

HOUSE BILL NO. 1108

Introduced by

Natural Resources Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact three new sections to chapter 57-34 of the North Dakota
2 Century Code, relating to the audit and assessment of telecommunications carriers, deficiency
3 notice, protest and appeal procedure, and claim for credit or refund of the tax on
4 telecommunications carriers; to amend and reenact sections 57-34-01, 57-34-02, 57-34-03,
5 57-34-06, and 57-34-10 of the North Dakota Century Code, relating to definitions, identification
6 of taxable resellers and pay telephone operators, elimination of tentative assessments,
7 allocation of revenue, filing extensions, tax liabilities of less than five dollars, and interest and
8 lien provisions; and to provide for retroactive application.

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

10 **SECTION 1.** A new section to chapter 57-34 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Tax commissioner to audit returns and state board of equalization to assess tax.**

13 The tax commissioner shall proceed to audit the returns of telecommunications carriers not
14 later than three years after the due date of the return, or three years after the return was filed,
15 whichever period expires later. The state board of equalization shall assess the tax and, if any
16 additional tax is found due, the tax commissioner shall notify the taxpayer in detail as to the
17 reason for the increase.

18 **SECTION 2.** A new section to chapter 57-34 of the North Dakota Century Code is
19 created and enacted as follows:

20 **Deficiency, protest, and appeal.**

21 1. When tax is understated on a return because of a mathematical or clerical error,
22 the tax commissioner shall notify the telecommunications carrier of the error and
23 the amount of additional tax due. This notice is not a notice of deficiency and the
24 telecommunications carrier has no right to protest.

- 1 2. If upon audit the tax commissioner finds additional tax due, the tax commissioner
2 shall notify the telecommunications carrier and the state board of equalization of
3 the deficiency in the tax amount. A notice of deficiency must be sent to the
4 telecommunications carrier by first-class mail and must state the amount of
5 additional tax due and set forth the reasons for the increase.
- 6 3. A telecommunications carrier has thirty days from the date of mailing of the notice
7 of deficiency to file a written protest with the state board of equalization objecting to
8 the assessment of additional tax due. The protest must set forth the basis for the
9 protest and any other information that may be required by the state board of
10 equalization. If a telecommunications carrier fails to file a written protest within the
11 time provided, the amount of additional tax stated in the notice of deficiency
12 becomes finally and irrevocably fixed. If a telecommunications carrier protests only
13 a portion of the tax commissioner's finding, the portion that is not protested
14 becomes finally and irrevocably fixed.
- 15 4. If a protest is filed, the state board of equalization shall reconsider the assessment
16 of additional tax due.
- 17 5. Within a reasonable time after the protest is filed, the state board of equalization
18 shall mail to the telecommunications carrier a notice of reconsideration and
19 assessment which must respond to the telecommunications carrier's protest and
20 assess the amount of any additional tax due. The amount set forth in that notice
21 becomes finally and irrevocably fixed unless the telecommunications carrier brings
22 an action against the state in district court within six months of the mailing of the
23 notice of reconsideration and assessment.

24 **SECTION 3.** A new section to chapter 57-34 of the North Dakota Century Code is
25 created and enacted as follows:

26 **Claims for credit or refund.**

- 27 1. A telecommunications carrier may file a claim for credit or refund of an
28 overpayment of any tax imposed by this chapter within three years after the due
29 date of the return or within three years after the return was filed, whichever period
30 expires later.

- 1 2. A claim for credit or refund must be made by filing with the tax commissioner an
2 amended return, or other report as prescribed by the tax commissioner,
3 accompanied by a statement outlining the specific grounds upon which the claim
4 for credit or refund is based.
- 5 3. The tax commissioner shall notify the telecommunications carrier if the state board
6 of equalization disallows all or part of a claim for credit or refund. The decision of
7 the state board of equalization denying a claim for credit or refund is final and
8 irrevocable unless the telecommunications carrier brings an action against the
9 state in district court within six months of the mailing of the notice denying the claim
10 for credit or refund.

11 **SECTION 4. AMENDMENT.** Section 57-34-01 of the 1997 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **57-34-01. Definitions.** As used in this chapter, unless the context or subject matter
14 otherwise clearly requires:

- 15 1. "Adjusted gross receipts" means telecommunications carrier gross receipts less all
16 amounts paid by the reporting telecommunications carrier on telecommunications
17 service that is taxable under this chapter in state and local sales and use taxes and
18 federal excise taxes ~~and~~ , amounts paid by the reporting telecommunications
19 carrier to another telecommunications carrier for directory assistance originated by
20 a caller in this state, and amounts paid to another telecommunications carrier for
21 service billed to a station in this state and included in the gross receipts of the
22 reporting carrier.
- 23 2. "Company" includes any individual, copartnership, business trust, corporation,
24 limited liability company, joint-stock company, association, or any other
25 organization.
- 26 ~~2.~~ 3. "Gross receipts" means all telecommunications carrier revenues from
27 telecommunications service charges billed to any station in this state and from
28 charges to another telecommunications carrier for directory assistance originated
29 by a caller in this state.
- 30 ~~3.~~ 4. "Station" means a subscriber service address located in this state with a distinct
31 call number designation or distinct extension number designation. If this is not a

