

2007

Legislative Policy Statements



**FLORIDA GOVERNMENT FINANCE OFFICERS
ASSOCIATION**

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2007 Legislative Policy Statements

The Florida Government Finance Officers Association (FGFOA) is pleased to present its Legislative Policy Statements for the 2007 Legislative Session. One of FGFOA's roles is to educate interested parties on issues of interest to local governments, which will improve local government's service delivery to the public. The enclosed recommendations, covering a variety of concerns, are prepared as a guide to assist the organization in having a unified effort to get legislation passed on these important issues.

These Legislative Policy Statements were developed by the 2007 Legislative Committee, which represents a variety of local governments including counties, municipalities and special districts. These Committee members are all finance professionals who strive to efficiently manage and operate local government.

We sincerely appreciate the opportunity to outline the FGFOA's positions. If you have any questions about the issues, please call Jeannie Garner, FGFOA Executive Director, at (850) 222-9684.

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2007 FGFOA POLICY STATEMENTS

TARGET ITEMS:

Property Tax Reform.....	3-4
Expanded Revenue Sources	5-6
Communications Services Tax.....	7-8
Public Records	9

OTHER ITEMS:

Bed Tax on Internet Sales of Lodging.....	10
Article V	11
Indexing Motor Fuel Rates	12
Unfunded Public Safety Employee Pension Benefits.....	13
Premium Taxes to Fund Police and Firefighter Pension Benefits	14
Local Government Authority To Establish Procedures for Issuing Bonds For Transportation Capital Projects	15
Credit Card Fees and Surcharges	16-17

PROPERTY TAX REFORM

Issue

In 1992, Florida voters approved an amendment to the Florida Constitution, popularly known as “Save Our Homes,” which limits the increase in assessed value for properties receiving the Homestead Exemption to no more than three percent or the increase in the consumer price index (CPI), whichever is less. The unintended consequences of this law after the passage of time and escalation of property values are that the property tax burden has shifted to non-homestead properties and created significant disparities in the taxes levied on similarly valued properties.

Analysis

Save Our Homes provides a significant tax break for homeowners with a homestead. This property valuation protection does not apply to any property that is not a homestead, so commercial and industrial properties do not benefit from this law. Non-homestead residential properties also do not benefit from this law. The benefit for homestead residences only applies until the home is sold, then the home is revalued for tax purposes at its higher market value.

The longer homeowners reside in their home, the less likely they are to pay a proportionate share for public services. Due to increasing costs for the impacts of growth, mandates, fuel, construction materials, and insurance, as well as a tight labor market that is driving up salaries, the overall annual cost of providing public services has increasingly exceeded three percent. As a result, the burden to pay for public services has shifted toward non-homestead and commercial type properties.

This tax shifting and re-valuing at the time of home sale has contributed to the housing affordability crisis in Florida. Homeowners enjoying the benefit of Save Our Homes face sticker shock when trying to purchase a new home because they have been insulated from the full effect of increased property valuations. Young people can’t afford to buy homes because the taxes are so high. The effect of Save Our Homes is that the shielded value of market increases has been excluded from the tax rolls so the remaining property values subject to tax pay at a higher tax rate than would be the case without Save Our Homes.

Additionally, because of Save Our Homes, there are unequal and very disproportionate taxes paid for similar properties in the same jurisdiction and often in the same neighborhood. This results when one homeowner has occupied the dwelling for a number of years and enjoys an artificially low taxable value while an identical property with a new homeowner pays taxes based on a more current market value. This is a fundamental inequity and violates the concept of fairness in application of taxes. Similarly situated homes pay very different amounts of taxes for the same level of service.

The Governor and Legislature recognize the property tax crisis and wisely decided this issue needed more study. The Legislature, through HB 7109 (Ch. 2006-311, Laws of Florida), directed the Department of Revenue and the Office of Economic and Demographic Research to study the impact on local property taxes of current homestead tax exemptions and assessment limitations. Reports will be due in January 2007, February 2007, and September 2007 for consideration by the Tax and Budget Reform Commission. In addition, the Governor created the Property Tax Reform Taxation Committee to study the issue and provide recommendations by December 1, 2007, for consideration by the 2008 Legislature.

Property Tax Reform (continued)...

