchant Restraints: Credit-Card-Transaction Surcharging and Interchange-Fee Regulation in the Wake of Landmark Industry Changes*, 68 OKLA. L. REV. 327, 338–39 (2016).

155. Arnier, *supra* note 24, at 652.

156. *Id.*

credit to finance their daily lives.[157] One way to accomplish this is to examine and eliminate improper incentives in tax policy.[158]

Card rewards can be particularly troublesome for consumers, who should be ultra-vigilant in adopting responsible spending practices. Even reward cardholders with subprime borrowing rates, who should be very careful in using card-provided credit, spend more than half their credit card spending on rewards cards.[159] The number is even higher for consumers with near-prime scores.[160] Card overuse reduces payment system efficiency by encouraging consumers, through interchange fee-driven subsidies (rewards), to switch from low-swipe-fee debit cards to high-swipe-fee credit cards with interest and other fees. Card overuse leads to inefficient choices about which payment system to use, thereby reducing total societal welfare.[161] As a consequence, "society as a whole incurs more costs as a result of credit card rewards programs because they encourage credit card use, and credit cards are more costly than debit cards or cash in some cases."[162] Note that not all accept this view, arguing, under the logic of Ronald Coase, that proper apportioning costs in a two-sided market is impossible because there is no natural cause of costs without the participation of all.[163] As a result, assessing the causes of costs is not possible, and the proper inquiry is efficiency.[164]

D. Equity Concerns in the Credit Card Market

In a world where access to borrowing is critical to success, ensuring fair access to credit is a pressing regulatory concern. While the

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157. *See generally* Wang, *supra* note 62.

158. Note that other policy developments, including in Bankruptcy law, also incentivized additional card spending. *See generally* Ronald J. Mann, *Bankruptcy Reform and the "Sweat Box" of Credit Card Debt*, 2007 U. ILL. L. REV. 375, 379 (2007) (The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), on April 14, 2005, made filing for bankruptcy more difficult, more costly, and more time-consuming. The BAPCPA effectively reduces the total number of bankruptcy filings, and for consumers who file, it lengthens the time they wait before filing. This delay encourages card-users to continue to borrow until bankruptcy becomes inevitable, resulting in a larger stream of debt service revenue paid to card issuers).

159. *See generally* CONSUMER FIN. PROT. BUREAU, *The Consumer Credit Card Market* 99 (2019), https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-market-2019/.

160. *Id.*

161. *See* John Simon, *Payment Systems are Different: Shouldn't Their Regulation Be Too?*, 4 REV. NETWORK ECON. 364, 364–83 (2005); *see also* RSRV. BANK AUSTL., *Reform of Credit Card Schemes in Australia: II Commissioned Report* (Dec. 14, 2001), https://www.rba.gov.au/payments-and-infrastructure/credit-cards/ii-commissioned-report/pdf/ii-commissioned-report.pdf.

162. Fumiko Hayashi, *The New Debit Card Regulations: Effects on Networks and Banks*, 97 FED. RSRV. BANK KAN. CITY. ECON. REV. 79, 89–118 (2012).

163. *See generally* Steven Semeraro, *The Economic Benefits of Credit Card Merchant Restraints: A Response to Adam Levitin*, 56 UCLA L. REV. DISCOURSE 25 (2009), https://www.uclalawreview.org/the-economic-benefits-of-credit-card-merchant-restraints-a-response-to-adam-levitin/ (citing R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 12–15 (1960)).

164. *Id.*

Equal Credit Opportunity Act bars discrimination,[165] distributive justice concerns continue to trouble America's lending system. For many years, the nation has struggled to provide fair access to credit and financial inclusion for all. [166] Unfortunately, the ability to obtain credit may negatively correlate with factors such as ethnicity, socioeconomic status, educational background, employment, and income.[167] Consequently, inequitable factors may impact one's standing in a stratification of potential cardholders in a world where credit is critical to financing important transactions.[168]

In 2021, the Treasury Department issued an official statement identifying equity and fairness as critical departmental concerns.[169] To many, this statement represented a symbolic expression of the organization's commitment to fairness in tax policy.[170] While the American income tax regime employs a progressive tax structure, and such regimes generally provide overall net benefits to the poor and other marginalized groups,[171] much remains to be done. In this light, the Treasury's 2021 statement represents a public commitment that Department policy must rest on a foundation of equity and fairness. Accordingly, American credit card reward tax policy must be considered in this context.

E. The Reverse Robin Hood Hypothesis & Modern Card Rewards

The bulk of credit card rewards goes to a limited subset of consumers. Specifically, a disproportionate share of credit card rewards will go to those with (1) higher incomes who can obtain access not only to credit, but to credit limits, (2) who can afford to and do make purchases, and (3) who can afford to and do pay their bills on time. While higher incomes will permit higher spending and, ceteris paribus, higher award accumulation, "regardless of income, sophisticated individuals profit from reward credit cards at the expense of naive

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165. *See* 15 U.S.C. § 1691(a)(1) (barring discrimination based on sex, marital status, age, religion, race, color, and national origin).

166. Adam J. Levitin, *The Financial Inclusion Trilemma*, 41 YALE J. ON REG. 109, 111 (2024).

167. *See generally* Aaron Klein & Justin Schardin, *Credit Card Rewards Subsidize the Wealthy*, 44 J. POL'Y ANALYSIS & MGMT. 1099, 1099–1103 (2025).

168. *See, e.g.,* Wilks, *supra* note 14, at 359–60; *see also* Andrea Freeman, *Racism in the Credit Card Industry*, 95 N.C. L. REV. 1071, 1116–20 (2017); Andrea Freeman, *Payback: A Structural Analysis of the Credit Card Problem*, 55 ARIZ. L. REV. 151, 158–59 (2013).

169. U.S. DEP'T OF THE TREAS., *Advancing Equity Analysis in Tax Policy* (Dec. 14, 2021), https://home.treasury.gov/news/featured-stories/advancing-equity-analysis-in-tax-policy.

170. *See* Kitty Richards, *An Expressive Theory of Tax*, 27 CORNELL J. L. & PUB. POL'Y 301, 301–55 (2017).

171. Steven M. Sheffrin, *Disparate Impact in Taxation Meets Disparate Impact Jurisprudence: Burdens vs. Barriers*, 43 VA. TAX. REV. 331, 358 (2024).

consumers."[172] By contrast, consumers with low credit scores and poor credit history will not be able to access such benefits.

Further complicating matters is the longstanding U.S. practice of merchants charging the same price to consumers regardless of payment method. This one-price approach derives from network providers' long-mandatory no-surcharge rule (NSR).[173] No-surcharge rules required charging the same price to card-paying customers as to cash customers.[174] While the NSR became non-mandatory in 2013, the practice remains prevalent in the United States.

This no-surcharge rule led to *price coherence* across payment methods. In a price-coherent environment, credit card users are charged the same price as cash payers. As a result, card users reap the full benefit of rewards earned on purchases, while bearing only part of the cost of higher prices.[175] Price coherence is also joined by the phenomenon of *merchant internalization*,[176] which is the property:

> [T]hat when deciding whether to join a platform . . . , sellers on one side (known as merchants in the cards literature) take into account the benefits buyers on the other side get from being able to interact with them on the platform (i.e., the benefits cardholders get from using cards including, potentially, rewards and interest-free benefits that cardholders receive) given this allows sellers to charge a higher price to buyers or to attract more business at the same price.[177]

As a result, "interchange fees result in an implicit subsidy from consumers who pay cash to consumers who pay with cards."[178] Higher prices from interchange fees shift costs to cash and debit users, making lower-income consumers subsidize rewards for wealthier cardholders.[179]

1. Rewards Are Truly a Wealth Transfer from Poor to

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172. Sumit Agarwal et al., *Who Pays For Your Rewards? Redistribution in the Credit Card Market* (Fed. Reserve Bd., Fin. & Econ. Discussion Series No. 2023-007, 2023), https://doi.org/10.17016/FEDS.2023.007.

173. *See* Nicholas Economides & David Henriques, *To Surcharge or Not to Surcharge? A Two-Sided Market Perspective of the No-Surcharge Rule* (Eur. Cent. Bank, Working Paper Series No. 1388, 7, 31 (2011).

174. *Id.* at 7.

175. *See generally* Levitin, *supra* note 66 at 307, 331.

176. *See* Rochet & Tirole, *supra* note 66.

177. Wright, *supra* note 63, at 762.

178. Shy, *supra* note 3 at 3; *see also* Bd. of Governors of the Fed. Rsrv. Sys., *Credit Cards in the U.S. Economy: Their Impact on Costs, Prices, and Retail Sales* (1983); Alan S. Frankel, *Monopoly and Competition in the Supply and Exchange of Money*, 66 ANTITRUST L.J. 313, 313 (1998); Joseph Farrell, *Efficiency and Competition Between Payment Instruments*, 5 REV. NETWORK ECON. 26, 30 (2006).

179. Marie-Hélène Felt et al., *Distributional Effects of Payment Card Pricing and Merchant Cost Pass-through in the United States and Canada* (Fed. Rsrv. Bank of Bos. Rsch. Dep't Working Paper No. 20-14, 1 2020), https://www.bostonfed.org/publications/research-department-working-paper/2020/distributional-effects-payment-card-pricing-merchant-cost-pass-through-united-states-canada.aspx.

Rich, Not a Discount

Some scholars theorize that through credit card rewards programs, "credit card companies reward the rich and punish the rest of us."[180] Following this logic, others have asserted that "[t]he ugly truth behind your fancy rewards credit card: America's poor foot much of the bill for credit card points, miles, and cash back."[181] As a result (using 2010 numbers), "[o]n average, and after accounting for rewards paid to households by banks, the lowest-income household ($20,000 or less annually) pays $21, and the highest-income household ($150,000 or more annually) receives $750 every year."[182] This relationship has become known as the Reverse Robin Hood Hypothesis.[183]

The Reverse Robin Hood Hypothesis argues that in loosely regulated fee systems, cash and non-reward card users bear higher costs without receiving benefits.[184] Some scholars "estimate an aggregate annual redistribution of $15 billion from less to more educated, poorer to richer, and high to low minority areas, widening existing disparities."[185] From an efficiency and total economic welfare perspective, this transfer system inflicts harm on society as, using 2010 numbers, "[o]n average, each cash-using household pays $149 to card-using households and each card-using household receives $1,133 from cash users every year."[186] Such a paradigm results in an ongoing wealth transfer, where people with low incomes, as well as those who pay with cash or non-rewards cards, effectively subsidize purchases made by those who do not.[187] Indeed, "[i]n the most regressive situation, then, credit card merchant restraints mean that frequent flier miles are subsidized by food stamp recipients."[188]

The data show that card rebates result in an effective wealth transfer from cash users to card users. For example, among the top six credit card issuers in 2022, $67.9 billion was paid out in reward redemptions and partner payouts, whereas only $31.9 billion was

180. Aaron Klein, *How Credit Card Issuers Reward the Rich and Punish the Rest of Us,* BROOKINGS INST. (Dec. 23, 2019), https://www.brookings.edu/opinions/how-credit-card-companies-reward-the-rich-and-punish-the-rest-of-us/.

181. Emily Stewart, *The Ugly Truth Behind Your Fancy Rewards Credit Card: America's Poor Foot the Bill for Credit Card Points, Miles, and Cash Back*, VOX (June 3, 2021), https://www.vox.com/the-goods/22454885/who-pays-for-credit-card-rewards.

182. Scott Schuh, Oz Shy & Joanna Stavins, *Who Gains and Who Loses from Credit Card Payments? Theory and Calibrations* (Fed. Rsrv. Bank of Bos., Public Policy Discussion Papers No. 10-03, 2010), https://www.bostonfed.org/publications/public-policy-discussion-paper/2010/who-gains-and-who-loses-from-credit-card-payments-theory-and-calibrations.aspx.

183. *See generally* Semeraro, *supra* note 15, at 3.

184. Durbin, *supra* note 139.

185. Agarwal et al., *supra* note 172, at 1.

186. Schuh et al., *supra* note 182.

187. Saranow Schultz, *How Much Credit Card Rewards Cost the Poor,* N.Y. TIMES (July 26, 2010), https://bucks.blogs.nytimes.com/2010/07/26/how-much-credit-card-rewards-cost-the-poor/.

188. Adam J. Levitin, *Priceless? The Social Costs of Credit Card Merchant Restraints*, 45 HARV. J. ON LEGIS. 1, 36 (2008).

retained as profits from these programs.[189] As a consequence, "two thirds of swipe fees charged to generate rewards . . . are returned to consumers who use rewards cards, while about one third are profits for the banks that issue cards."[190] Accordingly, most swipe fee benefits accrue to reward-card users, at the expense of all.

2. Pernicious Impacts of Reverse Robin Hood Effect

The Reverse Robin Hood Hypothesis posits that credit card rewards, funded by high swipe fees, unfairly benefit card users at the expense of cash payers, often low-income individuals, and may contribute to inflation. In fact,

The Reverse Robin Hood Hypothesis posits that credit card rewards, funded by high swipe fees, unfairly benefit card users at the expense of cash payers, often low-income individuals, and may contribute to inflation. In fact,

> "[d]ebit card swipe fees may be as low as $0.25 and credit card swipe fees can be sixty times as high for the same transaction. The incremental fees paid for credit transactions unjustly fund rewards programs that benefit the rich at the expense of the poor."[191]

On these grounds, some suggest that "[p]oor Americans fare the worst" as "[h]igh fees are built into the price of goods, and prices are typically the same whether you pay with card or cash, which the poor are more likely to use."[192] Moreover, non-card users pay prices driven higher to pay for the very rewards, as:

> [L]ower-income consumers subsidize wealthy consumers by helping fund credit card rewards programs that disproportionately benefit the wealthy. This transfer of wealth from the poor to the rich is a real-life 'reverse Robin Hood' effect — the opposite of robbing the rich and giving to the poor.[193]

By this line of thought, "[c]redit card interchange is foundational to a shift in wealth from the rich to the poor."[194]

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189. Matt Schulz, *Top Credit Card Issuers Dole Out $67.9 Billion in Reward Payments in 2022, But Interchange Fees More Than Make Up For Them*, LENDINGTREE (July 17, 2023), https://www.lendingtree.com/creditcards/study/reward-payments/.

190. Klein & Schardin, *supra* note 167, at 1100.

191. Dean E. Sheaffer, *'Reverse Robin Hood' Is Real*, THE HILL (Nov. 8, 2021), https://thehill.com/opinion/finance/580513-reverse-robin-hood-is-real/.

