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MEMORANDUM IN OPPOSITION

March 21, 2011

**S347 Diaz (ON SENATE INVESTIGATIONS & GOV'T OPERATIONS AGENDA)
A156 Kavanagh (Assembly Ways & Means Committee)**

An ACT to amend the tax law, in relation to requiring issuers of credit cards and debit cards to pay and collect sales and use taxes and pay such taxes to the commissioner of taxation and finance

This memorandum in opposition is written on behalf of our client, the New York Bankers Association. The Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 200,000 New Yorkers and hold more than \$9 trillion in assets.

The bill would require issuers of credit cards and debit cards to collect sales and use taxes on behalf of the State of New York and to pay those taxes directly to the Commissioner of Taxation and Finance. It would require processors also to pay sales and use taxes, but the definition of processor is sufficiently vague as to be indistinguishable from credit and debit card issuers. The bill also relieves vendors of any responsibility to collect and pay taxes on purchases made with a debit or credit card. This legislation would shift from the parties that have direct knowledge of the amount of sales taxes due on a particular transaction to third parties with no direct knowledge of the transaction the legal liability for payment of taxes due on the transaction. It would also require the complete rewriting of existing consumer credit and debit merchant agreements and burden both financial institutions and every merchant in the State with the operation of two, parallel sales and use tax payment systems.

This legislation is intended to achieve the laudable goal of improved compliance with the State's sales and use tax. The sponsor's memo asserts that "[a] major source of tax evasion occurs when vendors collect sales taxes from their customers, but fail to remit those taxes to the State...." This bill is intended to remedy failure by vendors to remit sales taxes by imposing on credit and debit card issuers the responsibility to do so. Apart from the unfairness of imposing on third parties responsibility for tax collection that properly belongs to the State of New York, this legislation creates no liability protections for banks, thrifts and other card issuers who would be forced to comply. Because issuers have no direct interaction with the customers in the sales transaction, they would not know the correct amount of sales tax to be charged. But this legislation would hold them liable for paying that amount, irrespective of whether vendors provide them with correct information. And, of course, since vendors are relieved by this legislation of any responsibility for paying the tax, they would have no incentive to provide correct information to issuers.

In addition, current payment systems are governed by a network of literally thousands of contracts between credit and debit card issuers and the merchants who accept credit and debit card transactions. These contracts define rights and responsibilities of parties. Under this proposal, card issuers would be required to completely redefine their agreements with merchants, seeking from merchants the cost of revamping their systems to comply with this legislation. It can be anticipated that

there will be considerable resistance on the part of merchants to paying for a new, parallel system of sales tax collection (since the merchants will still be responsible for collecting and paying sales tax on cash transactions).

In addition, as part of the federal Housing and Economic Recovery Act, signed into law last July, all banks and third party settlement organizations will have to report identifying information and the gross amount of reportable payment transactions (i.e., payment card and third party network transactions) to the Internal Revenue Service (IRS). Understanding the difficulty of establishing such a program, Congress made it applicable to returns for 2011 and thereafter. This provision will materially assist the State of New York, which can piggyback on this program as it does on other IRS data match programs, in collecting sales tax.

The responsibility for tax collection properly belongs to the Department of Taxation and Finance. The responsibility for collecting sales taxes properly belongs with the merchants who sell products that generate such taxes.

For these reasons, the New York Bankers Association **opposes** this legislation and urges that it be held.

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP