CHAPTER 57-34
TELECOMMUNICATIONS CARRIERS TAXATION

57-34-01. Definitions.

The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Adjusted gross receipts" means telecommunications carrier gross receipts less all amounts paid by the reporting telecommunications carrier on telecommunications service that is taxable under this chapter in state and local sales and use taxes and federal excise taxes and less amounts paid by the reporting telecommunications carrier to another telecommunications carrier for directory assistance originated by a caller in this state.
2. "Company" includes any individual, copartnership, business trust, corporation, limited liability company, joint-stock company, association, or any other organization.
3. "Gross receipts" means all telecommunications carrier retail revenues from telecommunications service charges billed to any station in this state and from charges to another telecommunications carrier for directory assistance originated by a caller in this state.
4. "Station" means a subscriber 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.
5. "Telecommunications carrier" means a company that is engaged in the business of furnishing telecommunications service within this state. The term includes a reseller of telecommunications service.
6. "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:
   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 and is billed to a station in this state;
   c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state;
   d. Mobile telecommunications service that is deemed to be provided by the customer's home service provider under chapter 57-34.1, regardless of where the mobile telecommunications service originates, terminates, or passes through; and
   e. Telegraph service.
7. "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 telecommunications carrier operating on any form of mutual basis, the term includes all amounts assessed against the members for the operation and maintenance of the business. The term does not include revenue from merchandising, jobbing and contract work, maintenance or repair of customer premises equipment including equipment leased or rented by the customer from any source, 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 transfer, sale, or lease of property not directly related to telecommunications service. The term does not include amounts collected for or amounts collected from federal and state mechanisms to preserve and advance universal service.

57-34-02. Reports of telecommunications carriers.

Each telecommunications carrier subject to gross receipts taxes under this chapter shall make and file with the tax commissioner, on or before May first of each year, on the form as the tax commissioner may prescribe, a report containing a statement of its gross receipts in this state during the preceding calendar year, 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 any other information as the tax commissioner may require. The form must include a notice of a telecommunications carrier's right to appeal its assessment to the state board of equalization prior to or at the August meeting of the state board of equalization. Each report must be signed, subject to section 12.1-11-02, by the president, secretary, or other official of the telecommunications carrier.

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

1. On or before July fifteenth of each year, the tax commissioner shall review the report under section 57-34-02 and compute the total tax to be assessed against each telecommunications carrier in this state at a rate of two and one-half percent of adjusted gross receipts. If the tax commissioner's computation of the total tax differs from the amount computed by a telecommunications carrier, the tax commissioner shall give notice of the change by mail to that telecommunications carrier on or before July fifteenth. The state board of equalization shall assess the tax under this section after consideration of any contest presented.
2. A telecommunications carrier's retail 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 December thirty-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. The tax commissioner shall verify that the telecommunications carrier to which the retail customer paid telecommunications service charges has paid the telecommunications gross receipts tax for the year for which the refund is claimed before a refund may be paid. Refunds under this subsection must be paid by the tax commissioner and are appropriated from the state general fund as a standing and continuing appropriation to the tax commissioner for that purpose.

57-34-04. Assessment by state board of equalization.

Repealed by S.L. 1997, ch. 483, § 15.

57-34-04.1. Tax commissioner to audit returns and state board of equalization to assess tax.

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

57-34-04.2. Deficiency, protest, and appeal.

1. When tax is understated on a return because of a mathematical or clerical error, the tax commissioner shall notify the telecommunications carrier of the error and the amount of additional tax due. This notice is not a notice of deficiency and the telecommunications carrier has no right to protest.
2. If upon audit the tax commissioner finds additional tax due, the tax commissioner shall notify the telecommunications carrier and the state board of equalization of the

deficiency in the tax amount. A notice of deficiency must be sent to the telecommunications carrier by first-class mail and must state the amount of additional tax due and set forth the reasons for the increase.

3. A telecommunications carrier has thirty days from the date of mailing of the notice of deficiency to file a written protest with the state board of equalization objecting to the assessment of additional tax due. The protest must set forth the basis for the protest and any other information that may be required by the state board of equalization. If a telecommunications carrier fails to file a written protest within the time provided, the amount of additional tax stated in the notice of deficiency becomes finally and irrevocably fixed. If a telecommunications carrier protests only a portion of the tax commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
4. If a protest is filed, the state board of equalization shall reconsider the assessment of additional tax due.
5. Within six months after the protest is filed, the state board of equalization shall mail to the telecommunications carrier a notice of reconsideration and assessment which must respond to the telecommunications carrier's protest and assess the amount of any additional tax due. The amount set forth in that notice becomes finally and irrevocably fixed unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice of reconsideration and assessment.

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

1. A telecommunications carrier may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within three years after the due date of the return or within three years after the return was filed, whichever period expires later.
2. A claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. Refunds under this section must be paid by the tax commissioner and are appropriated from the state general fund as a standing and continuing appropriation to the tax commissioner for that purpose.
4. The tax commissioner shall notify the telecommunications carrier if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

57-34-04.4. Preservation of records.

Every telecommunications carrier required to make a return and pay any tax under this chapter shall preserve records of the gross proceeds of sale as the commissioner may require and every carrier shall preserve for a period of three years and three months all invoices and other records of telecommunications services purchased for resale. All of these books, invoices, and other records must be open to examination at any time by the commissioner or any duly authorized agent of the commissioner.

57-34-04.5. Resale certificates.

A telecommunications carrier who receives a resale certificate certifying that another telecommunications carrier holds a North Dakota sales and use tax permit for sales or use tax purposes under section 57-39.2-14 is relieved from submitting the telecommunications gross receipts tax upon the sale of telecommunications services to be resold by the telecommunications carrier submitting the certificate. When a telecommunications carrier submits a false resale certificate to another telecommunications carrier, the telecommunications

carrier that submitted the certificate is liable for the telecommunications gross receipts tax on the sale. A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests is not a telecommunications carrier under this section.

57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications carriers tax fund - Continuing appropriation.

Gross receipts tax revenues of up to eight million four hundred thousand dollars under this chapter must be deposited in a special fund in the state treasury, the telecommunications carriers tax fund. Gross receipts tax revenues under this chapter exceeding eight million four hundred thousand dollars must be deposited in the state general fund. The tax commissioner shall allocate moneys in the telecommunications carriers tax fund 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. The balance in the telecommunications carriers tax fund, not exceeding eight million four hundred thousand dollars, is appropriated as a standing and continuing appropriation to the tax commissioner for annual allocation to counties under this section. If gross receipts tax revenues available for allocation on the first day of March of any 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 from the telecommunications carriers tax fund results in allocation of eight million four hundred thousand dollars to counties per calendar year. On or before the first day of March of each year, the tax commissioner shall certify for payment to the state treasurer an amount determined to be due each county. The state treasurer shall remit the certified amount to the county treasurers according to the allocation made by the tax commissioner under this section not later than March thirty-first of each year.

57-34-06. Duties of county treasurer.

The county treasurer shall allocate taxes received under this chapter to the state, the county, and the various taxing districts within the county according to the 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 the state, the county, and each currently existing 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.

57-34-07. Reports to county auditor.

Repealed by S.L. 1965, ch. 401, § 9.

57-34-08. Administrative laws applicable.

Repealed by S.L. 1997, ch. 483, § 15.

57-34-09. Disposition of revenue.

Repealed by S.L. 1965, ch. 401, § 9.

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

1. 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 use the best available facts and estimates to determine taxation of the gross receipts of that carrier. The tax must be imposed upon the basis of that information. If any company fails to make the report required under this chapter on or before the first day of May of any year, 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, but the tax commissioner, upon application, may grant extensions of time within which the returns must be filed. For good cause shown, the tax commissioner may waive all or any part of the penalty that attached under this section.

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. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalty and interest.
3. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon audit an additional tax is found to be due, there must be added to the tax remaining due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from March first to the date paid.
4. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the liability, the amount, including any interest, penalty, or addition to the tax, and the additional costs that may accrue are a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied.
5. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the tax commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in subsection 4, takes free of, or has priority over, the lien. The tax commissioner shall index in the central indexing system the following data:
   a. The name of the taxpayer.
   b. The name "State of North Dakota" as claimant.
   c. The date and time the notice of lien was indexed.
   d. The amount of the lien.
   e. The internal revenue service taxpayer identification number or social security number of the taxpayer.

   The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. The tax commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.
6. Upon payment of the tax, and any accrued penalties and interest, as to which the tax commissioner has filed a notice of lien, the tax commissioner shall index a satisfaction of the lien in the central indexing system without fees or costs.

57-34-11. 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 the telecommunications carrier in its telecommunications operations.

57-34-12. Rules.

1. The tax commissioner may adopt any rules necessary to carry out this chapter.
2. 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.