There are no simple solutions to the problems and inequities inherent in the current property tax structure. These issues require thorough and unbiased study to ensure that the solution provides a fair and equitable application of property taxes to all property owners.

Last year there were several tax reform proposals advanced that would have varying degrees of impact. None of these would have satisfactorily addressed the property tax inequity issue and would impose further restrictions on local governments' ability to manage local finances. Local governments are closest to the people, and the ability to raise property tax revenues should be left in their hands to determine how to finance local issues.

Recommendation

During the 2007 Legislative Session, it is recommended that the Legislature hold in abeyance any action regarding property tax reform. The FGFOA recommends that the issue of equitability in property taxation and all related matters be addressed by the Legislature after careful consideration of all information from the studies directed by the Legislature, the Governor's Property Tax Reform Committee, the Taxation and Budget Reform Commission, State Agencies, local governments, and the citizenry of Florida. The FGFOA supports a program of property tax equity so that all properties pay a fair share of the tax burden with no undue shifting of taxes to different classes of property owners.

EXPANDED REVENUE SOURCES

Issue

Costs such as insurance, fuel, construction materials, and housing have significantly increased. Local governments also must contend with these escalating costs. Local governments need expanded revenue sources to meet their citizens' needs.

Analysis

Several revenue sources can be utilized by local governments to generate revenues to address their communities' needs for operations and capital construction without putting more pressure on property taxes. Governments are sensitive to the property tax crisis faced by property owners and should be afforded the opportunity to utilize alternative or expanded revenue sources to fit the community's needs. The following revenue sources should be authorized for use by local governments.

Natural Gas Tax Revision - With the deregulation of the natural gas industry, municipalities and charter counties are experiencing a loss of utility taxes from natural gas sales. Large users of natural gas are able to purchase directly from the wellhead at out-of-state locations. Because title to the natural gas passes to the purchaser at this point, the sale is deemed to take place out-of-state, not in local municipalities. Consequently, no utility tax is paid in the jurisdiction where consumption actually takes place.

The method of taxation should be changed to allow the tax to be levied in the jurisdiction where it is consumed, in the same manner as most goods and services. This could be accomplished with a tax assessed at the point of delivery for consumption. The rate could be set initially to raise no more or no less revenue than a like sale under the current method. If the rate is set correctly, no increase in tax will be assessed on the industry.

Sales Tax on Internet Transactions - The Supreme Court ruled that states cannot require vendors to collect and remit taxes on purchases made in states in which the vendors do not have a physical presence, or nexus. The basis for these decisions is that requiring businesses to collect taxes on such purchases would impose an undue burden because of the complexity of and variations in state and local government sales tax rates and structures. To overcome this sticking point, a group of public and private entities formed the Streamlined Sales Tax Project, or SSTP, in March 2000 with the goal of simplifying state and local tax systems. As a result of the SSTP, a Streamlined Sales and Use Tax Agreement was developed and adopted by a number of states.

The National Governors' Association estimates that within the next 10 years, the amount of retail goods sold over the Internet will exceed \$1 trillion annually. That represents billions of dollars in lost sales tax revenue to state and local governments nationally. The Florida Legislature should adopt the Streamlined Sales and Use Tax Agreement, Once a state becomes a full member participant, retailers in that state may voluntarily use the system to collect and remit remote sales taxes.

Expanded Revenue Sources (continued)...

Surtax on Documents – The governing body in each county, as defined in s. 125.011(1), F.S., is authorized to levy a discretionary surtax on deeds and other instruments relating to real or personal property. Under this definition, only Miami-Dade County can levy this tax. The proceeds are deposited in a Housing Assistance Loan Trust Fund to assist in the financing and construction, rehabilitation, or purchase of housing for low and moderate income families. The funds are distributed to local governments to assist with affordable housing programs. The surtax rate shall not exceed 45 cents for each \$100 or fractional part thereof on deeds and other instruments relating to real property or interests in real property. The ability to levy this tax should be extended to all counties.

Repeal Public Service Tax Fuel Adjustment Charge Exemption--Section 166.231, F.S. authorizes the collection of a public services tax (utility tax) on electricity, but the fuel adjustment portion of the electric bill is exempt from this tax. Fuel adjustment charges were added to electric bills to separately identify the increased costs of fuel as a result of the oil embargo in the 1970's. The fuel adjustment charge has long since been assimilated into the economy, so there is no longer a need to provide this exemption. According to the 2006 Florida Tax Handbook, the value of the exemption is \$203.3 million in Fiscal Year 2006-07.