192. ECONOMIST, *supra* note 77.

193. Sheaffer, *supra* note 191.

194. *Id.*

Reasons like this underlie the motivation to change policy through measures designed to reduce credit card rewards and merchant fees. It is argued that doing so "would likely increase consumer welfare."[195]

Fairness issues do not apply only to consumers. Businesses can be treated differently depending on their size and influence as well. For example, while large enterprises can negotiate down swipe fees, small businesses do not have such power.[196] High swipe fees can make it difficult for companies to address other spending needs, such as to pay for "employees, invest in new technology, and grow our businesses."[197] For small businesses, managing such fees can be a matter of survival, as "[w]e know how important it is to save on those fees. Every cent counts when you're a small business – I can't stress that enough."[198]

3. Arguments Against the Reverse Robin Hood Hypothesis

On the other side of the ledger, some argue that credit card reward programs do no harm and that the notion is a fallacy.[199] In fact, some argue that the Reverse Robin Hood Hypothesis is a myth and that capping credit card interchange fees would harm people experiencing poverty. These advocates contend that:

> "there are serious problems with the "Reverse Robin Hood" hypothesis. Indeed, the entire narrative is more mythical than Robin Hood himself. Rather than returning wealth to the poor, capping interchange fees would primarily benefit large retailers, such as big-box stores."[200]

CCCA opponents argue that credit card fees fund essential infrastructure, such as processing systems and data centers, that benefit both consumers and businesses. They argue that:

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195. Kristina Cooke, *Boston Fed: Credit Card Fees Transfer Wealth to Rich*, REUTERS (July 26, 2010), https://www.reuters.com/article/idUSN2620629120100726/ (quoting Schuh et al., *supra* note 182 at 1).

196. *See generally* Danielle Kaye, *As Cash Fades, Small Retailers Embrace Efforts to Rein in Swipe Fees*, N.Y. TIMES (Nov. 30, 2024), https://www.nytimes.com/2024/11/30/business/swipe-fees-merchants.html.

197. Jeff Mathes, *High Swipe Fees Are a Clear Example of a Rigged System in Favor of Big Banks*, OHIO CAP. J. (Mar 22, 2023), https://ohiocapitaljournal.com/2023/03/22/high-swipe-fees-are-a-clear-example-of-a-rigged-system-in-favor-of-big-banks.

198. Robert Tomkavage, *Credit Card Fees are Hampering Small Businesses*, TIMES-TRIBUNE (Oct. 10, 2023), https://www.thetimes-tribune.com/2023/10/10/credit-card-fees-are-hampering-small-businesses (quoting Donna Groysman in interview with author).

199. *See generally* Todd Zywicki, Ben Sperry, & Julian Morris, *Credit Cards and the Reverse Robin Hood Fallacy: Do Credit Card Rewards Really Steal from the Poor and Give to the Rich*, 25 INT'L CTR. FOR L. & ECON., Issue Brief, (Nov. 4, 2021).

200. Julian Morris & Ben Sperry, *'Reverse Robin Hood' is a Myth and Capping Interchange Fees Would Hurt the Poor*, THE HILL (Nov. 21, 2022), https://thehill.com/blogs/congress-blog/politics/582584-reverse-robin-hood-is-a-myth-and-capping-interchange-fees-would.

> "rewards give cardholders incentives to use their credit cards. Consumers obviously benefit from the rewards themselves, while merchants benefit from the additional business they do because cardholders want to earn rewards."[201]

Reverse Robin Hood critics argue that merchants freely choose to accept card payments and can opt out if they prefer.

> The merchant accepts a brand of credit card at a particular price because it believes that it will earn higher profits than it would in a world in which it did not accept that card brand at that price. The benefits that lead merchants to accept cards extend well beyond the mechanics of acceptance and include, inter alia, increased customer spending power, greater fraud protection, and accounting efficiencies.[202]

Furthermore, accepting credit cards benefits businesses by driving incremental sales and transferring non-payment risk to the card issuer.[203] Incidentally, such benefits are presumed not to exist with debit cards, as they do not involve the extension of credit.

Card transactions imply mutual benefit, supported by Baxter (1983), who found that swipe fees persist only when their value to consumers and merchants equals or exceeds processing costs.[204] For card transactions to be economically viable, their benefits to users must outweigh the added costs they incur.

From a customer standpoint, consumers with credit cards presumably have credit ratings sufficient to be of good standing in the eyes of credit agencies. Frequent card use suggests to Reverse Robin Hood critics that the benefits outweigh the costs for those who use and gain from them.

Some suggest that accepting cards provides net benefits over accepting cash. They argue that cash payments come with additional costs, such as losses due to fraud, theft, and the need for back-office security, which are not incurred by accepting cards. Some have cited a study by Boston Consulting Group, which states that accepting cards costs less than cash, with card payments costing approximately 1.8% of the goods and cash payments costing 3.9%.[205] The conclusion suggested by Richard Wormald, Mastercard's division President for Australasia, is that "[t]here is an education piece here: that cash is more expensive than

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201. *Id.*

202. Semeraro, *supra* note 163, at 32.

203. Bomse & Westrich, *supra* note 58, at 657.

204. *See generally* W. F. Baxter, *Bank Interchange of Transactional Paper: Legal and Economic Perspectives*, 23 J.L. & ECON. 541 (1983).

205. James Eyers, *Mastercard Argues Cash Costs More than Card in Bid to Stymie Fee Limit*, AUSTL. FIN. REV., (Aug. 29, 2024), fhttps://www.afr.com/companies/financial-services/mastercard-argues-cash-costs-more-than-card-in-bid-to-stymie-fee-limit-20240828-p5k5xf.

cards."[206] Accordingly, it is clear that not all accept the premise of the Reverse Robin Hood Hypothesis or the existence of its effects.[207]

V. POLICY APPROACHES TO REGULATE PAYMENT SPACE

This paper reexamines the tax exemption of credit card rewards and explores regulatory options, beyond the CCCA, to reduce swipe fees and clarify the broader policy landscape.

A. Incentivize or Compel Surcharge Fees on All Credit Card Transactions

One option to combat high processing fees is to compel that swipe fees be added to the price of all transactions as a surcharge. This approach would drive prices down by eliminating the one-price rule option. American customers are not informed of the processing fee differences that come with different payment options at the time of the transaction. Consequently, "the status quo obscures the cost of credit card payment processing," and, as a result, "cardholders lack motivation to demand lower interchange fees, from which the majority of consumers would actually benefit."[208] Due to this, purchasers have little incentive to act in an economically rational way to drive down transaction costs by choosing the processing option with the best available combination of quality service and low fees.

Arming consumers with the cost would empower them to make the best-informed choice from available alternatives. Proponents of this suggest this will create "an incentive scheme by which merchants will have the requisite motivation to impose surcharges on customers who pay by credit card, subjecting interchange fees to downward pressure as consumers move purchases to less costly payment methods."[209]

With prices being made readily observable, fewer consumers might be willing to pay high swipe fees. In turn, this would provide a payment network incentive to reduce fees.[210] This approach:

> [W]ould ultimately inure card holders to a new status quo, eliminate the regressive wealth transfer in place under the current system, and benefit nearly all consumers—except for the small fraction of card holders who expend tremendous energy to extract maximum value from rewards programs to the detriment of nearly all other consumers.[211]

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206. *Id.*
207. *See generally* Semeraro, *supra* note 15, at 420–22.
208. *See* Arnier, *supra* note 24, at 627.
209. *See id.* at 621.
210. *See id.*
211. *Id.*, at 621–22.

Astute and self-interested consumers will be reflexively guided by Adam Smith's invisible hand to choose lower cost options, resulting in "lower interchange fees as consumers shift away from credit cards to less expensive alternatives, thereby placing downward pressure on the fees that networks can impose." Through this series of events, informed consumer decision-making is hoped to lower transaction costs and prices across the American economy. [212]

While card issuers once prohibited the imposition of surcharges on credit card transactions as a condition of market participation, this no-surcharge rule (NSR) has retired due to a settlement related to a 2013 class action.[213] Under this settlement, surcharges are not permitted, subject to a cap of four percent.[214] Nonetheless, as some states continue to hold laws banning credit card surcharges, imposing this option would require federal preemption.

B. Mandate Swipe Fee Parity, Regardless of Business Size and Negotiating Power

Another available option is to legislate swipe fee parity. The fact of the matter is that small American businesses pay far higher swipe fee percentages than prominent retailers.[215] As "Visa and Mastercard control over 80% of the credit card market and will not negotiate with Main Street merchants" these higher swipe fees are primarily the result of unequal negotiating power.[216] This disparity results in small companies bearing a disproportionate share of high American swipe fees. As a result, swipe fees now constitute many small firms' second-largest business expense.[217]

To counteract the dynamics of unequal negotiating power, Congress could legislate that all merchants be assessed the same swipe fees regardless of size or influence. For example, Congress:

> "could require all merchants to have access to the same swipe-fee pricing, regardless of size. Why should the payment system give big business another advantage? The electronic cash register should not tilt the playing field."[218]

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212. *Id.*, at 652.

213. *See supra* Section III.C.; *see also* In re Payment Card Interchange Fee & Merch. Discount Antitrust Litig., 986 F. Supp. 2d 207, 230-31 (E.D.N.Y. 2013).

214. *What Are Credit Card Surcharges and Where Are They Legal?*, TSG PAYMENTS (Mar. 11, 2024), https://tsgpayments.com/what-are-credit-card-surcharges-and-where-are-they-legal-2/.

215. *See generally* Klein, *supra* note 105; *see also supra* Section III.E.1.

216. Press Release, The Office of Senator Dr. Roger Marshall, Sen. Marshall Reintroduces Bipartisan Credit Card Swipe Fee Legislation, Standing With Main Street Over Wall Street (June 7, 2023), https://www.marshall.senate.gov/newsroom/press-releases/sen-marshall-reintroduces-bipartisan-credit-card-swipe-fee-legislation-standing-with-main-street-over-wall-street/.

217. Lee, *infra* note 366.

218. Klein, *supra* note 105.

Swipe fee parity would mitigate power imbalances by replacing small businesses' limited influence with Congress's plenary authority.

C. Price Caps as a Policy Tool

A third option to reduce swipe fees would be for Congress to cap or limit swipe fees. For example, while American swipe fees are among the highest in the world, they are much lower in cap-driven environments such as Europe and Australia.[219] In the EU., for example, such fees average a mere 0.3%.[220] It follows that experience in other jurisdictions demonstrates that caps can work to bring fees down.

The Durbin Amendment to the Dodd-Frank Act implemented swipe fee caps in debit card markets in 2010.[221] Applying to issuers with more than $10 billion in assets and covering approximately two-thirds of all US debit card transactions, the Durbin Amendment ordered the Federal Reserve Board to adopt regulations limiting debit card swipe fees.[222] These regulations, which eventually became Regulation II,[223] required swipe fees to be reasonable and proportionate to issuer-borne costs.[224] The new rules also established a cap of twenty-one cents per transaction[225] plus five basis points of the transaction value.[226] The Durbin Amendment also authorized issuers to charge an additional fee of up to one cent per transaction for implementing fraud prevention measures reasonably designed to reduce fraud.[227]

The Durbin Amendment was impactful. American debit card fees declined by approximately thirty percent following the Amendment's adoption for impacted firms (large banks and credit unions).[228]

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219. *See* Press Release, Eur. Comm'n., New Rules on Payment Services for the Benefit of Consumers and Retailers (July 24, 2013) (cap imposed through Regulation 2015/751); *Swipe Fees*, NAT'L RETAIL FED'N, https://nrf.com/advocacy/policy-issues/swipe-fees (last visited Mar. 25, 2026); *see* Gans & King, *supra* note 72.

220. William Matcham, *Risk-Based Borrowing Limits in Credit Card Markets* 7 (Aug. 15, 2024) (unpublished manuscript), https://willmatcham.com/img/main_rbbl_matcham_2024_08_15.pdf.

221. Tim Chen, *What the Durbin Amendment Means for You*, U.S. NEWS & WORLD REPORT (July 12, 2011, at 13:19 CT), https://money.usnews.com/money/blogs/my-money/2011/07/12/what-the-durbin-amendment-means-for-you.

222. 15 U.S.C. § 1693*o*–2(a)(3); 15 U.S.C. § 1693a(4); *see generally* 5 U.S.C. § 553 (outlining statutory requirements for administrative rule making process).

223. *See* Press Release, Bd. of Governors of the Fed. Rsrv. Sys., Federal Reserve Issues a Final Rule Establishing Standards for Debit Card Interchange Fees and Prohibiting Network Exclusivity Arrangements and Routing Restrictions (June 29, 2011), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20110629a.htm.

224. 15 U.S.C. § 1693o–2(a)(4)(A)-(B); 15 U.S.C. § 1693o–2(a)(2).

225. 12 C.F.R. § 235.3(b)(1) (2011); *see also* Bd. Of Governors of the Fed. Rsrv. Sys., *supra* note 223; *see also* Kayla Steinberg & Vicky Nguyen, *The Fight Over Credit Card Swipe Fees Enters a New Year With No End In Sight*, NBC NEWS (Jan. 4, 2025), https://www.nbcnews.com/business/business-news/fight-credit-card-swipe-fees-enters-new-year-no-end-sight-rcna184729.

226. 12 C.F.R. § 235.3(b)(2) (2011).

227. 15 U.S.C. § 1693*o*–2(a)(5); *see also* 12 C.F.R. § 235.4 (2012).

228. Vladimir Mukharlyamov & Natasha Sarin, *Price Regulation in Two-Sided Markets: Empirical Evidence from Debit Cards* (Apr. 2025), https://ssrn.com/abstract=3328579.

Eventually, swipe fees fell to roughly 0.72%, far lower than American credit card fees.[229] Accordingly, Congress has a pertinent example to examine how credit card fee caps might work domestically if imposed. Contemporary experience suggests that caps may very well bring down fees if implemented.

Some scholars go so far as to assert that "an interchange fee cap benefits all consumers."[230] Studies also suggest that fee caps will even benefit rewards cardholders, as rewards will shrink at a lower rate than swipe fees, leading to a net relative consumer gain.[231] There may also be other benefits of capping fees, as economists contend that while higher interchange fees, ceteris paribus, decrease merchant participation in the market by increasing the costs of doing so, [232] lower fees increase merchant participation. However, fee caps may also reduce the availability of capital by reducing the number of network participants willing to lend. This could impair some individuals' ability to obtain badly needed access to the credit and capital they need.[233] Moreover, lower swipe fees will generate fewer rewards, thus decreasing the number of consumers willing to participate in the market. [234]

Based on debit card experience in the U.S. and credit card experience abroad, fee caps appear to bring down swipe fees. For this reason, Congress could follow the Durbin Amendment example by formally authorizing the capping of swipe fees in the credit card space. Additionally, high swipe fees are in the interests of major donors as they produce massive profits for politically influential corporate credit card interests. For such reasons, Congress may hold reservations about interfering with the status quo.[235]

D. Use the Taxing Power to Mold Behavior and Fees

Another available option to reduce swipe fees is through Congressional taxing power. Congress can use its taxing power to influence members of the payment network, merchants, or consumers. This section of the paper examines tax policy as a tool to influence behavior and drive outcomes.

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229. *See generally* Wang, *supra* note 62, at 6 (showing impact on merchant fees following implementation of the Durbin Amendment).

230. Robert M. Hunt, Konstantinos Serfes, & Yin Zhang, *Interchange Fees in Payment Networks: Implications for Prices, Profits, and Welfare* 2 (Fed. Rsrv. Bank of Phila. Working Paper No. 25-18, June 2025), https://doi.org/10.21799/frbp.wp.2025.18.

231. *Id.*

232. *See generally* Shy, *supra* note 3, at 11-12 (explaining the purpose of the interchange fee within the equation between merchants and consumers).

