

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1068
(Legislative Council)
(Taxation Committee)
(Representatives Keiser, Timm, Wilkie)
(Senator Kringstad)

AN ACT to amend and reenact sections 57-06-01, 57-06-02, 57-06-05, 57-06-07, 57-06-14, 57-06-18, 57-34-01, 57-34-02, 57-34-03, 57-34-05, 57-34-06, 57-34-10, 57-34-11, and 57-34-12 of the North Dakota Century Code, relating to property tax exemptions and gross receipts taxes for telecommunications carriers and services; to repeal sections 57-06-01.1, 57-34-04, and 57-34-08 of the North Dakota Century Code, relating to assessment of property and gross receipts taxes for telecommunications carriers; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-01 of the North Dakota Century Code is amended and reenacted as follows:

57-06-01. Public utilities subject to provisions of chapter. ~~The provisions of this~~ This chapter ~~govern~~ governs the assessment of the property of any public utility company defined in section 57-06-02, and of any other company used directly or indirectly in carrying or conveying persons, or property, ~~or messages~~, unless the operative property is subject to a lieu tax in place of a general property tax. This chapter does not apply to the property of any railway or street railway company, ~~nor to the property of a company, the only business of which is providing signaling, paging, or other domestic public land mobile radio service if that service has seven hundred subscribers or less, nor to~~ the fixtures, buildings, and improvements owned by any cooperative or nonprofit corporation organized under the laws of this state and used by it to furnish potable water to its members and customers for uses other than irrigation of agricultural land, and except as otherwise provided in chapter 57-32, does not apply to the property of any express or air transportation company.

SECTION 2. AMENDMENT. Section 57-06-02 of the North Dakota Century Code is amended and reenacted as follows:

57-06-02. Definitions. As used in this chapter, unless the context and subject matter otherwise clearly require:

1. "Company" ~~means and~~ includes any individual, copartnership, business trust, corporation, limited liability company, joint-stock company, or association.
2. "Gas company" means a company owning, holding, or operating under lease or otherwise, any property in this state for the purpose of furnishing gas, or distributing the same, for public use, by means of pipelines.
3. "Pipeline company" means a company owning, holding, or operating under a lease or otherwise, any property in this state for the purpose of transporting crude oil, natural gas, processed gas, manufactured gas, refined petroleum products, or coal and related products for public use.
4. "Power company" means a company owning or holding, under lease or otherwise, any property in this state, and operating the same, for the purpose of furnishing electric light, electric power, or steam heat, or distributing the same, for public use.

5. ~~"Telecommunications company" means a company engaged in the furnishing of telecommunications service within this state.~~
6. ~~"Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.~~
7. ~~"Telegraph company" means a company owning or operating any telegraph or cable line in this state with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation as owner, lessee, or otherwise.~~

SECTION 3. AMENDMENT. Section 57-06-05 of the North Dakota Century Code is amended and reenacted as follows:

57-06-05. Annual assessment. The state board of equalization, at its annual meeting in August, shall assess the franchises and all operative property of ~~telephone, telegraph,~~ power, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

SECTION 4. AMENDMENT. Section 57-06-07 of the North Dakota Century Code is amended and reenacted as follows:

57-06-07. Additional information from ~~telephone, telegraph,~~ and power companies. Each ~~telephone, telegraph,~~ and power company shall report further as follows:

1. Number of miles [kilometers] of pole line in each taxing district in each county in the state, separated and classified as to location and character, as the tax commissioner may require; and
2. Cost of construction of such lines fully equipped, together with the present value per mile [1.61 kilometers] of such lines in each taxing district in each county.

SECTION 5. AMENDMENT. Section 57-06-14 of the North Dakota Century Code is amended and reenacted as follows:

57-06-14. Method of valuation. The operative property of each company assessed under this chapter must be assessed in the following manner:

1. For the purpose of determining the value of the property, the tax commissioner and the state board of equalization shall take into consideration the earning power of the property as shown by its gross earnings and net operating income, the market or actual value of its stocks and bonds, the value of its franchises, rights, and privileges granted under the laws of this state to do business in this state, and ~~such any~~ other legally established evidences of value as ~~enables~~ enable the board to make a just and equitable assessment.
2. In the case of a company ~~which~~ that owns or operates properties or lines partly within and partly without this state, the tax commissioner and state board of equalization shall value only the property within this state.
3. In determining the value of the portion within this state of an interconnected, or continuous system, the tax commissioner and state board of equalization may take into consideration the value of the entire system and of the part within this state, the mileage of the whole system and of the part within this state, the total operating earnings within and without this state, together with ~~such any~~ other information, facts, and circumstances as will enable ~~such~~ the officers to make a just and correct assessment.
4. ~~Repealed by S.L. 1985, ch. 604, § 22.~~
5. ~~In the case of a telephone or telegraph company, the term "mileage" means miles [kilometers] of pole line or cable.~~

6. The board may take into consideration the reports, annual or otherwise, filed by any company required to be assessed under this chapter with the public service commission, and ~~also~~ shall take into consideration any valuation of such company by the public service commission.