Recommendation

The Florida Legislature should enact legislation to:

- provide that the utility tax on natural gas be levied in the jurisdiction where it is consumed
- adopt the Streamlined Sales and Use Tax Agreement
- authorize all counties, not just Miami-Dade County, to levy a discretionary surtax on deeds and other instruments relating to real or personal property
- repeal the exemption from the public service tax for the fuel adjustment charge on electric bills

COMMUNICATIONS SERVICES TAX

Issue

The Communications Services Tax (CST) Simplification Law was enacted to simplify CST administration, assessment, collection and remittance for telecommunications, cable, direct-to-home satellite, and related services that existed prior to October 1, 2001. CST simplification benefits all major stakeholders, including dealers, taxpayers and local governments and provides a mechanism for the CST to follow migrating technology to new media to preserve the tax base; however, simplification procedures adopted by the Department of Revenue (DOR) have not ensured that the CST is being assessed fairly and there is increasing pressure to exclude new media such as Voice Over Internet Protocol (VOIP) from the CST, both of which may have affected revenues received by local governments. Continued technology change is reducing traditional communications services, which is eroding the tax base. Additionally, continued arbitrary exclusion of Internet access from the CST limits local government's ability to raise revenue and does not fairly apply the tax to all communication services.

Analysis

The definition of communications services encompasses voice, data, audio, video, cable services or any other information or signals that are transmitted by any medium. The simplified law replaced and consolidated seven different state and local taxes or fees with a single tax comprised of two components: a state CST and a local CST.¹

The CST is imposed on retail sales of communications services which originate and terminate in the state, or originate or terminate in the state and are billed to an address within the state. A county or municipality may, by ordinance, levy a local CST. Local CST rates vary depending on the local government. The maximum rate for municipalities and charter counties is 5.1 percent or 4.98 percent if the municipality or charter county levies permit fees. The maximum rate for non-charter counties is 1.6 percent. Maximum rates do not include add-ons of up to 0.12 percent for municipalities and charter counties or up to 0.24 percent for noncharter counties that have elected not to require and collect permit fees authorized pursuant to s. 337.401, F.S., nor do maximum rates supersede conversion rates or emergency rates authorized by s. 202.20, F.S.

In addition to the local CST, any local option sales tax that a county or school board has levied pursuant to s. 212.055, F.S., is imposed on communications services in the same manner as the local CST. The tax rate shall be determined by law and proceeds are distributed to local jurisdictions.

The DOR administers the statewide collection of both the State and local components of the CST. Tax proceeds are transferred to county and municipal governments, the Public Education Capital Outlay and Debt Service Trust Fund, and the State's General Revenue Fund. The DOR maintains a database that includes local taxing jurisdictions for all addresses in Florida. The DOR database contains county and municipal names based on information provided by local taxing jurisdictions and is updated once every six months. Dealers who collect the CST are not required to use the DOR database; however, Dealers must notify the DOR of the method

¹ 2006 Local Government Financial Information Handbook, Legislative Committee on Intergovernmental Relations, p. 111 (2006).

Communication Service Tax (Continued)...

employed to accurately assign addresses to the appropriate taxing jurisdiction. The DOR maintains a CST database that can be used by dealers to administer the CST, but dealers are not required to use the DOR database, nor are dealers required to identify discrepancies between the DOR database and the dealer's database.

Recommendation

The Legislature should address the erosion of the communications services tax base on which the CST is applied to preserve this important revenue source by including new communication technologies in the revenue base and by repealing the exclusion of Internet access from the revenue base. Further, the Legislature should require periodic audits to ensure that dealer databases are substantially accurate as compared to the DOR database.

PUBLIC RECORDS

Issue

Section 119.07(4) (d), F.S., exempts personal information about public safety officers, judges, code enforcement officers, and certain other personnel from being available to the general public. This is personal information that is not necessary for the provision of governmental services. This same exemption of personal information should be maintained for all public employees.

