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## **Calif. outlaws charge-card fees on tips, but chain keeps court win**

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ANAHEIM, CALIF. -- Specialty Restaurants Corp. maintained for years that nothing in California's labor laws prohibited it from withholding a pro-rata share of credit-card processing fees on tips paid by plastic-wielding patrons.

Then last year the operator of 43 dinner houses in 14 states won a court battle with state regulators, who contended unsuccessfully that such fees could not be withheld from workers' tips at the 15 Specialty locations in California.

Specialty, however, has gone from winning that battle to losing the war as the legal ground it stood on shifted.

The state Legislature changed California's labor code effective Jan. 1, blocking Specialty Restaurants and other operators from recovering proportional charge-card processing fees from employees' tips. The change protects charged tips that could exceed \$1 billion a year, according to a rough estimate based on official foodservice sales tax reports.

"It upset us," Specialty Restaurant's in-house counsel, Ashley Baron, confessed while discussing the changed law resulting from the passage of Assembly Bill 2509. "We're going to go ahead and comply [with the new law] because we don't believe there are any grounds on which to challenge it."

Baron indicated that Specialty would continue to withhold proportional amounts of processing fees linked to credit-card tips in the other 13 states where the company operates. While declining to detail the amount of money his company recovers through that practice, the attorney said Specialty withheld about \$18,000 in a single year from servers at the three restaurants involved in the California court case.

Presuming that the company's restaurants all generate comparable annual sales and that the level of tipping and cost of credit-card processing is about equal in all markets, it is conceivable that Specialty Restaurants' past fee-recovery efforts had reduced its workers' tips by \$270,000 a year. That estimate also suggests that the company's loss from the change in California law might annually amount to nearly \$90,000 in that state.

"It adds up to thousands of dollars for us," Baron confirmed.

No indications have been observed that any large number of restaurateurs in California or elsewhere had embraced Specialty Restaurant's position on the withholding of processing fees on credit-card tips. That's not surprising given the potential public-relations and labor-relations problems that could be faced by a restaurant company that diverted even a small amount of money patrons had intended for their servers to receive in full.

Still, other operators were disappointed to hear of Specialty Restaurants' setback, the company said.

"I've been getting calls from several groups interested in the progress of our case; they felt strongly we were right," Baron explained. "I told them, 'Now you need to lobby [for change] in Sacramento.'"

Baron said Specialty Restaurants was concerned that foodservice industry "lobbying organizations" had not done a better job of publicizing the threat from AB 2509. Specialty Restaurants learned of the bill and its passage after the fact, he said.

A spokeswoman for the California Restaurant Association acknowledged that her organization had learned of the bill's existence only late in the legislative process. However, she added, the CRA tried without success to get the bill's author, Assemblyman Darrell Steinberg of Sacramento, to remove from the measure the prohibition against withholding processing fees on credit-card tips.

Assembly labor committee sources said Steinberg, a Democrat, introduced the bill at the behest of the California Labor Federation, a state affiliate of the AFL-CIO.

Miles Locker, chief counsel for the California labor commissioner, said his office viewed the language in AB 2509 "as a clarification" of existing law as interpreted by that agency. He acknowledged that the Orange County Superior Court appellate panel that ruled recently against his office and in favor of Specialty Restaurants had considered AB 2509 "a change in the law" and therefore not retroactively applicable to the three-restaurant case at issue.

Referring to AB 2509 and his agency's long-running conflict with Specialty Restaurants, Locker said, "We're quite confident we won't run into this situation again."

He said the labor commissioner did not have a direct hand in forming the legislation. However, the organized labor forces behind the bill "were probably made aware of the case [against Specialty Restaurants] by my office," he added.

Specialty Restaurants' struggle with regulators began several years ago when servers in its California restaurants complained about the practice. Representatives of the labor commissioner's office told the restaurant company that its policy violated a section of the labor code prohibiting employers from recovering any business costs from workers.

Disagreeing with the commissioner's interpretation of the labor code, Specialty Restaurants held its ground. To support its position, the company produced a 1977 letter from the U.S. Labor Department's Employment Standards Administration, indicating that the agency saw nothing wrong with withholding a proportionate amount of processing fees on credit-card tips.

The 1999 court case brought by California against Specialty yielded a ruling in favor of the restaurant company early last year. The State immediately appealed the decision only to lose again last month when an appellate panel upheld the operator's position. Ironically, that defeat came just weeks after the new law barring withholding of fees from tips took effect.

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