SECTION 6. AMENDMENT. Section 57-06-18 of the North Dakota Century Code is amended and reenacted as follows:

57-06-18. Allocation of assessment of other operative property. All lots and parcels of real estate, not including rights of way, with the buildings, structures, and improvements thereon, ~~telephone exchange buildings,~~ dams and powerhouses, substations, shops, and other buildings, ~~telephone exchange systems,~~ electric power, electric light, gas, or steam distribution systems, and other personal property not a part of any single and continuous property, must be separately assessed and the assessment must be allocated to the taxing district in which ~~such~~ the property is located. The assessment by the state board of equalization covering ~~such~~ the property must give a legal description of the real estate and a general description of other property sufficient for identification. The assessment by ~~such~~ the board of ~~such~~ the operative property must cover the aggregate valuation of the property of any company in any municipality or taxing district of the state as a unit, and need not be made in detail.

SECTION 7. AMENDMENT. Section 57-34-01 of the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. ~~"Access revenues" means telephone company revenues resulting from charges to individuals, partnerships, corporations, and limited liability companies for their use of telephone company services or facilities to provide a toll service that permits origination or termination of telecommunications between a point or points within one telephone exchange and a point or points within another telephone exchange.~~
2. ~~"Adjusted telephone operating gross receipts" means telephone operating telecommunications carrier gross receipts less all amounts paid by the reporting telephone company telecommunications carrier on telecommunications service that is taxable under this chapter in state and local sales and use taxes and federal excise taxes and amounts paid by the reporting telecommunications carrier to an individual, partnership, corporation, or limited liability company another telecommunications carrier for connecting fees, switching charges, access charges, and directory assistance.~~
3. ~~"Originating revenues factor" means a fraction the numerator of which is the revenues of the telephone company from toll business generated from customer premises equipment in this state, regardless of the location to which the billing notice is sent, and the denominator of which is the total revenues of the telephone company from toll business everywhere.~~
4. ~~"Property factor" means a fraction the numerator of which is the undepreciated original cost as of December thirty first of the property located in this state owned or rented by the telephone company and used in operating its telecommunications business and the denominator of which is the undepreciated original cost as of December thirty first of the property located everywhere owned or rented by the telephone company and used in operating its telecommunications business.~~
2. "Gross receipts" means all telecommunications carrier revenues from telecommunications service charges billed to any station in this state and from charges to another telecommunications carrier for directory assistance.
5. 3. "Station" means a subscriber line service address located in this state with a distinct call number designation or distinct extension number designation. If this is not a defined location, "station" means the location of the primary use of telecommunications equipment as determined by telephone number, authorization code, or billing address.

6. ~~4.~~ "Telephone company" "Telecommunications carrier" means ~~all mutual associations and cooperative organizations or cooperative corporations engaged in the business of furnishing communication by telephone, and shall further mean all other persons, firms, corporations, limited liability companies, or other organizations which are a person that is engaged in the business of furnishing means of communication by telephone telecommunications service within this state exclusively to rural areas or to rural areas and cities provided that each city served has a population of two thousand five hundred persons or less. The term includes a reseller of telecommunications service.~~
7. ~~5.~~ "Telephone operating receipts" "Telecommunications service" means ~~transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes all revenue derived from local and rural exchange service, revenues from wide area telephone service, access revenues, billing and collection revenues, revenues from coin operated telephones, revenues from directory advertising, revenues from directory assistance, recoveries within the year of all telecommunications revenues written off in prior years as uncollectible, all other operating revenues from telecommunications service as defined in subsection 11 of section 49-21-04 attributable to this state, and toll business gross revenues as defined in this section:~~
- a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state;
 - d. A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests, if there is a separately stated charge for the service; and
 - e. Telegraph service.
6. "Telecommunications service charges" means ~~the value of all consideration received by a telecommunications carrier for provision of telecommunications service and recovery within the year of telecommunications service charges written off in a prior year as uncollectible. For a telephone company telecommunications carrier operating on any form of mutual basis, "telephone operating receipts" the term includes all amounts assessed against the members for the operation and maintenance of the business. "Telephone operating receipts" The term does not include income revenue from merchandising, jobbing and contract work, charges for the maintenance or repair of customer premises equipment, including equipment leased or rented by the customer from any source, revenue from commercial and cable television, unless it is used for two way communication, radio, one way radio paging, the transmission of messages incidental to transient occupancy in hotels, income from nonutility operations not directly related to provision of telecommunications service, amounts charged for billing and collection on behalf of another telecommunications carrier, proceeds from transfer of capital stock, or revenues from the transfer, sale, or lease of property not devoted directly related to telecommunications operation. "Telephone operating receipts" does not include excise taxes on telephone service or facilities or uncollectible telephone operating revenues actually written off during the year.~~
8. "Toll business gross revenues" means ~~gross revenues from toll business originating and terminating in this state and toll business gross revenues attributable to this state.~~
9. "Toll business gross revenues attributable to this state" means ~~the telephone company's total gross revenues from interstate toll services everywhere multiplied by the amount obtained by dividing the sum of the property factor and the originating revenues factor by two service. The term does not include amounts collected for or amounts collected from federal and state mechanisms to preserve and advance universal service.~~