233. *See generally* Ausubel, *supra* note 133, at 74 (discussing the hazards of price controls for some individuals).

234. *See* Rochet & Tirole, *supra* note 66, at 999; *see also* Caillaud & Jullien, *supra* note 63, at 4-6, 17; Wright, *supra* note 63; *see generally* Shy, *supra* note 3, at 11-12.

235. *See generally* Wang, *supra* note 62, at 1-7, 9, 10, 37, 38, 40.

1. Tax Policy to Influence Payment Network Behavior

Currently, members of the payment network, including the acquiring bank, the issuing bank, the merchant, and the network provider, are allowed to deduct all reasonable business expenses associated with network processing, including reward payments. While generally an accrual method taxpayer may not deduct "an estimate of an anticipated expense, no matter how statistically certain, if it is based on events that have not occurred by the close of the taxable year," the IRS permits the deduction of a credit card reward based on the *all events test*.[236] The all events test permits recognition of an originated liability and a related deduction so long as "all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability."[237]

Under the all events test, card-issuers may recognize a liability and a deduction so long as there is no "condition precedent that is not a ministerial act and results in a reward liability not being fixed for purposes of the first prong of the all-events test."[238] Accordingly, "credit card reward liabilities are deductible when the rewards become redeemable for cash or a statement credit and that the taxpayer may use the recurring-item exception to accelerate deductions for its credit card reward liabilities."[239]

The tax-deductible costs for card issuers, paired with tax-free reward accrual and redemption for users, create a unique policy issue where one party claims a deduction while the other reports no income. Congress could alter this mix by eliminating deductions associated with reward payments or taxing rewards. While taxing rewards may not be a popular option, academic studies have shown that taxing reward recipients may reduce swipe fees.[240]

2. Tax Policy to Influence Merchant Behavior

Congress or the IRS may also utilize tax policy to influence merchant behavior. From a theoretical point of view, merchants generally can accept any legal combination of cards, cash, and other payment methods. Each method, however, comes with costs. For this reason, the higher the after-tax cost of accepting cards, the fewer

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236. United States v. General Dynamics Corp., 481 U.S. 239, 243-44 (1987).

237. I.R.S. Chief Couns. Mem. 202417021, at 3 (Apr. 26, 2024); *see also* I.R.C. § 461(h); Treas. Reg. § 1.461-1(a)(2).

238. I.R.S. Chief Couns. Mem. 202417021, at 3 (Apr. 26, 2024).

239. Kathleen Meade, *Card Reward Liabilities Are Eligible for the Recurring-Item Exception*, TAX ADVISER (Oct. 1, 2024), https://www.thetaxadviser.com/issues/2024/oct/card-reward-liabilities-are-eligible-for-the-recurring-item-exception/; *see also* I.R.S. Chief Couns. Mem. 202417021, at 2–3 (Apr. 26, 2024).

240. Shy, *supra* note 3, at 1, 12, 19, 21.

merchants will take them. From a regulatory standpoint, increasing the cost of accepting cards will likely reduce the number of merchants accepting cards and the total number of card transactions, while decreasing the cost of accepting cards will have the opposite effect. Accordingly, Congress can influence merchant behavior by adjusting the after-tax cost of accepting cards, either by lowering, raising, or eliminating the deduction on swipe fees.

Currently, merchants may deduct swipe fees as ordinary and necessary business expenses under § 162(a).[241] From an economic standpoint, allowing businesses a "tax deduction on interchange fees can be viewed as a partial taxpayer subsidy to merchants in an attempt to reduce their financial expenses."[242] The higher (lower) the deduction rate, the larger (smaller) the subsidy, and the lower (higher) the costs of card transactions. Consequently, tax deductions incentivize the acceptance of card payments over cash. Moreover, as deduction rates rise, so does the subsidy and the merchant incentive to accept cards right along with it.

Deductibility of swipe fees comes with a catch. Card issuers can offset more generous merchant swipe fee tax benefits by charging higher interchange fees.[243] As a result, "a higher rate of merchant tax deduction ends up indirectly subsidizing a higher card reward to consumers via a higher interchange fee levied on the merchants." [244] In this loop, higher merchant tax subsidies lead to higher interchange fees, which support higher rewards to customers, thereby increasing the number of consumers who choose to pay with cards, thereby increasing the revenue of card issuers. Therefore, these newly higher fees will also lead to fewer merchants willing to accept them.

Congress must remember that targeting merchant behavior may also influence the behavior of others. Providing tax breaks to merchants may incentivize card issuers to act. In particular, as Congress increases the value of merchant tax deductions, card companies will "take advantage of merchant tax deductions and offset it by hiking [their] interchange fee."[245] Higher interchange fees fund higher rewards, thus leading to a chain of events where higher deductions effectively increase the number of merchants accepting cards, which in turn leads card companies to increase interchange fees, rewards, and consumer prices along with them. Changes to swipe fee deductibility yield mixed tax outcomes, shaped by payment network responses, so any policy aimed

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241. I.R.C. § 162(a).

242. Shy, *supra* note 3, at 11.

243. *See* Robert Shapiro & Jerome Davis, *The Unanticipated Costs and Consequences of Federal Reserve Regulation of Debit Card Interchange Fees*, PROGRESSIVE POL'Y INST. (Dec. 11, 2025), https://www.progressivepolicy.org/the-unanticipated-costs-and-consequences-of-federal-reserve-regulation-of-debit-card-interchange-fees/.

244. Shy, *supra* note 3, at 12.

245. *Id.* at 11.

at merchants must also account for and potentially regulate card issuer behavior.

3. Tax Policy to Influence Consumer Behavior

Congress and the IRS may also utilize tax policy to guide consumer behavior. Currently, most card rewards are not taxed in the United States.[246] To decrease card use, "brave policymakers could start taxing reward points."[247] According to leading economic scholars, taxing rewards would reduce consumer incentives to pay with cards,[248] resulting in fewer consumers using cards, fewer card transactions, lower revenue for card issuers, and lower prices.

For those concerned with tax fairness, exempting rewards from taxation helps foster the Reverse Robin Hood effect as "[p]rogressive taxation rates mean that exempting rewards from taxation makes them nearly four times as valuable to those in the top tax bracket as the bottom."[249] In this light, one may wonder why interest on a bank account, which impacts many underprivileged Americans, is taxable, but credit card rewards, which disproportionately benefit the wealthy, are not.

Times have changed since the early days of credit card rewards programs. In an airline rewards context, Announcement 2002-18 exempted air miles or "other in-kind promotional benefits attributable to or the taxpayer's business or official travel" from taxation on a de facto basis based on the inherent complexity in properly monitoring and accounting for them. [250] The task of valuing rewards, once opaque and administratively burdensome, has become far more standardized in a digitized marketplace; whereas the value of frequent-flier miles was historically difficult to quantify, contemporary platforms now publish systematic, regularly updated point-valuation metrics that translate rewards into dollar equivalents.[251]

Congress could decrease the net benefit of such rewards by taxing them. Card companies would likely seek to increase merchant participation to offset reduced consumer interest. The likely path to do this would be to lower swipe fees.[252] This outcome is only a natural result, as "a higher tax on rewards (higher τ) reduces the effectiveness of rewards on consumers with respect to their decision to pay with cards while, on the merchant side, the lower interchange fee induces

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246. *See supra* Section V(C).

247. Klein, *supra* note 105.

248. Shy, *supra* note 3, at 11-13.

249. Klein, *supra* note 105; *see generally* Semeraro, *supra* note 15.

250. I.R.S. Announcement 2002-18, 2002-1 C.B. 621.

251. *See, e.g.*, *What Are Points and Miles Worth?*, POINTS GUY (last visited Mar. 13, 2026), https://thepointsguy.com/loyalty-programs/monthly-valuations/.

252. *See generally* Shy, *supra* note 3, at 12–14.

more merchants to prefer cards over cash."[253] This outcome may be a laudable goal for adherents of the Reverse Robin Hood Hypothesis.

E. Foster Network Competition

Finally, Congress could seek to lower swipe fees and prices by fostering competition. As the chosen approach of the CCCA, the Durbin-Marshall Credit Card Bill will require merchants to receive a choice of at least two competing payment networks to process transactions.[254] Moreover, at least one of these networks must be from someone other than the largest two, currently Visa or Mastercard,[255] as the CCCA provides that networks shall not restrict the number of payment card networks to "the 2 such networks that hold the 2 largest market shares with respect to the number of credit cards issued in the United States by licensed members of such networks . . . ."[256]

Accordingly, the CCCA seeks, through legislated competition, to break the grip of the Visa-Mastercard duopoly by legislating the choice of two processing networks.[257] Through the adoption of proposed 15 U.S.C. § 1693o-2(b)(2),[258] the CCCA will drive swipe fees and consumer prices down by stimulating competition between payment network providers. Provided with options, merchants should be guided by Adam Smith's invisible hand to choose the best choice as "[i]t is not from the benevolence (kindness) of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest."[259] Merchant self-interest will incentivize them to choose the payment network with the best combination of low fees, high security, and good service. In a newly competitive environment, payment network self-interest will drive them to provide better service at a lower cost.

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253. *Id.* at 13.

254. *See, e.g.*, Matt Schulz, *Credit Card Competition Act: What It Is and How It Impacts Merchants, Consumers*, LENDINGTREE (Aug. 10, 2023), https://www.lendingtree.com/credit-cards/articles/credit-card-competition-act/.

255. *Id.*

256. Credit Card Competition Act of 2023, S. 1838, 118th Cong. (2023).

257. From a mechanical standpoint, advocates seek to commit this to law by amending existing terms of the 2010 Durbin Amendment by adding new section §1693o-2(b)(2). Said section which will provide, in pertinent part:

a covered card issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, technological specification, or otherwise, restrict the number of payment card networks on which an electronic credit transaction may be processed to—

(I) 1 such network;

(II) 2 or more such networks, if—

(aa) each such network is owned, controlled, or otherwise operated by—

(AA) affiliated persons; or

(BB) networks affiliated with such issuer . . . .

Id.

258. Credit Card Competition Act of 2026, S. 3623, 119th Cong. §2(b)(2) (2026).

259. Adam Smith, *Inquiry into the Nature & Causes of the Wealth of Nations* 9 (Kathryn Sutherland ed., Oxford Univ. Press 2008) (1776).

Though some scholars question whether platform competition can effectively reduce swipe fees,[260] the CCCA aims to replace the current regulatory framework with one that lowers merchant fees and prices by promoting high-quality, low-cost service. This paper now turns to the legal foundation supporting the continued tax exemption of card rewards under U.S. law.

VI. THE *DISCOUNTED PURCHASE PRICE VIEW* & THE EVOLUTION OF A REWARDS-FRIENDLY AMERICAN TAX ENVIRONMENT

The question of whether credit card rewards should be taxable is central to this paper. This question is from a legal perspective. If credit card rewards represent taxable income, they should be taxed. If they do not, they should not be taxed. In turn, the central examination of this paper concerns the question of what constitutes *incom*e, in the purest sense of the word.

Defining income is not an easy task from a definitional and theoretical standpoint. Nonetheless, it is central to whether credit card rewards should be taxable or continue to enjoy a de facto tax-exempt status under American law. The American tax policy regime has exempted rewards and rebates from taxation for many years based on the indirect purchase price discount rule.[261] This position rests upon a bedrock of precedent that recognizes credit card rewards, rebates, and other similar programs not as income, but as some form of reduced expenditure.[262] Courts and the IRS have consistently viewed such items as discounts on the purchase price, not as income, effectively providing a card-user tax exemption for rewards, airline miles, and other rebates.[263]

In a non-credit card reward context, the Tax Court decided, in *Pittsburgh Milk*,[264] that price allowances provided to a commercial customer were not deductible expenses, but downward price adjustments. This rationale was extended to buyers in Revenue Ruling 76-96,[265] which was significant because it implied that not only would price adjustments not be deductible expenses to the seller, but they would also not be considered income to the customer. Purchase price

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260. *See generally* Wang, *supra* note 62, at 4–5; *see also* Edelman & Wright, *supra* note 144 at 1–2.

261. *See* Michael M. Lloyd & S. Michael Chittenden, *Making a Point: Tax Court's Anikeev Decision Challenges Longstanding IRS Policy on Credit Card Rewards*, COVINGTON (May 5, 2021) https://www.twrblog.com/2021/05/making-a-point-tax-courts-anikeev-decision-challenges-longstanding-irs-policy-on-credit-card-rewards/.

262. *See id.*

263. *See generally* Joel C. Jones, *Elections to Direct Credit Card Rebates to Qualified Charities*, TAX ADVISER (Nov. 30, 2010), https://www.thetaxadviser.com/issues/2010/dec/clinic-dec2010-story-01/.

264. Pittsburgh Milk Co. v. Comm'r, 26 T.C. 707, 717 (T.C. 1956).

265. Rev. Rul. 76-96, 1976-1 C.B. 23.

discounts were a simple reduction in the actual purchase price, regardless of the published price. From there, the rule was extended and applied to more contexts, eventually reaching credit card rewards. For this reason, it is crucial to examine the ongoing relevance and defensibility of the discounted purchase price rule in a contemporary context. Accordingly, this paper examines the historical and precedential justifications for exempting rebates, discounts, or purchase price rewards from taxation in American jurisprudence.

A. Ben Franklin & the Difference Between Savings and Income

The longstanding IRS policy that credit-card rewards are not taxable rests on the foundational notion that rewards related to a purchase are not new income but rather merely a downward price adjustment. As downward price adjustments, rewards do not constitute an accession to wealth presumptively taxable under I.R.C. § 61(a).

To better understand the complexity of the taxability of credit card rewards, one can use the centuries-old simplifying logic of one of the world's great political, philosophical, and scientific minds, Benjamin Franklin. One of the most popular sayings attributed to the great Benjamin Franklin is the famous: "a penny saved, is a penny earned."[266] In fact, the actual statement attributed to him is "[a] penny saved is two pence clear."[267] While such statements may seem to present logic of the simple and obvious variety, nothing associated with Benjamin Franklin ever is. While individuals can enhance their wealth by earning new income, consumers can also increase their wealth by spending less of what they already have. This view of wealth retention has been applied to credit card rewards and rebates through the progeny of *Pittsburgh Milk*.

Centuries later, modern American tax law has defined gross income, under I.R.C. § 61(a), as "all income from whatever source derived . . . ." [268] Case law has further clarified the concept of gross income, recognizing it to include "the gain derived from capital, labor, or from both combined."[269] In the seminal case of *Commissioner v. Glenshaw Glass*, the United States Supreme Court emphasized the broad scope and wide-ranging nature of gross income. In examining the taxability punitive or exemplary damages awards, Chief Justice Warren stressed the broad inclusivity of gross income, in providing that the failure to recognize such income "would do violence to the plain meaning of the statute and restrict a clear legislative attempt to bring the taxing power to bear upon all receipts constitutionally taxable were

266. *See generally* Anikeev v. Comm'r, 121 T.C.M. (CCH) 1163, at 13 (T.C. 2021).
267. *Id.*
268. I.R.C. § 61(a).
269. Eisner v. Macomber, 252 U.S. 189, 207 (1920).

we to say that the payments in question here are not gross income."[270] The Court also provided a useful definitional description by ruling that gross income holds the character of being "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion."[271]

It follows that *Glenshaw Glass* implicitly set forth a three-part test for recognizing gross income. To be classified as gross income, it must represent (1) an undeniable accession to wealth, (2) be clearly realized, and (3) be something over which taxpayers have full control.[272] This three-part test converts a deep philosophical question about what earned income is, and what it is not, into a factual one. Applying *Glenshaw Glass* to the credit card reward space raises profound questions about what types of items qualify as taxable income. In the setting of American tax policy, Benjamin Franklin's statement raises the question of whether a credit card reward should be treated as a nontaxable penny saved or a taxable penny earned.

B. Income vs. Savings

For decades, American tax law has taken exception to Franklin's logic that a penny saved is a penny earned in the context of gross income. In the context of credit card rewards, American jurisprudence has consistently classified them as a non-taxable reduction in the purchase price. This view has been critical to the long-standing exemption of credit card rewards from taxation. For example, applying Franklin's logic in a modern context, the United States Tax Court in *Anikeev v. Comm'r*, noted that: "as Benjamin Franklin wisely observed, '[a] penny saved is two pence clear' (which became known more colloquially as 'a penny saved is a penny earned'), the income tax law imposes a tax only on the future penny earned, not on the current penny saved."[273] Accordingly, the Anikeev Tax Court determined that a penny saved is not of the character of gross income, while a future penny earned is. On this basis:

> [A] taxpayer who avails himself or herself of a discount in acquiring goods and services has no accession to wealth. The taxpayer has retained more of his or her wealth than a taxpayer who pays full price for the same good or service, but that taxpayer has gained no additional wealth and thus has no additional

270. Comm'r v. Glenshaw Glass Co., 348 U.S. 426, 432-33 (1955).
271. *Id.* at 431.
272. *See generally id.*
273. *Anikeev*, 121 T.C.M. (CCH) 1163, at 13.

> income. The taxpayer has simply consumed less of his or her existing wealth.[274]

While this approach clearly defines the difference between taxable earnings and nontaxable savings, it does not resolve the factual question of which of the two modern credit card rewards is.

C. A History of the Taxability of Consumer Rebates

The taxability of credit card rewards has been a subject of discussion for many years.[275] Generally speaking, under Internal Revenue Code Section 61(a),[276] "except as otherwise provided . . ., gross income means all income from whatever source derived . . . ." As the reach of § 61(a) is broadly construed and holds a "sweeping scope,"[277] the general rule in the United States is that any accession to wealth constitutes gross income, unless properly exempted.[278] The question regarding credit card rewards is whether they contribute to wealth accumulation. For years, rewards on credit card purchases have been reflexively viewed as a non-taxable dispensation of money already earned (and potentially already taxed), rather than an accession to wealth of the gross income variety.[279] This paper will examine the continuing defensibility of this position.

1. The Development of the Discounted Purchase Price Rule

A critical link in the chain of precedent exempting modern credit card rewards from taxation is the 1956 case of *Pittsburgh Milk*.[280] In *Pittsburgh Milk*, the Tax Court established that when a seller provides a rebate or price allowance, the rebate is not a deductible expense. Instead, the seller must offset the price allowance against the published purchase price to arrive at the true price received. The Tax Court opined that "such realized amount must be based on the actual price or consideration for which the property was sold, and not on some greater price for which it possibly should have been, but was not, sold."[281] According to the *Pittsburgh Milk* Tax Court, the after-price-allowance price, not the pre-rebate price, would be used to compile gross income.

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274. James A. Beavers, *Credit Card Rewards for Purchases of Gift Cards Are Not Taxable Income*, TAX ADVISER (May 1, 2021), https://www.thetaxadviser.com/issues/2021/may/credit-card-rewards-purchases-gift-cards/.

275. Bruce M. Bird et. al., *Charitable Donations: The Role of 'Cash Back Rewards'*, 82 CPA J. 48 at 48, 50 (Feb. 2012).

276. I.R.C. § 61(a).

277. Comm'r v. Schleier, 515 U.S. 323, 327-28 (1995).

278. Glenshaw Glass Co., 348 U.S. 426, 431-33.

279. *See generally* Davis, *supra* note 3 at 828.

280. *Pittsburgh Milk Co.*, 26 T.C. at 716-17.

281. *Id.* at 715, 717.

Pittsburgh Milk addresses the seller's side of a two-party transaction. While the buyer's perspective is not explicitly addressed, it logically follows that the rebate would not constitute income to the buyer. Instead, a price allowance or rebate would serve as a mere reduction in the purchase price as "[u]nder both the Sixteenth Amendment and the Internal Revenue Code, the tax is imposed only on 'income,' and not upon every conceivable type of receipt."[282] Nonetheless, the IRS tackled the buyer's perspective by issuing Revenue Ruling 76-96.[283]

In Revenue Ruling 76-96, the IRS responded to a request for advice concerning the taxability of automobile manufacturer sales rebates to retail customers who purchased a new vehicle and traded in a specified vehicle. The request for advice concerned whether such rebates constituted gross income to consumers and whether they constituted ordinary and necessary business deductions under I.R.C. §162 for manufacturers. Once again, in a non-credit card setting, the IRS determined that rebates paid to qualifying retail consumers represented a "reduction in the purchase price of the automobile."[284]

The IRS also indicated that a rebate or price allowance would reduce the taxpayer's basis in the vehicle under I.R.C. § 1012 and § 1016.[285] The reduction in the basis would be defined by the rebate amount, with the new basis being the original purchase price minus the rebate. Regarding basis reduction, as provided by IRS Publication 17 in directions to taxpayers, "[a] cash rebate you receive from a dealer or manufacturer of an item you buy is not income, but you must reduce your basis by the amount of the rebate."[286]

While Revenue Ruling 76-96 addressed consumer rebates, it only involved the two parties necessary to any business transaction, the buyer and the seller. As a result, it did not reach the more complicated scenario of intermediated credit card transactions. For this reason, Revenue Ruling *76-96* left untouched the issue of the continued suitability of the discounted purchase price view of a reward or rebate program when a third party provides the reward.

2. The Indirect Discounted Purchase Price Rule

In 2010, the IRS issued Private Letter Ruling 201111002 (privately released as Private Letter Ruling 141607-09). [287] When a credit card holder received a cash back reward with the option to donate the

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282. *Id.*

283. Rev. Rul. 76-96, 1976-1 C.B. 23.

284. *Id*. at 1-2.

285. I.R.C. § 1012; 26 U.S.C. § 1016.

286. I.R.S. Publication 17, *Your Federal Income Tax (For Individuals)* (2015), https://www.irs.gov/pub/irs-prior/p17—2015.pdf.

287. I.R.S. Priv. Ltr. Rul. 201111002 (Nov. 11, 2010).

reward to charity, the IRS applied Revenue Ruling 76-96's discounted purchase price view to indirect transactions. In this regard, the IRS offered the indirect purchase price discount rule by opining that "a rebate received by a buyer from the party to whom the buyer directly or indirectly paid the purchase price for an item is an adjustment in purchase price, not an accession to wealth, and is not includible in the buyer's gross income."[288] The IRS continued, "in either case, this rebate constitutes an adjustment to the purchase price of the items purchased with Taxpayers' credit cards and, consequently, is not includible in Taxpayers' gross income." [289]

Private Letter Ruling 201111002 is a significant ruling in the chain of events that led to the exemption of modern credit card rewards from taxation. From a precedential standpoint, the keyword to focus on is "indirectly." Through PLR 201111002, the IRS publicly and officially extended the discounted purchase price rule to indirect, credit card issuer-provided rebates on everyday spending. Under this ruling, such rewards are considered downward price adjustments and not gross income under I.R.C. § 61(a).[290]

3. Direct or Indirect Discounted Purchase Rule Requires a Purchase

A rebate must be attached to a legitimate purchase to qualify as a purchase price discount. This follows from the notion that to be an actual rebate, a reward must reflect "the recognition that a taxpayer who avails himself or herself of a discount in acquiring goods and services has no accession to wealth."[291] If it is not attached to a legitimate purchase, it is ineligible for exclusion from taxable income.

As provided by the United States Tax Court in *Anikeev v. Comm'r*, the rationale underlying the IRS's longstanding position that genuine rebates are not taxable because the: "taxpayer has retained more of his or her wealth than a taxpayer who pays full price for the same good or service, but that taxpayer has no additional income; he or she simply has reduced consumption."[292] Furthering this point, the Court in *Anikeev* proclaimed that "the income tax law imposes a tax only on the future penny earned, not on the current penny saved."[293] Accordingly, credit card rewards received in exchange for genuine purchases qualify for the indirect purchase discount rule.

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288. *Id.*
289. *Id.*; *see also* Jones, s*upra* note 263.
290. *See generally* I.R.S. Publication 17, *supra* note 287.
291. *Id.*
292. *Anikeev*, 121 T.C.M. (CCH) 1163, at 13.
293. *Id.*

4. Non-Qualifying Transactions

If a credit card rebate relates to a transaction that is not in substance a rebate on a genuine purchase of a product or service, it may be taxable. Accordingly, large-scale credit card transactions manufactured to earn a rebate may not qualify for the indirect purchase price discount rule. In the 2021 *Anikeev v. Comm'r* case,[294] crafty taxpayers devised an ingenious spending plan to generate rewards of up to 5% cash back through their American Express Blue Cash Reward Program, which has no reward limit. Through this stratagem, the taxpayers charged more than $1.2 million in 2013 to obtain Visa prepaid gift cards and reloadable debit cards. While purchasing these cards included a fee of approximately 1%, this fee was significantly less than the average credit card reward earned. The taxpayers then used the gift cards to purchase money orders, deposited the money orders, and then paid the bill. Thus, the taxpayers netted a return of several percent. Based on the success of their venture, the taxpayers expanded their operation and charged over $5 million in 2014.

After the taxpayers did not declare their reward, the IRS determined that they had understated their income by roughly $36,000 in 2013 and $277,000 in 2014. On these grounds, the IRS assessed deficiencies of $9,928 for 2013 and $93,845 for 2014. The Tax Court held that credit card rewards tied to the purchase of actual goods or services are non-taxable. This raised the question of whether buying gift or debit cards qualifies. The IRS argued these are cash equivalents, not true purchases, making the rewards ineligible for tax exclusion.

In response, the Tax Court noted as a preliminary matter that "when a payment is made by a seller to a customer as an inducement to purchase property, the payment does not constitute income but instead is treated as a purchase price adjustment to the basis of the property."[295] Next, the Tax Court determined that "[t]he Visa gift cards have product characteristics. They provide a consumer service embodied in a simple plastic card for convenience." For this reason, the gift card purchase-derived rewards were derived from a genuine purchase and were exempt from taxation. For the purchase of debt cards, the court determined that "the cash infusions to the reloadable debit cards were not product purchases."[296] The Tax Court also determined that the purchase of money orders with the American Express credit card did not qualify as a product purchase, as "money orders are not properly

294. *See generally Tax Court Holds Credit Card Rewards Earned From Purchasing Debit Cards and Money Orders Are Taxable*, 135 J. TAX'N 34, 34-35 (2021), https://www.proquest.com/trade-journals/tax-court-holds-credit-card-rewards-earned/docview/2585494451/se-2; *see also Anikeev*, 121 T.C.M. (CCH) 1163, at 11–13.

295. *Anikeev*, 121 T.C.M. (CCH) 1163, at 11–12.

296. *Id.* at 21.

treated as a product subject to a price adjustment because they were eligible for deposit into petitioners' bank account from acquisition."[297]

Anikeev is significant for clarifying the boundaries of the discounted purchase price rule. Generally, credit card rewards remain tax-free when tied to legitimate purchases of goods or services. However, taxpayers should note that the IRS may treat rewards as taxable income in limited cases, such as cash-equivalent transactions or schemes designed solely for profit.

5. Facts Matter: Challenges to the Longstanding Discounted Purchase Price Rule

The *Anikeev* case is significant beyond defining the boundaries of the card reward tax exemption. The case provides a dramatic example of how far the discounted purchase price can go. In addressing the ingenuity of the taxpayer, the *Anikeev* Tax Court noted that "the scale of his success in acquiring rewards makes this case an extreme test of the longstanding nontaxability of credit card reward programs."[298] Nonetheless, *Anikeev* clarifies that the purchase price rule has limits. This case establishes the precedent that courts and the IRS must not reflexively accept the discounted purchase price rule, as not all credit card purchases will qualify for non-taxability.

A*nikeev's* extreme facts challenge conventional notions of what qualifies as a discount. Building on the precedent set by Pittsburgh Milk, the case applies the discounted purchase price rule to profit-driven indirect transactions, provided that a genuine purchase occurs. Yet, courts have not scrutinized the nature or origin of the discount. For policy scholars, *Anikeev* stands out precisely because it stretches the rule far beyond its traditional scope, so far, in fact, that its rigid application invites reconsideration.

While *Anikeev* relied on reflexive adherence to the indirect purchase price discount rule, precedent clearly establishes that facts matter in analyzing what is taxable and what is not. *Pittsburgh Milk Co.* directed that courts look to the true substance of a transaction when making such assessments. Income, "must be based on the actual price or consideration for which the property was sold, and not on some greater price for which it possibly should have been, but was not, sold."[299] Accordingly, taxpayers, the IRS, and others must recognize the genuine substance of a transaction in assessing taxability as "no more than the actual gross income can be subjected to income tax, in any event."[300] In this undertaking, there is little place for reflexive adherence to old rules.

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297. *Id.*
298. *Id.* at 14.
299. *Pittsburgh Milk Co.*, 26 T.C. at 715.
300. *Id.*; *see also* Sullenger v. Comm'r, 11 T. C. 1076, 1077 (T.C. 1948).

The court then went on to provide critical language to assess the actual nature of a transaction:

> After the true nature of a transaction has been revealed, if it is found that the book entries do not accurately reflect the income realized, then the tax must be computed with respect to the income, rather than with respect to such entries. The actual facts, not bookkeeping entries, determine the taxable income.[301]

Accordingly, book entries or accounting formalities must fall to "[t]he actual facts."[302] They must yield to the actual substance at hand, as reality must govern "the determination of taxable income."[303]

Against this backdrop, it is helpful to review instances where the court has faced challenges addressing the discounted purchase price rule or other card-reward exemptions from taxation.

a. Card Purchases with No Stand-Alone Product-Like Benefit: Taxable Rewards Associated with Debit Cards & Money Orders Are Taxable

In *Anikeev*, the Tax Court determined that the purchase of (a) refillable debit cards and (b) money orders, unlike the purchase of gift cards, does not offer the product-like qualities that gift cards do. As a result, the Court ruled that rewards associated with debit card and money order purchases were taxable income. In this regard, the Court noted:

> [I]nfusion of cash into the reloadable debit cards are difficult to reconcile with the IRS credit card reward policy. No product or service is obtained in these uses of the American Express cards other than cash transfers. The money orders are not properly treated as a product subject to a price adjustment because they were eligible for deposit into petitioners' bank account from acquisition. Similarly, the cash infusions to the reloadable debit cards were not product purchases.[304]

Accordingly, if a card rebate is to be non-taxable, it must be related to the purchase of a product or service that provides something other than the service of cash transfers.

b. Frequent Flyer Miles & Other Airline Rewards-IRS Restraint

Frequent flyer miles provide another source of programmatic benefits that can raise serious tax questions. Noting the problematic

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301. *Pittsburgh Milk Co.*, 26 T.C. at 714; *see also* Doyle v. Mitchell Bros. Co., 247 U.S. 179, 187 (1918); Nw. States Portland Cement Co. v. Huston, 126 F.2d 196, 199 (8th Cir. 1942).