Analysis

The standard applicable to this public records exemption is to allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption. Except for considering an individual's candidacy and qualifications for employment, personal and familial information is not necessary to provide government services. The government services, recommendations, opinions or other considerations involving an employee fulfilling their responsibilities can be made available for public inspection without potentially interrupting their personal or familial life.

All Florida public employees have the right to expect protection from harassment stemming from workplace situations. All Florida public employees should have the same protection from intrusion by the public in their personal lives with regard to personal information that has no bearing on their job performance. Unfortunately, public employees are vulnerable to unscrupulous individuals who can access public records to harass employees.

Recommendation

The Legislature should amend s. 119.07(4) (d), F.S., to provide the same protection to all public employees' personnel records with regard to information that is personal in nature.

BED TAX ON INTERNET SALES OF LODGING

Issue

The Florida Statutes allow local governments to impose a bed tax on hotel and motel rooms. The law needs to be clarified to ensure that Internet providers of rooms remit the tax collected on amounts paid by patrons versus the flat fee amounts paid to get the rights to offer the rooms.

Analysis

The law is clear regarding the various hotel and motels offering their services directly to patrons for use of their facilities. The confusion comes however, when providers of rooms to patrons through the Internet pay the hotels and motels a flat rate for rooms purchased in a block and subsequently mark the price up when patrons actually pay for the room. The Internet-based providers may or may not be collecting taxes charged at the increased rate. The taxes are currently being submitted to the hotels and motels at the block rate so the differential between that rate and the actual rate to the consumer is untaxed.

Recommendation

The Legislature should amend current law on bed taxes clarifying that the taxable amount is the room rate paid by the patron for lodging; not the block rate paid by the Internet booking service.

ARTICLE V

Issue

The Legislature, as mandated by the voters in the State of Florida, enacted Article V legislation that was implemented in 2004. The Legislature also enacted a glitch bill to address some of the immediate issues and concerns which were raised as a result of the original bill.

Although the Legislature has made attempts to address some of the concerns expressed by local governments, several matters remain unresolved including the allocation methodology used in the distribution of fines and fees. Legislation should be enacted to provide the level of fines and fees to local governments enjoyed prior to the enactment of Article V.

Also, there are arbitrary limits on Clerk expenditures, and there are arbitrary requirements that require counties to spend progressively more money each year on court activities regardless of whether those activities will actually cost more money or not. The 2004 legislation also created duplicative reporting requirements that are not consistent with existing uniform financial reporting requirements to which the Clerks and counties adhere.

Concerns remain regarding the allocation methodology used in determining the expenditure cap and the return or distribution of surplus funds. Currently, the methodology for expenditure caps rewards counties with increasing revenues without recognizing the costs associated with collections and other functions regardless of the ability to increase revenues. Several fines and fees should be amended to provide specific ability for assessments and greater cost recovery.

Analysis

Even though the 2005 “glitch bill” addressed some of the problems that were inadvertently created by the 2004 Article V legislation, there are still numerous glitches that have yet to be addressed.

Additional review of fine and fee assessments, reporting requirements, and budgetary allocations is necessary to provide clear and concise direction to local governments.

Recommendation

The Legislature should enact follow-up legislation to the Article V “glitch” bill to resolve issues related to the collection and distribution of fines and fees and provide for a central repository to eliminate duplicate reporting requirements.

INDEXING MOTOR FUEL RATES

Issue

All municipal and county fuel taxes are established as a fixed amount per gallon. As the cost of providing transportation related services increases, the corresponding funding source—fuel taxes—remains flat. The shortfall in revenue growth has caused cities and counties to raise additional funding to meet their transportation infrastructure needs.

Analysis

The State of Florida imposes a total of 14.9 cents per gallon tax on motor fuel; this total consists of a two cents constitutional fuel tax, a one cent county fuel tax, a one cent municipal fuel tax, and a 10.9 cents state fuel sales tax. Only the state fuel sales tax (10.9 cents) is indexed to the CPI. As inflation grows so does the income from this tax. This helps road construction and maintenance budgets keep pace with inflationary cost increases.

In addition to the State taxes, Counties may levy an additional one cent to twelve cents of tax per gallon of motor fuel. Eleven of the twelve cents are required by law to be shared with municipalities via interlocal agreements or a default methodology. The 1st Local Option Fuel Tax – six “Original Cents”- is applicable to all motor and diesel fuels sold at wholesale in a county. The 2nd Local Option Fuel Tax – provides up to five additional cents on all motor fuel but exempts diesel fuel or “special fuels”. The “Ninth Cent Fuel Tax”, formerly the “voted gas tax”, may also be levied by counties. The revenues derived from the local option fuel taxes are used to fund transportation related expenditures such as the purchase of transportation facilities, road and street rights-of-way, construction, reconstruction, maintenance of roads and streets, and transportation-related public safety activities. Similar to the municipal, county, and constitutional fuel taxes, local option fuel taxes are not indexed to inflation.

Recommendation

The Legislature should provide for indexing all fuel taxes in the same manner as the 10.9 cent state fuel sales tax. The ability to index fuel tax rates to the CPI is needed to generate additional revenues to keep up with the increased costs of providing the transportation-related infrastructure and services for which the tax was originally levied.

UNFUNDED PUBLIC SAFETY EMPLOYEE PENSION BENEFITS

Issue

Each year, the Legislature considers bills to improve public safety retirement benefits and many times legislation is passed that increases the costs to local governments without providing a revenue source from which to pay these improved benefits.

Analysis

Local governments must conduct an actuarial study before any retirement plan changes are adopted; however, the State is not required to follow this requirement. The requirement to accurately calculate the cost of any benefit changes provides vital information regarding the true impact of changes, which should be considered before legislation is adopted.

Retirement plan changes are best determined through the collective bargaining process between local governments and the respective bargaining units. Local governments and their employees are better able to identify appropriate benefit levels based on specific local needs, which include making legitimate trade-offs between providing higher benefits and higher wages. Local governments should be provided flexibility to negotiate different levels of minimum benefits for each public safety bargaining unit to provide the best mix of benefits, based on the diverse needs of each local government and bargaining unit. Legislatively mandating additional benefits circumvents the collective bargaining process between local governments and public safety employees.

Recommendation

The Legislature should enact legislation which provides that any public safety benefit improvement be negotiated locally between the affected employees and the respective local government entity. Short of that, the Legislature should not take action on any bills improving public safety employees' pension benefits without first requiring an actuarial impact statement and identifying a revenue source from which local governments can pay the increased benefit. Additionally, the Legislature should repeal the minimum benefits requirements and allow local governments the flexibility to negotiate pension benefits with the public safety bargaining units.

PREMIUM TAXES TO FUND POLICE AND FIREFIGHTER PENSION BENEFITS

Issue

Taxes on insurance premiums are used to fund a small portion of police officer and firefighter pension benefits. Legislation approved in 1999 mandated that this revenue source may only be used to fund “extra benefits” that exceed the current level of benefits for that bargaining unit. This has limited the value of the premium tax revenues as a source to fund pension benefits and puts a greater burden on the citizens to fund mandated police and firefighter pension benefits.

Analysis

Before the 1999 law was approved, the premium taxes were levied for the purpose of funding a benefit level to police officers and firefighters at a higher level than general employees. This recognized the additional risk regularly faced in these high hazard occupations. After intense lobbying by police and fire unions, this long standing practice with regard to the definition of “extra benefits” was legislatively determined to mean benefits greater than the benefits currently being provided to police officers and firefighters, and the premium taxes were frozen at the same dollar level of tax revenue each year regardless of the escalating costs of the previously funded benefit. This means that benefit costs were rising, but that the funding source was not permitted to be used to cover the additional costs. The only way to release the “unfrozen” premium tax revenue is to provide an increased benefit. This creates an upward spiral of costs. Costs are not static, but increase as wages increase. Because local governments are not permitted to use the premium taxes to fund these increased costs for the same benefit, other local revenue sources must be found to provide for the pension benefits.

Recommendation

The Legislature should enact legislation authorizing the use of premium taxes to fund any police or fire pension benefit.

LOCAL GOVERNMENT AUTHORITY TO ESTABLISH PROCEDURES FOR ISSUING BONDS FOR TRANSPORTATION CAPITAL PROJECTS

Issue

Local governments are granted authority in the Florida Statutes to issue bonds to finance capital projects, however, the language in s. 336.025(1)(c), F.S. can be interpreted to limit the issuance of bonds to no more than once per year.

