

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1105

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact subsection 6 of section 57-34-01, subsection 2 of
2 section 57-34-03, sections 57-34-04.3 and 57-34-05, and subsection 1 of section 57-34-10 of
3 the North Dakota Century Code, relating to the definition of mobile telecommunications service,
4 refunds to retail customers, refunds to telecommunications carriers, deposit of
5 telecommunications carriers gross receipts tax revenues, and waiver of penalty for failure to
6 report; and to provide a continuing appropriation.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Subsection 6 of section 57-34-01 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 6. "Telecommunications service" means transmitting for consideration of two-way
11 communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or
12 other means. The term includes:
- 13 a. Essential telecommunications service and nonessential telecommunications
14 service as defined in section 49-21-01;
 - 15 b. Telecommunications service that originates and terminates in this state and is
16 billed to a station in this state;
 - 17 c. Interstate telecommunications service that originates or terminates in this
18 state and is billed to a station in this state; ~~and~~
 - 19 d. Mobile telecommunications service that is deemed to be provided by the
20 customer's home service provider under chapter 57-34.1, regardless of where
21 the mobile telecommunications service originates, terminates, or passes
22 through; and
 - 23 e. Telegraph service.

1 **SECTION 2. AMENDMENT.** Subsection 2 of section 57-34-03 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 2. A telecommunications carrier's retail customer in this state is entitled to a refund
4 equal to two and one-half percent of the amount of telecommunications service
5 charges paid to telecommunications carriers by that customer in excess of eight
6 hundred thousand dollars in a calendar year. A refund claim under this subsection
7 must be filed with the tax commissioner before ~~July first~~ December thirty-first of the
8 year following the calendar year for which the refund is claimed. A claim for refund
9 must be made in the manner prescribed by the tax commissioner. The tax
10 commissioner shall verify that the telecommunications carrier to which the retail
11 customer paid telecommunications service charges has paid the
12 telecommunications gross receipts tax for the year for which the refund is claimed
13 before a refund may be paid. Refunds under this subsection must be paid by the
14 tax commissioner ~~from tax collections under this chapter~~ and are appropriated from
15 the ~~telecommunications carriers tax~~ state general fund as a standing and
16 continuing appropriation to the tax commissioner for that purpose.

17 **SECTION 3. AMENDMENT.** Section 57-34-04.3 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-34-04.3. Claims for credit or refund - Continuing appropriation.**

- 20 1. A telecommunications carrier may file a claim for credit or refund of an
21 overpayment of any tax imposed by this chapter within three years after the due
22 date of the return or within three years after the return was filed, whichever period
23 expires later.
- 24 2. A claim for credit or refund must be made by filing with the tax commissioner an
25 amended return, or other report as prescribed by the tax commissioner,
26 accompanied by a statement outlining the specific grounds upon which the claim
27 for credit or refund is based.
- 28 3. Refunds under this section must be paid by the tax commissioner and are
29 appropriated from the state general fund as a standing and continuing
30 appropriation to the tax commissioner for that purpose.

1 4. The tax commissioner shall notify the telecommunications carrier if the state board
2 of equalization disallows all or part of a claim for credit or refund. The decision of
3 the state board of equalization denying a claim for credit or refund is final and
4 irrevocable unless the telecommunications carrier brings an action against the
5 state in district court within six months of the mailing of the notice denying the claim
6 for credit or refund.

7 **SECTION 4. AMENDMENT.** Section 57-34-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications**
10 **carriers tax fund - Continuing appropriation.** ~~Net gross~~ Gross receipts tax revenues of up to
11 eight million four hundred thousand dollars ~~per taxable year~~ under this chapter must be
12 deposited in a special fund in the state treasury, the telecommunications carriers tax fund. ~~Net~~
13 ~~gross~~ Gross receipts tax revenues under this chapter exceeding eight million four hundred
14 thousand dollars ~~in a taxable year~~ must be deposited in the state general fund. ~~For purposes of~~
15 ~~this section, "net gross receipts tax revenues" means gross receipts tax revenues minus any~~
16 ~~refunds paid under section 57-34-03.~~ The tax commissioner shall allocate moneys in the
17 telecommunications carriers tax fund among counties in the same proportion that taxes paid by
18 telecommunications carriers in locally assessed property taxes and taxes assessed under
19 chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all
20 taxes paid by telecommunications carriers in locally assessed property taxes and taxes
21 assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the
22 state. The balance ~~of~~ in the telecommunications carriers tax fund, not exceeding eight million
23 four hundred thousand dollars ~~per taxable year~~, is appropriated as a standing and continuing
24 appropriation to the tax commissioner for annual allocation to counties under this section. If
25 gross receipts tax revenues available for allocation ~~in a taxable~~ on the first day of March of any
26 year are less than eight million four hundred thousand dollars, there is appropriated as a
27 standing and continuing appropriation from the state general fund the amount that, when added
28 to gross receipts tax revenues available for allocation from the telecommunications carriers tax
29 fund ~~for the taxable year~~, results in allocation of eight million four hundred thousand dollars to
30 counties ~~per taxable~~ calendar year. On or before the first day of March of each year, the tax
31 commissioner shall certify for payment to the state treasurer an amount determined to be due

1 each county. The state treasurer shall remit the certified amount to the county treasurers
2 according to the allocation made by the tax commissioner under this section not later than the
3 tenth working day in March of each year.

4 **SECTION 5. AMENDMENT.** Subsection 1 of section 57-34-10 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 1. If a telecommunications carrier refuses or neglects to make the reports required by
7 this chapter, or refuses or neglects to furnish any information requested, the tax
8 commissioner shall use the best available facts and estimates to determine
9 taxation of the gross receipts of that carrier. The tax must be imposed upon the
10 basis of that information. If any company fails to make the report required under
11 this chapter on or before the first day of May of any year, the state board of
12 equalization shall add a penalty of one-quarter of the tax due for failure to make the
13 required report which must be collected as a part of the tax, but the tax
14 commissioner, upon application, may grant extensions of time within which the
15 returns must be filed. For good cause shown, the tax commissioner may waive all
16 or any part of the penalty that attached under this section.