SECTION 8. AMENDMENT. Section 57-34-02 of the North Dakota Century Code is amended and reenacted as follows:

57-34-02. Reports of ~~telephone companies~~ telecommunications carriers. Each telephone company ~~required~~ telecommunications carrier ~~subject to be assessed~~ gross receipts taxes under the provisions of this chapter shall annually make and file with the tax commissioner, on or before May first of each year, on ~~such~~ the form as the tax commissioner may prescribe, a report containing a statement of its telephone operating gross receipts in this state during the preceding calendar year, ~~the number of stations in service on December thirty first preceding, the number of miles [kilometers] of telephone line operated in providing telephone service,~~ amounts paid by the carrier on telecommunications service that is taxable under this chapter during the preceding calendar year in state and local sales and use taxes and federal excise taxes, amounts received from or paid to another telecommunications carrier for directory assistance, and ~~such~~ any other information as the tax commissioner may require ~~except that any telephone company having thirty telephone stations or less in service on December thirty first preceding may not be required to furnish a statement of its telephone operating receipts.~~ Each report must contain a statement of the number of stations located in each county served and each school district within such counties and the number of stations maintained per mile [1.61 kilometers] of telephone line in this state. Each report must be signed, subject to the provisions of section 12.1-11-02, by the president, secretary, or other official of the ~~telephone company~~ telecommunications carrier. Each telephone company subject to the provisions of this chapter, at the time of submitting its report to the tax commissioner, shall forward a copy of such report to the county auditor of each county in which it maintains a station or stations.

SECTION 9. AMENDMENT. Section 57-34-03 of the North Dakota Century Code is amended and reenacted as follows:

57-34-03. Computation of taxes by tax commissioner - Exemption for high-volume customers - Continuing appropriation.

1. On or before ~~August first~~ July fifteenth of each year, the tax commissioner shall review the report under section 57-34-02 and compute the tentative total tax to be assessed against each telephone company telecommunications carrier in this state in the following manner:
 - a. ~~Telephone companies maintaining an average of one and twenty five hundredths telephone stations or less per mile [1.61 kilometers] of telephone line operated in this state must be taxed at the rate of one half of one percent of their adjusted telephone operating receipts.~~
 - b. ~~Telephone companies maintaining an average of not less than one and twenty six hundredths and not more than one and seventy five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state must be taxed at the rate of one percent of their adjusted telephone operating receipts.~~
 - c. ~~Telephone companies maintaining an average of not less than one and seventy six hundredths and not more than two and twenty five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state must be taxed at the rate of one and one half of one percent of their adjusted telephone operating receipts.~~
 - d. ~~Telephone companies maintaining an average of more than two and twenty five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state must be taxed at the rate of two percent of their adjusted telephone operating receipts.~~
2. ~~If the tax due from any telephone company as computed under subsection 1 is less than fifty cents per station maintained in this state or if such company had less than thirty one stations in service in this state on the preceding December thirty first, such company is subject to a tax of fifty cents per station.~~
3. ~~Notwithstanding the provisions of subsections 1 and 2, any telephone company having twenty telephone stations or less in service on December thirty first preceding the year for~~

~~which the tax computed under this section is assessed is exempt from the provisions of this chapter at a rate of two and one-half percent of adjusted gross receipts. The tax commissioner shall give ten days' notice by mail to each telecommunications carrier of its tentative total tax under this section and of its right to contest the determination before the state board of equalization at its August meeting. The state board of equalization shall assess the tax under this section after consideration of any contest presented.~~

2. ~~A telecommunications carrier's customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated as a standing and continuing appropriation to the tax commissioner for that purpose.~~

SECTION 10. AMENDMENT. Section 57-34-05 of the North Dakota Century Code is amended and reenacted as follows:

57-34-05. Certification of tax-- Allocation to counties - Continuing appropriation. ~~The tax commissioner shall certify to the county auditor of each county in which the company assessed maintains a telephone station or stations, the gross receipts of the company, the number of telephone stations within the county and the number within each school district of the county belonging to the said company and the amount of tax to be collected from said company.~~