- 1 defined location, "station" means the location of the primary use of
2 telecommunications equipment as determined by telephone number, authorization
3 code, or billing address.
- 4 ~~4.~~ 5. "Telecommunications carrier" means a ~~person~~ company that is engaged in the
5 business of furnishing telecommunications service within this state. The term
6 includes a reseller of telecommunications service.
- 7 ~~5.~~ 6. "Telecommunications service" means transmitting for consideration of two-way
8 communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or
9 other means. The term includes:
- 10 a. Essential telecommunications service and nonessential telecommunications
11 service as defined in section 49-21-01;
- 12 b. Telecommunications service that originates and terminates in this state and is
13 billed to a station in this state;
- 14 c. Interstate telecommunications service that originates or terminates in this
15 state and is billed to a station in this state;
- 16 d. A hospital, hotel, motel, or similar place of temporary accommodation selling
17 telecommunications service to its patients or guests, if there is a separately
18 stated charge for the service; and
- 19 e. Telegraph service.
- 20 ~~6.~~ 7. "Telecommunications service charges" means the value of all consideration
21 received by a telecommunications carrier for provision of telecommunications
22 service and recovery within the year of telecommunications service charges written
23 off in a prior year as uncollectible. For a telecommunications carrier operating on
24 any form of mutual basis, the term includes all amounts assessed against the
25 members for the operation and maintenance of the business. The term does not
26 include revenue from merchandising, jobbing and contract work, maintenance or
27 repair of customer premises equipment including equipment leased or rented by
28 the customer from any source, operations not directly related to provision of
29 telecommunications service, amounts charged for billing and collection on behalf of
30 another telecommunications carrier, proceeds from transfer of capital stock, or
31 transfer, sale, or lease of property not directly related to telecommunications

1 service. The term does not include amounts collected for or amounts collected
2 from federal and state mechanisms to preserve and advance universal service.

3 **SECTION 5. AMENDMENT.** Section 57-34-02 of the 1997 Supplement to the North
4 Dakota Century Code is amended and reenacted as follows:

5 **57-34-02. Reports of telecommunications carriers - Penalty.**

- 6 1. Each telecommunications carrier that received inter-company telecommunications
7 revenue in the preceding calendar year shall make and file with the tax
8 commissioner, on or before January fifteenth of each year, a list containing the
9 name and mailing address of each company from which the reporting
10 telecommunications carrier received inter-company telecommunications revenue in
11 the preceding calendar year. This list is to be filed in addition to the report required
12 by subsection 4.
- 13 2. Each telecommunications carrier that provided telecommunications service in the
14 preceding calendar year to one or more pay telephones owned by another
15 company shall make and file with the tax commissioner, on or before January
16 fifteenth of each year, a list containing the name and mailing address for each
17 company that owned a pay telephone served by the reporting telecommunications
18 carrier in the preceding calendar year. This list is to be filed in addition to the
19 report required by subsection 4.
- 20 3. A telecommunications carrier that fails to file a list required under subsection 1 or
21 subsection 2 is liable for a penalty of twenty-five dollars for each day that company
22 fails or refuses to furnish the list. Any penalty may be recovered at the suit of the
23 state, on relation of the tax commissioner. Any penalty collected must be
24 deposited in the state general fund. For good cause shown the tax commissioner
25 may excuse any or all penalties imposed under this section.
- 26 4. Each telecommunications carrier subject to gross receipts taxes under this chapter
27 shall make and file with the tax commissioner, on or before May first of each year,
28 on the form as the tax commissioner may prescribe, a report containing a
29 statement of its gross receipts in this state during the preceding calendar year,
30 amounts paid by the carrier on telecommunications service that is taxable under
31 this chapter during the preceding calendar year in state and local sales and use

1 taxes and federal excise taxes, amounts received from or paid to another
2 telecommunications carrier for directory assistance, and any other information as
3 the tax commissioner may require. The form must include a notice of a
4 telecommunications carrier's right to appeal its assessment to the state board of
5 equalization prior to or at the August meeting of the state board of equalization.
6 Each report must be signed, subject to section 12.1-11-02, by the president,
7 secretary, or other official of the telecommunications carrier.

8 **SECTION 6. AMENDMENT.** Section 57-34-03 of the 1997 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

10 **57-34-03. Computation of taxes by tax commissioner - Exemption for**
11 **high-volume customers - Continuing appropriation.**