302. *Pittsburgh Milk Co.*, 26 T.C. at 715.

303. *Id.*

304. *Anikeev*, 121 T.C.M. (CCH) 1163, at 21.

issues of tax assessment associated with such benefits, the IRS observed its practice of non-enforcement up until that time (2002) by providing:

> There are numerous technical and administrative issues relating to these benefits on which no official guidance has been provided, including issues relating to the timing and valuation of income inclusions and the basis for identifying personal use benefits attributable to business (or official) expenditures versus those attributable to personal expenditures. Due to these unresolved issues, the IRS has not pursued a tax enforcement program regarding promotional benefits, such as frequent flyer miles.[305]

To address these issues, the IRS released Announcement 2002-18. Through Announcement 2002-18, the IRS publicly proclaimed a statement of deference and forbearance moving forward indefinitely until stated otherwise by proclaiming:

> Consistent with prior practice, the IRS will not assert that any taxpayer has understated his federal tax liability by reason of the receipt or personal use of frequent flyer miles or other in-kind promotional benefits attributable to the taxpayer's business or official travel. Any future guidance on the taxability of these benefits will be applied prospectively.[306]

Since at least 2002, the IRS has not operated a frequent flyer mile tax enforcement program. Notably, the Service did not include cash benefits in its non-enforcement policy by indicating "[t]his relief does not apply to travel or other promotional benefits that are converted to cash."[307] This announcement has allowed the IRS to avoid difficult assessment and timing issues associated with frequent flyer miles. In other forms of awards, this issue remained unresolved. In reflecting on Announcement 2002-18, "[t]he IRS has seemed willing at times to give taxpayers a pass on certain items that are relatively modest in amount, involve subjective estimates of value, and are difficult to enforce."[308] The IRS left the door open for changes in this area when it indicated that "[a]ny future guidance on the taxability of these benefits will be applied prospectively."[309]

New technical capabilities derived from the ever-forward march of technology now undermine the premise of Announcement 2002-18. In recent years, consumers and industry specialists have nearly perfected methods to identify and value card rewards. Professionals like the Points Guy have earned an international reputation by valuing,

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305. I.R.S. Announcement 2002-18, 2002-1 C.B. 621.

306. *Id.*

307. *Id.*

308. Stanley E. Rose, *Taxation of Frequent Flyer Miles*, TAX ADVISER (Aug. 1, 2012), https://www.thetaxadviser.com/issues/2012/aug/clinic-story-08-aug-2012/.

309. *Id.*

comparing, and maximizing credit card rewards.[310] Consequently, while "[o]nce upon a time the value of frequent flier miles was hard to quantify; now the Points Guy has it down."[311] This development challenges the continuing basis of the IRS's non-enforcement policy, as advanced in Announcement 2002-18. For this reason, the CCCA provides an opportunity to express Congressional intent in this area for years to come.

c. Frequent Flyer Miles Earned in Business-Use for Personal Travel-IRS Continued Restraint

With Announcement 2002-18, the IRS extended enforcement deference to the personal use and redemption of frequent flyer miles earned on personal and business cards. It did so by proclaiming that:

> "the IRS will not assert that any taxpayer has understated his federal tax liability by reason of the receipt or personal use of frequent flyer miles or other in-kind promotional benefits attributable to the taxpayer's business or official travel." [312]

Accordingly, Announcement 2002-18 effectively gave the green light to the tax-free use of business-earned frequent flyer miles for personal travel. This loophole creates a tax incentive to transfer business-earned miles to personal use. Because the financial value associated with such miles would not be deductible if used for business purposes, it makes sense to transfer business miles to personal use and to pay for business flights. In this way, the business retains a tax deduction. Accordingly, the IRS decision to refrain from enforcement has led to the unintended consequence of extensive use of business-earned frequent flyer miles for personal travel.

d. Frequent Flyer Miles & Promotional Benefits Converted to Cash Do Not Qualify for Discounted Purchase Price Rule Based on Facts

Despite the IRS's decision not to pursue frequent flyer miles, the IRS also warned that it would not extend this privilege to all circumstances. In particular, the IRS provided, in pertinent part:

> "[This] relief…does not apply to travel or other promotional benefits that are converted to cash, to compensation that is paid in the form of travel or other promotional benefits, or in other

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310. *See* YooHee Hwang & Anna S. Mattila, *The Effect of Smart Shopper Self-Perceptions on Word-of-Mouth Behaviors in the Loyalty Reward Program Context*, 46 J. HOSP. & TOURISM RES. 243, 259 (2022).

311. Aaron Klein, *Deal Between Credit-Card Giants Will Do Nothing to Fix Our Broken and Predatory Credit-Card System*, SALT LAKE TRIBUNE (Mar. 17, 2024), https://www.sltrib.com/opinion/commentary/2024/03/17/opinion-with-capital-one-discover/.

312. I.R.S. Announcement 2002-18, 2002-1 C.B. 621.

> circumstances where these benefits are used for tax avoidance purposes."[313]

As a result, promotional benefits not derived from purchases, awards as compensation, or other situations used for tax avoidance do not qualify for the discounted purchase price rule and are taxable.

e. Bank and Card Account Opening Rewards Not Tied to Spending Do Not Qualify for Discounted Purchase Price Rule

"Thank You Points" earned from opening a bank or credit card account can produce tax consequences that differ from those of card purchases. For example, in *Shankar v. Comm'r*, the Tax Court opined that the redemption of rewards for opening a bank account produced taxable income.[314] The court's focus here was on the method of reward acquisition as no purchase was involved. In particular, the court averred:

> We proceed on the assumption that we are dealing here with a premium for making a deposit into, or maintaining a balance in, a bank account. In other words, something given in exchange for the use (deposit) of Mr. Shankar's money; i.e., something in the nature of interest. In general, the receipt of interest constitutes the receipt of an item of gross income. See sec. 61(a)(4). Receipt of the airline ticket constituted receipt of an item of gross income . . . .[315]

The *Shankar* Court noted that the substance of the award was a form of "premium for making a deposit into, or maintaining a balance in, a bank account…in other words, something given in exchange for the use (deposit) of Mr. Shankar's money; i.e., something in the nature of interest."[316] The Tax Court continued: "[i]n general, the receipt of interest constitutes the receipt of an item of gross income."[317] While taxpayers should receive a 1099-INT for awards of $600 or more, they remain responsible for reporting the income to the IRS, regardless of whether they receive one or not. Nonetheless, some accounts and credit cards offer a bonus in exchange for a minimum purchase over time. In such instances, any bonus received will be considered related to underlying purchases and therefore non-taxable.

f. Discounted Purchase Price Rule Does Not Apply to Refer-a-

313. *Id.*
314. *See generally* Shankar v. Comm'r, 143 T.C. 140,148 (T.C. 2014).
315. *Shankar*, 143 T.C. at 148.
316. *Id.*
317. *Id.*

Friend Bonuses

Another category of credit card benefits relates to referral bonuses. In such instances, the consumer receives a cash or points-based reward (with some cash value) based on a successfully referred colleague or friend setting up a new credit card or account. Once again, Announcement 2002-18's deferential approach to purchase-driven frequent flyer rewards "does not apply to . . . to compensation that is paid in the form of travel or other promotional benefits . . . ."[318] Unlike purchase-driven credit-card rewards, which are exempt from taxation under the discounted purchase price rule,[319] and frequent flyer miles, which were exempted (at least for now) by Announcement 2002-18, no similar exemption applies to refer-a-friend bonuses. For this reason, refer-a-friend bonuses are taxable. Once again, income must be reported, and the awarding company must provide a 1099-MISC if the award amount is $600 or more. Even if the company does not issue a 1099, the taxpayer must report the income.

6. Timing, Valuation, and Reporting Concerns

The key issue with credit card rewards is when to recognize income, as timing is complicated by restrictions, forfeiture clauses, and fluctuating reward terms, meaning even seemingly *earned* benefits may be reduced or lost.

a. Recognition, Timing, and Valuation of Credit Card Rewards

If modern credit card rewards were deemed taxable, it would create an administrative nightmare for card issuers, merchants, taxpayers, and others. One of the most important challenges would stem from timing and valuation concerns. Due to the uncertain nature of most rewards, examining how courts and the IRS approach the issue is necessary.

For many years, courts have utilized the cash equivalency doctrine "to evaluate the proper timing of income recognition when a taxpayer receives a contractual right to receive payment in the future." [320] Under the cash equivalency doctrine, "a cash basis taxpayer must report income received in the form of property only if the property is a cash equivalent."[321] Furthermore, "[a] debt obligation is a cash equivalent where it is a 'promise to pay of a solvent obligor and the obligation is unconditional and assignable, not subject to set-offs, and is of a kind that is frequently transferred to lenders or investors at a discount not substantially greater than the generally prevailing premium for the use

318. I.R.S. Announcement 2002-18, 2002-1 C.B. 621.
319. *See* I.R.S. Priv. Ltr. Rul. 141607-09 (last visited Apr. 10, 2026).
320. *Anikeev*, 121 T.C.M. (CCH) 1163, at 19.
321. *Id.* at 20 (citing *Warren Jones Co. v. Comm'r*, 524 F.2d 788, 790 (9th Cir. 1975)).

of money."[322] Accordingly, income is taxable when one receives "a contractual right to receive payment in the future," and not when one receives the mere possibility of such payment.[323] If rewards are taxable, they only become taxable when they meet the cash equivalency doctrine standard.

Timing concerns were addressed in *Shankar v. Comm'r*. [324] In *Shankar*, the Tax Court determined that an airline ticket received as an account opening reward was taxable not in the year it was assigned, but in the year it was redeemed. In particular, the Tax Court held that when the taxpayer converted accounting opening rewards into a plane ticket, the "[r]eceipt of the airline ticket constituted receipt of an item of gross income."[325] *Shankar* is important because it "establishes a precedent regarding the amount and timing of the taxable event for rewards programs: The redemption of the points for a reward is a taxable event."[326] Accordingly, reward redemption triggers taxability in the card and account-opening rewards space.

Shankar Tax Court also opined that "the amount the taxpayer must include in income is the FMV of the reward, and that amount should be reported in the tax year the redemption occurs."[327] For this reason, the Tax Court determined that the fair market value of the ticket at the time of redemption is includable in gross income. The timing and valuation approaches of the cash equivalency doctrine may conflict with the longstanding *constructive receipt rule*. The *constructive receipt rule* (provided by 26 CFR § 1.446-1(c)(1)(i)) directs that for taxpayers who follow "the cash receipts and disbursements method in the computation of taxable income, all items which constitute gross income (whether in the form of cash, property, or services) are to be included for the taxable year in which actually or constructively received."[328] Because the regulation includes "constructively received," income arises when rewards are awarded, not redeemed. [329]

Shankar eradicates this position by clarifying that rewards are taxable when redeemed. In reaching this determination, the *Shankar* Tax Court invoked *Glenshaw Glass's* three-part test that recognizable income includes "instances of undeniable accretions to wealth, clearly realized, and over which the taxpayers have complete dominion."[330]

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322. *Id.* (quoting *Cowden v. Comm'r*, 289 F.2d 20, 24 (5th Cir. 1961), rev'g 32 T.C. 853 (1959)).

323. *Id.* at 19.

324. *Shankar* 143 T.C. at 147.

325. *Id.*

326. Lynn Comer Jones & M. Catherine Cleaveland, *The Receipt and Redemption of Rewards Program Points: Tax and Reporting Implications*, TAX ADVISER (Aug. 1, 2018), https://www.thetaxadviser.com/issues/2018/aug/receipt-redemption-rewards-program-points.html.

327. *Id.*

328. 26 C.F.R § 1.446-1(c)(1)(i).

329. Jones & Cleaveland, *supra* note 326.

330. *Shankar*, 143 T.C. at 147.

Modern credit card rewards are not taxable until redeemed because most fail this three-part test. Most modern credit card rewards are either not transferable, subject to forfeiture, or of uncertain value at the time of award. For this reason, modern credit card rewards are not considered an addition to wealth until they are redeemed. If purchase-related rewards become taxable, they should be judged by these valuation and timing principles.

D. Reporting & Compliance Concerns

Another area of policy uncertainty is with entity reporting obligations. For many years after Announcement 2002-18 was issued, an uneasy truce existed between card issuers, taxpayers, and the IRS. During this time, "a stealth effect ensued, the IRS did not pursue an enforcement program, and businesses did not issue information returns to customers who received points or other promotional benefits in rewards programs."[331]

1. Reward Recipient Reporting Considerations

From a taxpayer reporting standpoint, non-cash awards for a taxpayer utilizing the cash receipts and disbursements method under 26 CFR § 1.446-1(c)(1)(i) are reportable in gross income in "the taxable year in which actually or constructively received."[332] In terms of said reporting obligations, tax scholars Comer-Jones and Cleaveland have offered:

> [U]nder Regs. Sec. 1.446-1(c)(1)(i), taxpayers must report any income from a taxable transaction even if a cash equivalent instead of cash is received. However, if the taxable event occurs when the thank you points are deposited (at constructive receipt), then the cash equivalent will need to be established at that time. Determining the value of rewards points is an extremely subjective process, and the IRS has not issued any guidance on how to value them for this purpose.[333]

One thing that reward recipients did not wish for was to receive Form 1099s from card issuers and banks.

2. Corporate Reporting Considerations

For many years, the legal issues relating to the taxability of frequent flyer miles remained unresolved as entities relied on the IRS's continued enforcement restraint. In the late 2000s, things changed as the IRS asserted greater interest in policing rewards-related reporting.

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331. Jones & Cleaveland, *supra* note 326.
332. 26 C.F.R § 1.446-1(c)(1)(i).
333. Jones & Cleaveland, *supra* note 326.

In fact, as the decade changed from the 2000s to the 2010s, Rose noted that the IRS

> "made no secret of its intention to increase scrutiny in this area, and in fact, most 2011 business tax returns . . . include new questions asking whether Forms 1099 are required and whether they have been, or will be, filed."[334]

As the IRS applied more scrutiny, companies reviewed their reporting obligations more closely. Proper filings became especially important considering Form 1099-MISC mandates requiring the reporting of "prices and awards" as taxable income.[335] Rewards would have to be reported for rewards not eligible for the discounted purchase price rule or other exemptions from I.R.C. § 61(a)'s "whatever source derived" language. Moreover, non-filers of Form 1099s were now penalized for intentional or inadvertent failure to file.