Analysis

Local governments issue bonds or other financing arrangements to fund capital projects with an expected life exceeding one year. Local governments manage the planning, procurement, and cash flow involved with the capital projects. The law as currently written is interpreted by some attorneys as limiting the frequency a local government can issue bonds supported by the Local Option Fuel Tax.

Recommendation

The Legislature should amend s. 336.025(1) (c) F.S. as shown below and authorize local governments to act in their own capacity to issue bonds supported by the Local Option Fuel Tax.

Proposed language: “Local governments may issue bonds for transportation capital projects, including construction or reconstruction of roads and sidewalks. Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through the provisions of this section and may pledge the revenues from local option fuel taxes to secure the payment of bonds. In no case may a jurisdiction issue bonds pursuant to this section using the services of the Division of Bond Finance of the State Board of Administration more frequently than once per year. Counties and municipalities may join together for the issuance of local option fuel tax bonds using the services of the Division of Bond Finance of the State Board of Administration.”

CREDIT CARD FEES AND SURCHARGES

Issue

The use of credit cards for payment of state and local government taxes, fines, and other charges is a convenient payment option for citizens and is a means of accelerating payment to these governments. Currently, major credit card companies do not allow state and local governments to collect usage fees for involuntary assessments paid by credit cards. Federal legislation is required to permit state and local governments to pass on surcharges and usage fees to cardholders. At the State level, legislation is needed to allow local governments to deduct surcharges and usage fees from the amount of taxes owed.

Analysis

To maximize revenues, state and local governments are continually looking for new ways to cut the cost of collecting and processing payments from citizens and to expedite deposit of these payments. In addition, many citizens are requesting the convenience and flexibility that the use of credit cards permits for payment of government-related expenses.

Many states have passed legislation authorizing the acceptance of credit cards for government payments. The most frequent uses are for fines, motor vehicle fees, recreation services, and parking fees. Some jurisdictions also accept credit cards for tax payments. A provision of the Taxpayer Relief Act of 1997 (P.L. 105-34) authorizes payment of federal income taxes by credit card, but prohibits the federal government from paying fees or surcharges.

Section 215.322(5), F.S., authorizes local governments in Florida to accept payments by credit cards and to surcharge the user an amount sufficient to pay the service fee charges of the credit card company. The major credit card companies prohibit such a practice. Also, local governments in Florida are not permitted to deduct credit card usage fees from the amount of taxes owed. Local governments should have the option of deducting credit card usage fees from taxes owed as a cost of collection.

As a matter of policy, the major credit card companies do not allow governments or businesses to pass on the usage fees (normally between 1.5 percent and 2 percent of the amount charged) imposed by credit card vendors to citizens and customers utilizing this payment option. State and local governments, however, are responsible for the collection of taxes, fines, forfeitures, and other involuntary assessments and, unlike businesses, are unable to adjust their "pricing" to cover the costs of collection. Florida law does not permit local governments to deduct such usage fees from the amount of taxes owed.

State and local governments have responded to these prohibitions on collecting surcharges in a number of ways. Some use outside vendors to process credit card transactions, and the credit card companies have generally not opposed passing on the fees in this case. Some continue to pass on surcharges until the credit card operators discover this and clamp down on the jurisdiction. Many use their compensating balances at the financial institution processing the transactions to pay for the fees. Other jurisdictions have simply ceased use of credit cards altogether.

Credit Card Fees and Surcharges (continued)...

The credit card companies have granted a number of exceptions (referred to as "unique transactions") from their general prohibition on collection of surcharges. Some of these have been granted on an ad hoc basis, but others are specifically enumerated. Among these exceptions are transactions at gambling casinos and truck stops. Payment of taxes has also been identified as a "unique transaction", but surcharges for this purpose have not been permitted. All that is required is that card users be notified in advance that the fee will be included in the total transaction amount.

State and local governments have questioned the criteria used in granting exceptions at these establishments while essentially denying users of governmental services the same opportunity. Since the option of payment by credit card is essentially a convenience to the government's customer and a user-specific fee, it is unfair to pass those costs on to other taxpayers.

Recommendation

The Legislature should support the enactment of federal legislation that will allow state and local governments to impose surcharges on credit cards. In addition, the Legislature should also enact laws that will permit local governments to deduct credit card usage fees from taxes owed.