- 12 1. On or before July fifteenth of each year, the tax commissioner shall review the
13 report under subsection 4 of section 57-34-02 and compute the ~~tentative~~ total tax
14 to be assessed against each telecommunications carrier in this state at a rate of
15 two and one-half percent of adjusted gross receipts. ~~The~~ If the tax commissioner's
16 computation of the total tax differs from the amount computed by a
17 telecommunications carrier, the tax commissioner shall give ~~ten days'~~ notice of the
18 change by mail to each that telecommunications carrier of its tentative total tax
19 under this section and of its right to contest the determination before the state
20 board of equalization at its August meeting on or before July fifteenth. The state
21 board of equalization shall assess the tax under this section after consideration of
22 any contest presented.
- 23 2. A telecommunications carrier's customer in this state is entitled to a refund equal to
24 two and one-half percent of the amount of telecommunications service charges
25 paid to telecommunications carriers by that customer in excess of eight hundred
26 thousand dollars in a calendar year. A refund claim under this subsection must be
27 filed with the tax commissioner before July first of the year following the calendar
28 year for which the refund is claimed. A claim for refund must be made in the
29 manner prescribed by the tax commissioner. Refunds under this subsection must
30 be paid by the tax commissioner from tax collections under this chapter and are

1 appropriated as a standing and continuing appropriation to the tax commissioner
2 for that purpose.

3 **SECTION 7. AMENDMENT.** Section 57-34-06 of the 1997 Supplement to the North
4 Dakota Century Code is amended and reenacted as follows:

5 **57-34-06. Duties of county treasurer.** The county treasurer shall allocate taxes
6 received under this chapter to the state, the county, and the various taxing districts within the
7 county according to the proportion that taxes paid by telecommunications carriers in locally
8 assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and
9 received by the state, the county, and each currently existing taxing district in the county bears
10 to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes
11 assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county,
12 and all taxing districts in the county.

13 **SECTION 8. AMENDMENT.** Section 57-34-10 of the 1997 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **57-34-10. Penalties - Interest - Lien for tax.**

16 1. If a telecommunications carrier refuses or neglects to make the reports required by
17 this chapter, or refuses or neglects to furnish any information requested, the tax
18 commissioner shall use the best available facts and estimates to determine
19 taxation of the gross receipts of that carrier. The tax must be imposed upon the
20 basis of that information, ~~and~~. If any company fails to make the report required
21 under this chapter on or before the first day of May of any year, the state board of
22 equalization shall add a penalty of one-quarter of the tax due for failure to make the
23 required report which must be collected as a part of the tax, but the tax
24 commissioner, upon application, may grant extensions of time within which the
25 returns must be filed.

26 2. Taxes levied under this chapter are due and payable to the tax commissioner on
27 January first following the year in which the taxes were assessed. ~~The unpaid~~
28 ~~principal balance of taxes on the following March first is subject to a penalty of~~
29 ~~three percent, on the following May first an additional penalty of three percent, on~~
30 ~~the following July first an additional penalty of three percent, and on the following~~
31 ~~October fifteenth an additional penalty of three percent. Beginning January first of~~

1 ~~the year following the year the taxes became due, simple interest at the rate of~~
2 ~~twelve percent per annum applies to the unpaid principal balance until the taxes~~
3 ~~and penalties are paid. Interest penalties must be prorated to the nearest full~~
4 ~~month for a fractional year of delinquency. A remittance of tax need not be made~~
5 ~~and any assessment or collection of tax may not be made unless the amount is at~~
6 ~~least five dollars, including penalty and interest.~~

7 3. If any amount of tax imposed by this chapter is not paid on or before March first, or
8 if upon audit an additional tax is found to be due, there must be added to the tax
9 remaining due interest at the rate of one percent of the additional tax for each
10 month or fraction of a month during which the tax remains unpaid, computed from
11 March first to the date paid.

12 ~~3. 4. Taxes under this chapter constitute a first and paramount lien in favor of the state~~
13 ~~upon all property and rights to property of the taxpayer. The lien may be~~
14 ~~foreclosed in the same manner provided by law for mortgages on real or personal~~
15 ~~property. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or~~
16 ~~neglects to pay the liability, the amount, including any interest, penalty, or addition~~
17 ~~to the tax, and the additional costs that may accrue are a lien in favor of the state~~
18 ~~of North Dakota upon all property and rights to property, whether real or personal,~~
19 ~~belonging to the taxpayer. The lien attaches at the time the tax becomes due and~~
20 ~~payable and continues until the liability for the amount is satisfied.~~

21 5. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any
22 interest in, or lien on, any property situated in the state, prior to the tax
23 commissioner filing in the central notice system maintained by the secretary of
24 state a notice of the lien provided for in subsection 4, takes free of, or has priority
25 over, the lien. The tax commissioner shall index in the central notice system the
26 following data:

- 27 a. The name of the taxpayer.
28 b. The tax identification number or social security number of the taxpayer.
29 c. The name "State of North Dakota" as claimant.
30 d. The date and time the notice of lien was indexed.
31 e. The amount of the lien.

1 The notice of lien is effective as of eight a.m. the next day following the indexing of
2 the notice. The tax commissioner shall index any notice of lien with no payment of
3 fees or costs to the secretary of state.

4 6. Upon payment of the tax, and any accrued penalties and interest, as to which the
5 tax commissioner has filed a notice of lien, the tax commissioner shall index a
6 satisfaction of the lien in the central notice system without fees or costs.

7 **SECTION 9. RETROACTIVE APPLICATION OF ACT.** This Act applies retroactively to
8 all tax years beginning after December 31, 1997.