For such reasons, the safest corporate reporting approach was to err on the side of caution and report. Generally, companies could comply by issuing Form 1099-MISCs. Nonetheless, based on the Tax Court's *Shankar* ruling, depending on whether the facts suggest an account opening bonus was at play, a "Form 1099-INT, Interest Income, would have been more appropriate."[336] This distinction is vital because the reporting thresholds differ between Form 1099-MISC and Form 1099-INT, with reporting obligations beginning at $600 for the former and $10 for the latter.[337]

As better reporting practices began to take hold, cardholders started receiving tax forms in the mail. In 2009, Citibank gave many of its customers an unwelcome surprise by issuing 1099-MISC forms (for Miscellaneous Income) to report the value of frequent flyer miles and other account-opening awards. Due to heightened regulatory scrutiny, this approach may not have been "unreasonable under the circumstances."[338] While reporting may have been a sensible practice, it was unwanted by card users. Eventually, this led to a class-action lawsuit against Citibank for failing to notify customers of potential tax consequences related to rewards.[339]

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334. Rose, *supra* note 308.

335. I.R.S., *About Form 1099-Misc, Miscellaneous Information*, https://www.irs.gov/forms-pubs/about-form-1099-misc.

336. Jones & Cleaveland, note 326; *see also Shankar*, 143 T.C. at 147–48.

337. Jones & Cleaveland, *supra* note 326.

338. Rose, *supra*, note 308.

339. Kelly Phillips Erb, *Citibank Issues Forms 1099 for Frequent Flyer Miles, Surprising Customers and IRS*, FORBES (2012); note that it is precisely this form of 1099 that was at the heart of the matter in Shankar v. Comm'r. Mr. Shankar had redeemed airline tickets with a fair value assessed at $668 by Citibank. The taxpayer failed to report this income on the 1040 and the IRS assessed a deficiency. For this reason, Mr. Shankar got caught up in Citibank's 2009 bold step forward of issuing Form 1099-MISC (Miscellaneous Income) on the basis of the value rewards redeemed associated with an accounting opening award.

E. Overview of Precedential Chain & Continuing Policy Challenges

One clear takeaway from this history is that the precedent exempting modern credit card rewards from taxation is ununified, fragmented, and disjointed. Policy in this space has evolved from multiple sources over several decades. A review of the body of precedent leading to the current policy regime comprises numerous elements from various authority sources, including Supreme Court opinions, revenue rulings, private letter rulings, statutory authority, regulatory authority, and IRS announcements, compiled over a period of more than 70 years. Against this backdrop, it is perhaps no surprise that modern credit card reward tax policy leaves many questions unanswered.

VII. DISCUSSION & ANALYSIS

Perhaps the central question of this paper is whether credit card rewards are an accession to wealth taxable under I.R.C. § 61(a), or a nontaxable purchase price discount. Answering this question calls for a close examination of the nature of credit card rewards and whether existing precedent truly supports their tax-exempt status.

A. Facts Matter: Substance Prevails Over Form

When it comes to rebates and rewards, times have changed. Modern American credit card rewards bear little resemblance to the vendor discounts of yesteryear. Whereas traditional discounts, such as those in the Pittsburgh Milk or Revenue Ruling 76-96 variety, comprised straightforward and contemporaneous purchase-related price adjustments, modern card-based rewards derive from consumer and merchant transactions intermediated by a complex and interwoven web of acquiring banks, issuing banks, and network providers. Whether such rewards qualify as purchase price discounts is a critical inquiry of this paper.

The practice of exempting purchase-derived credit card rewards from gross income has developed over the decades. The current tax exemption for credit card rewards is rooted in older, fact-based legal precedent that has been extended to cover today's very different transactions. A central lesson from this history is that the facts of a transaction, not just its form, determine whether something counts as income. In this context, modern rewards come from a portion of the intermediation fee charged by third-party payment platforms

The pivotal *Pittsburgh Milk* case determined that only the *net* price charged after all price allowances is recognizable as income.[340] With this holding, the court determined that the *gross price* charged was only a starting point and that the "realized amount must be based on the *actual price* or consideration for which the property was sold, and not on some greater price for which it possibly should have been, but was not, sold."[341] The court emphasized the importance of getting to the transaction's genuine economic substance as it "no more than the actual gross income can be subjected to income tax, in any event."[342] Accordingly, substance prevails over form as "after the true nature of a transaction has been revealed, if it is found that the book entries do not accurately reflect the income realized, then the tax must be computed with respect to the income, rather than with respect to such entries."[343]

Artfully crafting a transaction to conceal its true nature will prove ineffective under existing precedent, as bookkeeping form and accounting formalities succumb to the "true nature of a transaction."[344] In this endeavor, presentation serves a mere ministerial role as:

> "[b]ookkeeping entries do not produce either income or losses for the purposes of taxation. They are intended to record facts, and are evidential, but they do not create or destroy facts."[345]

As a result, and according to the almost century-old case of *Sitterding v. Commissioner*, bookkeeping and accounting practices create "nothing, and the question must be decided according to proven and established facts."[346] It follows that modern credit card rewards must genuinely constitute purchase price discounts to qualify for tax-exempt status under the discounted purchase price rule.

B. As Times Have Changed, So Have Rewards

The precedential chain exempting credit card rewards from taxation dates to very early cases drawn from very different circumstances. The price adjustments encountered in *Pittsburgh Milk* and Revenue Ruling 76-96 come from simpler times involving less complicated fact patterns. In these simpler times, it made sense to recognize the after-adjustment prices as the accurate measure of gross income to the merchant and cost to the customer, as these after-adjustment prices reflected the actual price of the transaction.

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340. *Pittsburgh Milk Co.*, 26 T.C. at 715.

341. *Id.*

342. *Id.* (citing Lela Sullenger v. Comm'r, 11 T. C. 1076 (T.C. 1948)).

343. *Pittsburgh Milk Co.*, 26 T.C. at 715 (citing *Doyle*., 247 U.S. at 187); *Nw. States Portland Cement Co.*,126 F.2d at 196.

344. *Pittsburgh Milk Co.*, 26 T.C. at 715 (1956).

345. *Nw. States Portland Cement Co.*, 126 F. 2d at 199.

346. Sitterding v. Comm'r, 80 F.2d 939, 941 (4th Cir., 1936).

Modern credit card rewards arise from fundamentally different conditions than traditional price adjustments. Given the significant differences in how each is structured, it's worth reconsidering whether the discounted purchase price rule still appropriately applies to credit card rebates.

C. The Nature of Modern Card Rewards

One of the foundational conclusions justifying the exemption of modern credit card rewards from taxable gross income is that they represent an indirect discount on purchase price. This view was committed to policy through *Private Letter Ruling 141607-09* where the IRS declared the indirect purchase price rule by providing that

> "[a] rebate received from the party to whom the buyer directly or *indirectly* paid the purchase price for an item is an adjustment to the purchase price paid for the item. It is not an accession to wealth and is not includible in the buyer's gross income."[347]

Given the indirect purchase price rule, one must remember *Pittsburgh Milk's* call to disregard formalities and look to "[t]he actual facts."[348] With this admonition in mind, this paper now conducts a comparative analysis of traditional purchase price discounts with modern credit card rewards.

1. Nature, Character, and Source of Modern Card Rewards

Traditional discounts apply to a single transaction and specific products or services chosen by the merchant. Modern rewards extend across nearly all purchases and vendors, reflecting transactions that occur over time rather than at one point of sale. Traditional discounts originate from merchant pricing and marketing strategies, while credit card rewards depend on decisions made by issuing banks. Because rewards are administered by third parties, merchants have no control over their terms, use, or forfeiture. Traditional discounts reduce prices, but modern reward systems often increase them by incorporating costs into swipe fees.

Timing also differs. Discounts are applied at the sale, whereas credit card rewards accumulate over time and are recorded by the issuing bank. Rewards can be redeemed later, often months or years afterward, which increases flexibility but creates potential for forfeiture.

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347. I.R.S. Priv. Ltr. Rul. 141607-09 (Jul. 9, 2010) (emphasis added); *see also* Rev. Rul. 76-96, 1976-1 C.B. 23, as modified by Rev. Rul. 2005-28, 2005-1 C.B. 997.

348. *Pittsburgh Milk Co.*, 26 T.C. at 715.

The source of value also diverges. Merchants fund traditional discounts through direct price reductions. Card issuers fund rewards from swipe-fee revenue. Modern programs expand redemption options such as cash back, travel, lodging, or charitable donations, yet the issuer retains control and may impose expiration or loss for noncompliance.

2. Modern Card Rewards Impose Externalities Beyond the Transaction

While modern credit card rewards derive from swipe fees imposed on merchants, they eventually impose externalities on others. Academic evidence has also shown that high credit card merchant fees increase prices economy-wide. According to Dr. Sujit Chakravorti, then of the Federal Reserve Bank of Chicago:

> [W]hen feasible, the payment network prefers rebates (negative per transaction fees) given to card users. Granting such rebates to card users boosts their demand for cards while simultaneously forcing merchants to absorb part of the corresponding rise in the merchant fee, because any resulting increase in the uniform good's price must apply equally to cash users. In this way, the network uses rebates to indirectly extract surplus from cash-paying customers in the form of higher prices.[349]

Accordingly, network providers pass on intermediation fees, through merchants, to consumers in the form of higher prices. Moreover, higher prices result in a cross-subsidy from cash users to credit card users because both types of payers end up paying a higher price.[350] This scheme perfectly reflects the essence of the Reverse Robin Hood Cross-Subsidy Hypothesis, and bears no relation to traditional vendor discounts, which involve and are based upon the free participation of two parties.

D. Hobson's Choice: Card Rewards Are Anything but Voluntary Merchant Discounts

Merchant opposition to high fees has been so powerful that it has led to what some call the "interchange wars" between merchants and payment networks.[351] Fierce merchant opposition to the modern credit card fee paradigm primarily results from a take-it-or-leave-it processing environment where merchants have little choice. As few competitive forces drive down Visa and Mastercard transaction fees, this lack of competition yields robust payment network profit margins while

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349. Sujit Chakravorti, *Externalities in Payment Card Networks: Theory and Evidence*, REV. OF NETWORK ECON., June 1, 2010, at 6-7(citation omitted).

350. Shy, *supra* note 3, at 20.

351. Baxter, *supra* note 142.

providing strong incentives for card issuers to protect the status quo.[352] With the notable exception of a few large merchants, such as Costco and Starbucks, merchants generally lack the bargaining power to negotiate with card issuers to reduce swipe fees. This problem is not merely one of economic leverage, but of how the payment system is structured.

Merchants do not pay fees directly to issuing banks, but to acquiring banks. Of the limited power merchants hold in the payment network, they can select the acquirer or merchant bank with which they wish to do business. In this regard, "the market for acquisition is competitive, in the sense that a large number of acquirers compete for merchants" based on merchant discount fees.[353] Nonetheless, this power is of little consolation, as acquirers have limited influence over payment network prices and outcomes. Merchants face barriers going further as:

> [I]nstead of negotiating a separate agreement with each issuer, each acquirer simply joins the relevant network and agrees to comply with the network rules for all transactions on that network. For example, the network rules specify the fees that the issuer will deduct from each transaction for all entities in the network when forwarding payment to the acquirer.[354]

Due to how this payment system is structured, the most significant percentage of swipe fees remains beyond the reach of acquirers and merchants. Additionally, as merchant discount fees represent but one small fraction of total swipe fees, this leads merchants to be hamstrung in reaching the bulk of swipe fees in any meaningful way, as

> "merchants cannot negotiate the interchange rate or the network rules . . . that insulate the interchange rate from market discipline. They can only negotiate on the merchant discount fee."[355]

Merchant negotiating power is limited to a small fraction of the total swipe fees, representing the merchant discount fee.[356] Furthermore, "while merchants will have an opportunity to negotiate lower merchant discount fees and seek out competing acquiring institutions who will offer more competitive fee levels, this negotiation cannot directly influence the interchange fee itself."[357] Moreover, even the bargaining power merchants hold is ineffective as "[m]ost merchants are too small to directly influence interchange levels, since

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352. Dylan Jeon, *Learn the truth about the Credit Card Competition Act*, NAT'L RETAIL FED'N. (Mar. 14, 2024), https://nrf.com/blog/learn-truth-about-credit-card-competition-act.

353. Mann, *supra* note 21, at 25; *see also* Arnier, *supra* note 24, at 629.

354. Mann, *supra* note 21, at 21.

355. *See* Levitin, *supra* note 62, at 1333.

356. *See* Merchant, *supra* note 154, at 339; *see also* Arnier, *supra* note 24, at 630; *see also* Levitin, *supra* note 62, at 1333.

357. Arnier, *supra* note 24, at 629.

the card networks set these fees unilaterally."[358] For this reason, competitive pressures on price are not allowed to take hold.

The office of Senator Dick Durbin has emphasized the critical importance of bringing competition back to the marketplace to produce a fair and efficient payment system for all. Said statement provides, in pertinent part:

> Visa and Mastercard have structured their networks to avoid competitive market pressures on their fees. Visa and Mastercard set the fee rates for all their cards so the banks that receive the fees don't have to compete on those rates, and when a consumer presents any Visa or Mastercard credit card, a merchant has to accept it no matter how high the fees get or else the merchant will lose access to all the cards issued by all the banks in the Visa and Mastercard networks. It's a take-it-or-leave-it system, and it is difficult for any merchant to stay in business without accepting cards from the Visa-Mastercard duopoly.[359]

For this reason, merchants truly face Hobson's Choice, where one appears to have a choice but does not.[360] As provided in the *Spectator* in the year 1712:

> I say, Mr. Hobson kept a stable of forty go cattle always ready and fit for travelling; but, when a man came for a horse, he was led into the stable where there was great choice; but he obliged him to take the horse which stood next to the stable door; so that every customer was alike well served according to his chance, and every horse ridden with the same justness; from whence it became a proverb when what ought to be your election was forced upon you, to say, "Hobson's Choice."[361]

Not only do merchants play a limited role in the process leading to credit card rewards, but they also face the false choice of either accepting the payment network's terms or failing to accept card payments and remaining in business.

As facts matter in assessing the true nature of a transaction and the tax consequences that flow from it, it is important to recognize that times have changed since *Pittsburgh Milk*, Revenue Ruling 76-97, and PLR 201111002. While traditional vendor-provided discounts are voluntary, merchant groups staunchly oppose the rapid and seemingly never-ending increases in swipe fees year after year. In response to this problem, many small business groups have openly called for reform. Modern swipe-fee derived transactions, and the rewards that derive

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358. *Id.* at 630.

359. Durbin, *supra* note 139, at ¶ 2.

360. Hezekiah Thrift, *The Spectator*, No. 509, Oct. 14, 1712.

361. *Id.*; *see generally* John MacArthur Maguire & Philip Zimet, *Hobson's Choice and Similar Practices vs Federal Taxation*, 48 HARV. L. REV. 1281, 1281 (1935).

from them, can only be called voluntary on behalf of the merchant if one considers actions done under duress voluntary.

In recent years, credit card swipe fees have grown steadily. Over time, these higher fees provided the resources necessary to fuel generous rewards. As a result, "credit card rewards programs are becoming increasingly generous with banks paying more cash back and getting rid of annual fees and expiration dates."[362] The high fees and rewards that come with modern cards arise without merchant consent or participation. Not only are merchants not required to approve the issuance of credit card rewards, but they also resent the decades-long steady march of higher swipe fees.

Merchant opposition to the modern swipe fee and card reward regime is for good reason, as Brad Close, President of the National Federation of Independent Business Inc. (NFIB), noted that "'swipe fees,' . . . have more than doubled since 2012." Rates continue to climb, as "[t]he average swipe fee rate for Visa and Mastercard-branded credit cards rose to 2.35% of the transaction amount," up from 2.26% in 2023 and 2.02% in 2010.[363] As a result of these increases, "[s]wipe fees are often merchants' second largest expense after labor and eventually get passed down to consumers."[364] Such a paradigm could hardly be called voluntary.

One small business owner lamented the damage of high swipe fees by noting his $50,000 annual card fee expense and that "[e]very year, 3% of all of our sales is washed away just to credit card processing."[365] To mitigate the impact of swipe fees, some organizations have begun to pass the fee on to consumers by imposing a surcharge for card usage. For such reasons, "[m]ore and more so, these fees are borne by the consumer, rather than the seller."[366] Even organizations as noble as the American Cancer Society have been forced to look to donors by requesting a 5.5% processing fee to help defray transaction fees, provide web support, strengthen cybersecurity, and more.[367] It is worth noting that the increase in credit card swipe fees coincides with the

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362. Samuel Weigley, *Credit Card Rewards Grow as Debit Rewards Dwindle*, INT'L BUS. TIMES NEWS, (Feb. 13, 2012), https://advance.lexis.com/api/document?collection=news&id=urn%3acontentItem%3a54YD-NKP1-JBF5-T47R-00000-00&context=1519360&identityprofileid=V3JXB460653.

363. NACS, *Swipe Fees Hit Record High in 2024* (Mar. 20, 2025) https://www.convenience.org/Media/Daily/2025/March/20/3-Swipe-Fees-Hit-Record-High-in-2024_Research.

364. Medora Lee, *Tariffs May Be an Inflation Worry but So Are Credit Card Processing Fees, Some Say*, USA TODAY (Dec. 9, 2024).

365. Kayla Steinberg & Vicky Nguyen, *The Fight Over Credit Card Swipe Fees Enters a New Year With No End in Sight*, NBC NEWS (Jan. 4, 2025), https://www.nbcnews.com/business/business-news/fight-credit-card-swipe-fees-enters-new-year-no-end-sight-rcna184729.

366. Medora Lee, *Americans Relying Less on Cash, More on Credit Cards May Pay More Fees. Here's Why*, USA TODAY (Oct. 25, 2023), https://www.usatoday.com/story/money/personalfinance/2023/10/25/cash-credit-card-fee/71246025007/.

367. *Id.*

contemporaneous decline in debit card fees. While credit card swipe fees increased in recent years, debit card fees declined primarily due to the Durbin Amendment-imposed fee caps.[368]

The Durbin Amendment worked.[369] After its passage, debit card fees dropped by approximately thirty percent[370] and now averages less than three-quarters of one percent.[371] The success of this measure in reducing debit card fees serves as a reminder that dedicated legislative efforts to lower fees can be effective.[372] While high debit card fees have decreased, credit card fees have not. The stickiness of swipe fees in the credit card space may make some wonder how such a situation can persist in what should be an open market. Some studies have suggested that this persistence may be a characteristic of a two-sided market, where consumer adoption of credit cards is reward-sensitive, while merchant card acceptance is fee-insensitive.[373] This dichotomy may play a role, as consumers are ten times more price-sensitive when adopting cards than merchants are when accepting payments.[374]

Another factor in the stubbornness of high swipe fees is that merchants have no choice of which payment network to use. Under the existing payment regime, merchants, when presented with a card for payment, must either refuse to process the card or accept and process the transaction over the network provided, regardless of the swipe fee imposed.[375] These fees elevate merchant expenses,[376] which may eventually be passed on to customers through higher prices. If one should take anything away from this system, it can hardly be compared favorably to traditional purchase price discounts.

High swipe fees also impact prices and the cost of doing business. In this regard, scholars from the Federal Reserve Bank of Boston determined that "[t]he merchant cost pass-through results in a retail price increase of 1.42 percent for U.S. consumers . . . ."[377] Merchant groups contend that such prices "are far too high to absorb, especially for small merchants, and drive up consumer prices by nearly $1,200 a

368. 12 U.S.C. § 253.3(b).

369. *See generally* David S. Evans, et al., *The Impact of the U.S. Debit Card Interchange Fee Caps on Consumer Welfare: An Event Study Analysis* (Univ. of Chi. Coase-Sandor Inst. for Law & Econ., Working Paper No. 658, 2013), https://ssrn.com/abstract=2342593.

370. *See* Mukharlyamov & Sarin, *supra* note 228, at 2.

371. *See generally* Wang, *supra* note 62, at 34.

372. *See generally* Ronald Bird, *The Durbin Amendment: A Short Regulatory History*, CATO INST. (Spring 2024).

373. Wang, *supra* note 62, at 1, 3.

374. *See generally* Wang, *supra* note 62, at 3.

375. *See generally id.* at 1-2.

376. *See generally* Mark Armstrong, *Competition in Two-Sided Markets*, 37 THE RAND J. OF ECON. 688, 668–691 (Sept. 2006).

377. Felt et al., *supra* note 179, at 16-17.

year for the average family."[378] From a legislative perspective, Congress should weigh the economic benefits of reward programs, like boosting transaction activity, against their associated costs.

It follows that the interaction of reward-sensitive consumers, fee-insensitive merchants, and the absence of a merchant choice of processing network enables the high interchange fees necessary to fund lavish rewards programs. As interchange fees are tied to credit card purchases, credit card issuers hold an inherent interest in driving up credit card transactions. Higher credit limits result in higher purchases, which in turn lead to higher interchange fees.[379] From an economic optimality perspective, this can lead to inefficient overuse of credit cards compared to other payment methods.[380] As consumers tend to overestimate their ability to repay borrowed funds and underestimate future expenses, overuse of cards can lead to overborrowing.[381] Overborrowing on credit cards can increase the ratio of consumer debt to disposable income and the likelihood of bankruptcy.[382] This is a picture of a system designed primarily to benefit credit card companies, rather than consumers or merchants.

Merchants face a Hobson's Choice; declining card payments would impose unsustainable financial costs, so modern credit card rewards shouldn't be seen as voluntary discounts. Rather, they reflect a portion of the intermediary fees imposed by payment networks.

E. Absurdity of Anikeev Dismantles Credibility of Discounted Purchase Price Rule

The discounted purchase price rule was applied to the facts in *Pittsburgh Milk* and Revenue Ruling 76-96 with care and clarity. In each of these seminal cases, merchants provided straightforward price adjustments or rebates to customers to incentivize the purchase of a specific item of inventory. Consequently, it was reasonable to determine that the downward price adjustments were genuine purchase price discounts, not taxable income to the buyer.

The facts of the *Anikeev* case are entirely different. In *Anikeev*, enterprising taxpayers devised a credit card scheme to utilize the

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378. *NACS Continues to Fight for Credit Card Competition Act*, NAT'L ASS'N OF CONVENIENCE STORES (June 12, 2025), https://www.convenience.org/Media/Daily/2025/June/12/2-NACS-Continues-to-Fight-for-CCCA_GR.

379. *See generally* Matcham, *supra* note 220, at 1–2, 4.

380. Edelman & Wright, supra note 144, at 1291.

381. *See, e.g.,* Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373, 1373 (2004).

382. *See* TERESA A. SULLIVAN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 129 (Yale Univ. Press, 2020); Joanna Stavins, *Credit Card Borrowing, Delinquency, and Personal Bankruptcy*, NEW ENG. ECON. REV., 15 (2000) (higher unpaid balances leads to higher probability of being behind on payments, which may lead to bankruptcy); Lawrence M. Ausubel, *Credit Card Defaults, Credit Card Profits, and Bankruptcy*, 71 AM. BANKR. L. J., 249, 257 (1997) (credit card delinquencies and bankruptcies can move in tandem).

American Express Blue Card, generating and profiting from massive rewards.[383] At the time, the Blue Card offered an extremely generous cash back program, including 1% cash back on purchases up to $6,500 per year, and 5% back thereafter.[384] Sensing an opportunity, the Anikeevs devised a scheme to profit from the Blue Card's generosity. Through their strategy, the taxpayers would first generate rewards by purchasing gift cards, debit cards, and money orders. After purchasing said items, the taxpayers used these resources to pay off card balances. Within a completed transaction loop, the taxpayers would then keep the difference as boot.

Following their plan, the taxpayers charged approximately $1.2 million in 2013 and $5.2 million in 2014, generating sizable rewards to match. In 2013, for instance, the Anikeevs generated $36,000 in statement credit due to their efforts. For the year 2014, this number grew to $277,000. Not viewing these rewards as taxable income, they did not report them on their tax return for either year. The IRS then issued notices of deficiency for $9,928 for 2013 and $93,845 for 2014, which eventually led to the case being heard in the United States Tax Court.

In adjudication of this dispute, the Tax Court's central point of inquiry was whether the various items purchase (gift cards, cash infusions into refillable debit cards, and money orders) constituted the *purchase* of goods or services under existing law. After undertaking this review, the Tax Court held that the *gift card* transactions constituted the purchase of a product or service from which a discount could be taken as gift cards "provide a consumer service embodied in a simple plastic card for convenience."[385] As a consequence, not only did gift card purchases qualify for the discounted purchase price rule, but rewards associated with them were non-taxable.[386] The taxpayers did not stop there. They also used their Blue Card to fund cash infusions into debit cards and money orders. Unlike gift card purchases, these transactions were not held to constitute the purchase of a legitimate product or service. In this regard, the Tax Court continued that:

> "the money orders purchased with the American Express cards and the infusion of cash into the reloadable debit cards are difficult to reconcile with the IRS credit card reward policy. No product or service is obtained in these uses of the American Express cards other than cash transfers."[387]

For this reason, such expenditures were "not product purchases," but mere cash transfers ineligible to qualify for the discounted purchase

383. *See generally Anikeev* 121 T.C.M. (CCH) 1163, at 8–10.
384. *Id.* at 4.
385. *Id.* at 21.
386. *See id.* at 20.
387. *Id.* at 21.

price rule.[388] As a result, gift-card purchases were considered nontaxable, while debit-card and money orders were not.

The Tax Court's generous interpretation of the indirect purchase price discount rule allowed the taxpayers to retain hundreds of thousands of tax-free dollars. Reflexively, the Tax Court applied the indirect purchase price discount rule to exempt hundreds of thousands of dollars from taxation. Nonetheless, no evidence of any merchant action to provide an actual discount on the purchase price to the buyer (the Anikeevs) is visible anywhere in the case.

The substantial rewards received by the taxpayers originated from American Express, which funded them through interchange fees on each transaction. These rewards acted as incentives to use the card, simple as that. Nonetheless, the Tax Court mechanically applied the indirect discounted purchase price rule by holding that "a taxpayer who avails himself or herself of a discount in acquiring goods and services has no accession to wealth."[389]

When one examines the facts, as ordered by the express direction of *Pittsburgh Milk*, we quickly see that squeezing credit card rewards into the discounted purchase price box is a long stretch at best. While the *Anikeev* taxpayers generated rewards of $36,000 in statement credits in 2013 and $277,000 in 2014, they received no physical product, and the only service provided was to complete a reward-generating cycle of transactions. At no point did any merchant agree to provide a discount on the purchase price, aside from the merchant's initial agreement to participate in the payment network. Critically, while vendor-driven discounts decrease prices, any swipe fees imposed on Anikeevs increased actual prices. In short, modern credit card rewards are not merchant-provided discounts as portrayed by *Pittsburgh Milk* or Revenue Ruling 76-96. They are shared intermediation fees.

Modern credit card rewards differ significantly from traditional merchant-provided discounts. Traditional discounts typically involved only two parties, whereas contemporary credit card reward transactions involve multiple parties. The financing of this system depends on charging swipe fees sufficient to compensate the acquiring bank, the issuing bank, the network provider, and the rewards-card user, at the expense of others. Credit card issuers set these fees; merchants do not.[390] The only choice merchants have is to either accept credit cards and the sales that come with them or refuse, which means losing all the associated sales. [391] For this reason, American small businesses face Hobson's Choice and the harsh reality that to stay alive, they must accept cards and the supracompetitive swipe fees that come

388. *Id.*
389. *Id.* at 13.
390. *See generally* Shy, *supra* note 3, at 1.
391. *See generally* Greene, *supra* note 8.

with them. As cash loses its position as the dominant form of payment, economic pressure to participate in this system becomes nearly compulsory.

The case of *Anikeev* poignantly illustrates the absurdity of applying precedent thoughtlessly to modern credit card reward transactions without considering the nature of the transaction and the specific facts at hand. While the precedential chain leading to the indirect discounted purchase price rule involved actual merchants issuing actual discounts on actual sales to actual customers at actual and identifiable points in time, modern credit card rewards, such as those issued in *Anikeev*, do not. Therefore, applying the discounted purchase price rule to rewards from indirect transactions, like those issued by third-party payment networks, is misguided and unwarranted.

F. Rewards Are Better Viewed as Taxable Intermediation Fee Kickbacks

If modern credit card rewards are not purchase price discounts, it becomes essential to understand what they truly are. Modern rewards derive from swipe fees. Unfortunately, the Visa-Mastercard duopoly has exercised its substantial market power to produce some of the highest interchange fees in the world. High swipe fees also "distort competitive markets by steering consumers toward using more costly and less efficient payment methods and generate significant increases in costs due to rent-seeking behavior."[392] Accordingly, supra-competitive fees result in a utility-destroying economic imbalance, leading to the payment of a form of economic rent by the duopoly at the expense of merchants and consumers.[393]

Payment network providers encourage the survival of this profitable system by encouraging consumers to spend more. For this reason, card issuers exert their own self-interest as "[p]erversely, they use a portion of this cash flow to reward consumers, reinforcing the behavior."[394] Issuers have created economic incentives that effectively maintain the status quo and deter efforts to decrease fees and prices by sharing a substantial portion of interchange fees with consumers. While credit card customers would prefer lower prices, individual consumers often fail to internalize the impact of using credit cards.[395] While most credit card-using consumers are unaware of the positive relationship

392. Alan S. Frankel & Allan L. Shampine, *The Econ. Effects of Interchange Fees*, 73 ANTITRUST L. J. 627, 672 (2006).

393. Arnier, *supra* note 24, at 652.

394. *Id*. at 626.

395. Wang, *supra* note 62, at 2.

between credit card usage and higher retail prices,[396] the results are clear: consumers could help lower prices by reducing credit card use.[397]

While "[e]fficient competitive payment systems reduce transaction costs affecting a multitude of other markets, expanding output and reducing prices . . ." an inefficient payment system has the opposite effect. Such a system "can distort consumer and merchant choices and make markets in goods and services less efficient."[398] The existing payment regime prevents market equilibrium from taking hold, resulting in higher swipe fees and consumer costs as interchange fees "significantly and arbitrarily raise prices based not on technologically and competitively determined costs, but through a collective process."[399] Accordingly, the collective action of American payment networks decreases efficiency and increases costs across the economy.