~~The tax commissioner shall allocate the tax to be collected from each telephone company, as determined by the state board of equalization, to the counties upon a pro rata basis to be determined according to the proportion that each company's stations in a county bears to the total number of stations maintained by such company net gross receipts tax revenues among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. Gross receipts tax revenues of eight million four hundred thousand dollars per taxable year are appropriated as a standing and continuing appropriation to the tax commissioner for allocation to counties under this section and any gross receipts tax revenues exceeding that appropriation in any taxable year must be deposited in the state general fund. If gross receipts tax revenues available for allocation in a taxable year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation for the taxable year, results in allocation of eight million four hundred thousand dollars to counties per taxable year.~~

SECTION 11. AMENDMENT. Section 57-34-06 of the North Dakota Century Code is amended and reenacted as follows:

57-34-06. Duties of county auditor treasurer. ~~It is the duty of the county auditor after receiving such statement from the tax commissioner to certify such taxes to the county treasurer for collection at the time that real and personal property taxes are required to be certified. Such certification must give the amount allocated to each school district in which the company maintains a station or stations. The county auditor treasurer shall make such allocation and pay such funds allocate taxes received under this chapter to the state, the county, and the various school taxing districts upon a pro rata basis within the county according to the proportion that each company's stations in a school district bears to the total number of stations of such company in the county taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and each taxing district in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and all taxing districts in the county.~~

SECTION 12. AMENDMENT. Section 57-34-10 of the North Dakota Century Code is amended and reenacted as follows:

57-34-10. ~~Penalty for failure to furnish statement~~ Penalties - Lien for tax.

1. ~~In case any company~~ If a telecommunications carrier refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall ~~inform himself as best he may on use the best available facts necessary to be known in order to discharge his duties with respect to the and estimates to determine taxation of the property gross receipts of such company, and the that carrier.~~ The tax must be imposed upon the basis of such that information, and the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report; which must be collected as a part of the tax.
2. Taxes levied under this chapter are due and payable to the tax commissioner on January first following the year in which the taxes were assessed. The unpaid principal balance of taxes on the following March first is subject to a penalty of three percent, on the following May first an additional penalty of three percent, on the following July first an additional penalty of three percent, and on the following October fifteenth an additional penalty of three percent. Beginning January first of the year following the year the taxes became due, simple interest at the rate of twelve percent per annum applies to the unpaid principal balance until the taxes and penalties are paid. Interest penalties must be prorated to the nearest full month for a fractional year of delinquency.
3. Taxes under this chapter constitute a first and paramount lien in favor of the state upon all property and rights to property of the taxpayer. The lien may be foreclosed in the same manner provided by law for mortgages on real or personal property.

SECTION 13. AMENDMENT. Section 57-34-11 of the North Dakota Century Code is amended and reenacted as follows:

57-34-11. ~~Exemption from other taxation~~ Taxes in lieu of property taxes. The taxes imposed by this chapter are taxes upon the privilege of doing business in this state and are in lieu of all real and personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is directly used by any telephone company subject to the provisions of this chapter the telecommunications carrier in its telephone telecommunications operations and in lieu of real and personal property taxes on property leased or rented to any other person or company when the revenue derived from such leases or rentals is included in the telephone operating receipts of the company deriving the revenue. Real and personal property directly used by a telephone company subject to the provisions of this chapter and owned by any other person or company may not be assessed or taxed under the provisions of this chapter; provided, that any such property held under a contract for the purchase thereof by any telephone company subject to the provisions of this chapter must be considered for all purposes of taxation as property owned by that telephone company.

SECTION 14. AMENDMENT. Section 57-34-12 of the North Dakota Century Code is amended and reenacted as follows:

57-34-12. ~~Rules and regulations—Appeals.~~

1. ~~The state tax commissioner may promulgate adopt any rules and regulations that are necessary to carry out the provisions of this chapter. The provisions of chapter 28-32 govern the promulgation of all rules and regulations, the holding of hearings thereon, and the appeal therefrom. All such appeals must be taken to the district court of Burleigh County.~~
2. Any person aggrieved by a decision of the state board of equalization may appeal to the district court of Burleigh County after the hearing provided for in section 57-34-04. The tax commissioner shall adopt rules as necessary to avoid double taxation of gross receipts

and to eliminate the avoidance of taxation of gross receipts of telecommunications carriers under this chapter.

SECTION 15. REPEAL. Sections 57-06-01.1, 57-34-04, and 57-34-08 of the North Dakota Century Code are repealed.

SECTION 16. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1997.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1068.

House Vote: Yeas 87 Nays 5 Absent 5

Senate Vote: Yeas 45 Nays 0 Absent 4

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State