Swipe fees used to finance modern credit card rewards activate a large-scale transfer of wealth as "[o]n average, each cash-using household pays $149 to card-using households, and each card-using household receives $1,133 from cash users every year."[400] As precedent admonishes that "[t]he actual facts, not bookkeeping entries, control the determination of taxable income,"[401] policy scholars, jurists, legislators, and others must reconcile with the hard facts. That "two-thirds of swipe fees charged to generate rewards. . . are returned to consumers who use rewards cards," helps clarify and define the true nature of the transaction as an intermediation fee kickback.[402]

Lavish credit card reward programs are propped up by a system that transfers wealth from the poor to the rich, and from those with low incomes and FICO scores to those with high incomes and high FICO scores. Leading economists have suggested that, on an annualized basis, this results in a redistribution of approximately $15.1 billion annually.[403] As provided by Hayashi (2012):

> [C]redit card rewards that are funded by interchange fees reduce the welfare of consumers who do not use the rewards-yielding credit cards. This is because the credit card interchange fees that fund the rewards have the effect of raising retail prices for all consumers. The rewards may be sufficient for those who receive them to offset their welfare losses from higher retail prices, but

396. *See generally* Edelman & Wright, *supra* note 144, at 1284.
397. *See generally* Wang, *supra* note 62, at 4.
398. Frankel & Shampine, *supra* note 392, at 627.
399. *Id* at 671.
400. Schuh et al., *supra* note 182, at 3.
401. *Pittsburgh Milk Co.*, 26 T.C. at 715, (*citing Doyle*, 247 U.S. at 179, 187); *Nw. States Portland Cement Co.*, 126 F. 2d at 199.
402. Klein & Schardin, *supra* note 167, at 1100.
403. Agarwal et al., *supra* note 172, at 3.

> they do not offset the welfare losses of consumers who use other payment methods and therefore do not receive the rewards.[404]

Based on these facts, leading economists have concluded that rewards are not price discounts, but rather a form of compensation provided to cardholders in exchange for their use of the card. Based on this viewpoint, it is notable that American tax policy has not caught up as:

> [T]he United States does not tax rewards that consumers receive for making credit card payments. However, the IRS allows merchants to deduct the fees that they pay for accepting card payments. Therefore, it seems that the IRS treats rewards on card payments as price discounts or rebates. This is puzzling because most merchants charge the same price to consumers who pay with cash and to those who pay with cards that offer rewards. *This may suggest that the rewards are not price discounts but are rewards for using credit cards.* Under this interpretation, card rewards could be taxed as any other income.[405]

The facts of *Anikeev* support this view. It is difficult to conceive that any rational merchant, under a traditional purchase price discount of the *Pittsburgh Milk* variety, would ever voluntarily provide a discount of hundreds of thousands of dollars for simple gift card transactions, without a sufficient profit delta to fund it. Regardless, engaging in such speculation is unnecessary as no such event ever happened.

A more accurate depiction of events as they occurred, and as they occur millions of times per day across America, is that the American Express company deliberately constructed and implemented an incentive-laden scheme to induce the *Anikeev* taxpayers to generate purchases and interchange fees. The card company returned a percentage of the spoils to the taxpayers as compensation. As a result, the actual source of the Anikeev rewards was not a discount but a shared portion of the intermediation fee. As such, such rewards should not be considered nontaxable purchase price discounts, but gross income of the taxable variety, absent Congressional intervention.[406]

To classify such rewards as a purchase price discount is, at best, a reflexive exercise in adhering to an outdated and poorly suited precedent. It also represents an attempt to shoehorn new facts into old rules and an unsupportable extension of the discounted purchase price rule to modern circumstances. Not only is the application of the discounted purchase price rule poorly suited to the facts of contemporary credit card transactions, but the greatest minds of

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404. *See* Hayashi, *supra* note 162, at 90–93, 107–09.

405. Shy, *supra* note 3, at 25 (emphasis added).

406. *See generally* Fry, *supra* note 4, at 121, 171–72; *see also* Davis, *supra* note 3, at 805, 809, 828–30.

economics deem them to be the shared spoils of an intermediation-fee-sharing joint venture between card issuer and card user. As under the command of I.R.C. § 61(a),[407] "except as otherwise provided . . ., gross income means all income from whatever source derived . . ." card rewards, unless otherwise exempted by Congress, should be considered taxable income in the United States. [408] By Benjamin Franklin's logic, rewards derive not from a penny saved but from a penny earned.

If credit card rewards are considered taxable, we must determine when and in what amount to recognize them as taxable income.[409] As provided by *Shankar*,[410] credit card rewards represent income when they constitute an undeniable addition to wealth, are clearly realized, and the taxpayer has full control.[411] According to *Shankar*, these three events occur when rewards are redeemed, not when they are accrued. Redemption as a prerequisite to income recognition makes sense in the reward space for many reasons, including that many card rewards are subject to potential forfeiture. Regarding the question of value, while parties may disagree or even litigate this issue, taxpayers should recognize the fair market value of the reward redeemed.[412] Summing things up, if rewards are determined to be taxable, taxpayers should realize income "in the tax year the redemption occurs,"[413] and "the amount the taxpayer must include in income is the FMV of the reward . . . ."[414]

G. Calls for Change

Uncertainty and doubt have plagued the American credit card reward tax policy space for far too long. Regulatory voids have led some to lament that the legislators or regulators have not done more. In particular, some have claimed that "[i]t is unfortunate that the proper treatment of these awards has not been codified by Congress or clarified by the IRS."[415] Others have gone even further by alleging neglect or indifference to this policy space by asserting that "[t]he IRS and Congress have not carried their weight in assisting the Tax Court in these cases due to continued reluctance to establish concrete enforcement for the taxation of consumer loyalty rewards."[416]

The judiciary has also voiced displeasure with the status quo. The Tax Court has noted that much of the reason for policy uncertainty

407. I.R.C. § 61(a).
408. *See generally Schleier*, 505 U.S. at 237–238; *see also Glenshaw Glass*, 348 U.S. at 431.
409. *See generally Shankar*, 143 T.C. at 141.
410. *Id*; *see supra* Section VI.C.6.a.
411. *See generally Glenshaw Glass*, 348 U.S. at 431.
412. Jones & Cleaveland, *supra* note 326, at 524.
413. *Id*.
414. *Id.*
415. Rose, *supra* note 308, at 511–12.
416. Davis, *supra* note 3, at 828.

stems from the IRS's inaction. In *Anikeev*, for instance, the Tax Court emphasized the many problems that derive from IRS inaction and indifference. It noted that, where the IRS was the Anikeev respondent:

> [T]his case rests squarely in the legal chasm between the basic principle to broadly define income and the respondent's own policy. Petitioners' aggressive efforts to generate Reward Dollars have created a dilemma for the respondent, which is largely the result of the vagueness of IRS credit card reward policy.[417]

The *Anikeev* Tax Court's frustration being freely evident, it pressed for action by proclaiming "[w]e hope that respondent polices the IRS policy in the future in regulations or public pronouncements rather than relying on piecemeal litigation."[418]

The Tax Court's admonition must be taken seriously. The existing body of precedent supporting the exemption of credit card rewards from taxation rests on a tangled web of judicial decisions, IRS announcements, regulations, statutes, private letter rulings, revenue rulings, and piecemeal litigation. Due to the increasingly shaky foundation of existing precedent, the indirect discounted purchase price rule is ripe for being challenged and potentially overturned. For this reason, failure to heed the Tax Court's warning could be hazardous. If a claimant with proper standing gets before the correct appellate court, the entire industry could be disrupted, throwing the payments market and its stakeholders into disarray. Not only is this unnecessary, but taking action to avoid this possibility is quite possible, as "there is nothing stopping the IRS from following it up with a useful interpretation of the rules."[419] For the foregoing reasons, failure to legislate or regulate would be an act of extreme negligence. Accordingly, in line with the unmistakable sentiment of courts and scholars, it is the right time to bring legislative and regulatory clarity to an under-regulated, disjointed, and lawless space. Accordingly, there is time to act, and that time is now.

VIII. CONCLUSION

The nature of what constitutes income has been debated for centuries.[420] Logic, famously attributed to Ben Franklin, contends that a penny saved has much in common with a penny earned. While this may hold true for net worth evaluation, it does not apply to the assessment of taxable income.[421] A penny saved, for example, has already been earned, is already owned, and has potentially already been taxed. A

417. *Anikeev* 121 T.C.M. (CCH) 1163, at 13.
418. *Id*. at 22.
419. Rose, *supra* note 308, at 512.
420. *See generally Anikeev* 121 T.C.M. (CCH) 1163.
421. *See, e.g.,* I.R.C.§ 61(a).

penny earned, on the other hand, represents the acquisition of potentially taxable new wealth. By this rationale, a penny saved on an outgoing expenditure does not constitute an accretion to wealth taxable under I.R.C. § 61(a), while a penny earned does.[422] For this reason, whether modern credit card rewards should be taxable turns on the richly factual question of whether card rewards are a penny saved or a penny earned.

As this paper's central examination is whether, absent Congressional action, modern credit card rewards should be taxable in the United States, it is helpful to reexamine the guidance of the seminal case of *Pittsburgh Milk*, and its progeny's warning that facts matter in assessing the true nature of a transaction.[423] In assessing income, the Tax Court in *Pittsburgh Milk* proclaimed that the "realized amount must be based on the *actual price* or consideration for which the property was sold, and not on some greater price for which it possibly should have been, but was not, sold."[424] The Tax Court emphasized that assessing the actual economic substance of the transaction was mandatory and that "no more than the actual gross income" can be taxed[425] as form must succumb to substance.[426] In this regard, the court stressed that "after the true nature of a transaction has been revealed, if it is found that the book entries do not accurately reflect the income realized, then the tax must be computed with respect to the income, rather than with respect to such entries."[427]

Pittsburgh Milk was not alone. In assessing a question of expense deductibility in *Doyle v. Mitchell Bros.,* the United States Supreme Court determined that a "decision must rest upon the actual facts."[428] Furthermore, according to the almost century-old case of *Sitterding v. Comm'r*, bookkeeping and accounting practices "are no more than evidential and the decision must rest upon the actual facts . . . ."[429] State courts have also chimed in, with the Supreme Court of Utah emphasizing that methods of recording a transaction do not govern, and that decisions must "rest upon the actual facts."[430] Finally, "[t]he substance of a transaction must be determined from the facts surrounding the transactions rather than from bookkeeping entries."[431]

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422. *Id.*

423. *Pittsburgh Milk Co.*, 26 T.C. at 714.

424. *Id.* at 715.

425. *Pittsburgh Milk Co.*, 26 T.C. at 714 (citing *Sullenger*, 11 T. C. at (1076).

426. *Id.*

427. *Pittsburgh Milk Co. v. Comm'r*, 26 T.C. 707, 714 (1956) (citing *Doyle,* 247 U.S. 179, 187; *Nw. States Portland Cement*, 126 F.2d at 196).

428. *Doyle*, 247 U.S. at 187.

429. *Sitterding*, 80 F.2d at 940–41.

430. *Harper Invs., Inc. v. Auditing Div., Utah State Tax Comm'n*, 868 P.2d 813, 816 (Utah 1994).

431. *Wood v. Comm'r*, 93 T.C. 114, 120 (1989) (citing *S. Pac. Transp. Co. v. Comm'r*, 75 T.C. 497, 832-33 (1980); *Comtel Corp. v. Comm'r*, 45 T.C. 294, 304-05 (1965), *aff'd.* 376 F.2d 791 (2d Cir. 1967)).

Modern credit card rewards differ in their essence from traditional downward price adjustments and bear little resemblance to the intent of traditional discounts, such as those offered by *Pittsburgh Milk* or Revenue Ruling 76-96. Not only do modern credit card rewards differ in how they are generated, but they also differ in their external impacts. For example, while traditional discounts decrease prices, modern credit card rewards increase them. In fact, swipe fees necessary to fund modern credit card rewards have increased prices by 1.4% economy-wide in recent years.[432]

The role of merchants in modern credit card rewards is also entirely unlike that of traditional discounts. While merchants voluntarily provide purchase price discounts, merchants have no say in how modern rewards are earned or applied. Merchants also face Hobson's Choice as they must either accept the terms of the payment network under pressure or face catastrophic losses in customers and sales. Accordingly, merchants have no real choice but to begrudgingly accept onerous payment terms and pass on the costs to customers through higher prices.

Leading economists have also concluded that the Reverse Robin Hood Cross Subsidy Effect is real. Credit card reward programs place in motion events that raise prices and "indirectly extract surplus from cash-paying customers."[433] These programs survive by siphoning off a portion from ever-increasing swipe fees, raising prices for all, and eventually creating "a cross-subsidy from cash users to credit card users because both types of payers end up paying a higher price."[434] These higher prices benefit some at the expense of all, ultimately transferring wealth from the poor to the rich. As a result, economists have described classifying rewards as nontaxable purchase price discounts as "puzzling, because most merchants charge the same price to consumers who pay with cash and to those who pay with cards that pay rewards."[435]

Modern reward programs also create economic inefficiencies as they steer "consumers toward using more costly and less efficient payment methods, and generate significant increases in costs due to rent-seeking behavior."[436] These higher costs come with consequences as "rewards may be sufficient, for those who receive them, to offset their welfare losses from higher retail prices, but they do not offset the welfare losses of consumers who use other payment methods and

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432. Mike Davies, *Visa and Mastercard Duopoly: Time to Go?*, DISRUPTION BANKING (Mar. 9, 2023), https://www.disruptionbanking.com/2023/03/09/visa-and-Mastercard-duopoly-time-to-go/.

433. Sujit Chakravorti, *Externalities in Payment Card Networks: Theory and Evidence*, 9 REV. NETWORK ECON. 1, 6-7 (2010).

434. Shy, *supra* note 3, at 26.

435. Shy, *supra* note 3, at 25.

436. Frankel & Shampine, *supra* note 392.

therefore do not receive the rewards."[437] For this reason, rewards benefit cardholders at the direct expense of others, generating swipe fees for card issuers. Accordingly, "*rewards are not price discounts but are rewards for using credit cards.*" [438] For this reason, "card rewards could be taxed as any other income."[439]

Considering new developments, new challenges, and a growing body of economic evidence, exempting modern credit card rewards from taxation is no longer supportable under American tax law. An overwhelming body of evidence now unequivocally demonstrates that modern rebates are not purchase price discounts, but shared spoils of an intermediation fee. Against the backdrop of the Durbin-Marshall Bill, it is time for Congress to adopt legislative reform in the credit card reward tax policy space. While some scholars argue that credit card rewards should be taxed as a matter of public policy,[440] this paper takes no position on the matter. While academics and scholars may debate policy matters, they are decided by legislators. Congress must weigh the negative impacts of credit card rewards, such as excessive credit card use, increased bankruptcies, and higher prices, against the fact that millions of Americans enjoy rewards-based credit cards.

Congress must act to clarify the tax treatment of credit card rewards before courts do. The discounted purchase price rule is outdated and vulnerable to challenge, and judicial reversal could disrupt issuers, merchants, and consumers alike. Legislative action now would prevent uncertainty and ensure consistent, equitable tax policy.

437. Hayashi, *supra* note 162, at 115.
438. Shy, *supra* note 3, at 25 (emphasis added).
439. *Id.*
440. *See generally* Fry, *supra* note 4; Shy, *supra* note 3, at 26; Davis, *supra* note 3.