

1999 HOUSE NATURAL RESOURCES

HB 1108

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1108

House Natural Resources Committee

Conference Committee

Hearing Date 1/7/99

Tape Number	Side A	Side B	Meter #
1	x		6.8
Committee Clerk Signature <i>Kevin Baul</i>			

Minutes:

SUMMARY OF THE BILL:

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

Chairman Grosz opened the hearing on HB 1108. All committee members were present:

Chairman Grosz, Vice-Chairman Henegar, Rep. Drovdal, Rep. Galvin, Rep. DeKrey, Rep.

Page 2

House Natural Resources Committee

Bill/Resolution Number 2minutes for day3.lwp

Hearing Date 1/7/99

Nottestad, Rep. Nelson, Rep. Clark, Rep. Porter, Rep. Martinson, Rep. Hanson, Rep. Kelsh, Rep. Lundgren, Rep. Sandvig, Rep. Solberg.

A member of the tax commission was not present to testify, so Chairman Grosz put the hearing into recess until 11:30 a.m.

Chairman Grosz called the meeting into order at 11:30 a.m. All committee members were once again present: Chairman Grosz, Vice-Chairman Henegar, Rep. Drovdal, Rep. Galvin, Rep. DeKrey, Rep. Nottestad, Rep. Nelson, Rep. Clark, Rep. Porter, Rep. Martinson, Rep. Hanson, Rep. Kelsh, Rep. Lundgren, Rep. Sandvig, Rep. Solberg.

Marcy Dickerson of the Tax Commission testified in support of HB 1108. (See attached testimony.)

Rep. Drovdal asked Ms. Dickerson whether it would be legal to apply the law as far as the penalty for being affective in the 1998 calendar year, making it retroactive

Ms. Dickerson responded that she was unable to answer the question accurately and deferred to Tax Commissioner Rick Clayburgh.

Mr. Clayburgh answered that he would have to defer to legal council to get a response to check the constitutionality.

Rep. Lundgren asked Mr. Clayburgh why the law needed to be retroactive.

Mr. Clayburgh deferred the question to Tax Commissioner Barry Haste, who answered the question, giving the reasons that it would give the tax commissioner audit capabilities when the tax has been filed, it allows a three year period in which to audit, and it gives the tax payer a chance to file for a refund, which current law does not allow for. He also stated that there were probably some future corrections to be made.

Chairman Grosz asked Mr. Haste if the retroactivity would cover the months in-between the bill taking affect..

Mr. Haste answered that it would, and it would allow the Tax Commission to make an audit, that it under current law, does not have the power to do.

Mel Kambeitz of US West testified in favor of the bill, but he testified that there were still some issues with the language of the bill that he felt should be worked out, and he asked for more time before deciding on the bill.

David Crothers of the North Dakota Association of Telephone Cooperative testified in favor of the bill, agreeing with Mr. Kambeitz of US West and the Tax Commissions stance. He felt that there were a few things from the bill that the NDATC would not be able to comply with, for instance, the bill relating to pay phone operators, as the NDATC's records do not show who actually owns the pay phones, in reference to page 5 subsection 2 of HB 1108. Mr. Crothers also questioned a clause on page one that a telecommunications carrier has no right to protest, and he was concerned about this. He then commented that he was not fully aware of the implications and wished to study them further.

Chairman Grosz asked whether Mr. Crothers was concerned with the penalty or with who actually owned the pay phones.

Mr. Crothers answered in that he was concerned with both issues and directed the committee to some language that he was concerned with on page 3 of HB 1108. He then completed his testimony.

Mr. Clayburgh appeared as a neutral party and discussed how he felt that this bill raises other areas of interest and how a

debate on internet service providers would be valuable. He felt that the bill could open up debate in many other areas and that he would like to work with the committee more on this bill. He asked that the committee vote a do not pass and hold onto the bill.

Chairman Grosz mentioned that he thought that the bill needed some fine-tuning.

Mr. Clayburgh added that there was another bill being worked on, that he was unable to recall the bill number for, but would also give the Tax Commission distribution power.

Chairman Grosz asked for opposing witnesses, but there were none, so he motioned to hold the bill and not to take action.

Chairman Grosz adjourned the meeting.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1108

House Natural Resources Committee

Conference Committee

Hearing Date 2/11/99

Tape Number	Side A	Side B	Meter #
1		x	8.5-23.2
Committee Clerk Signature <i>Robin D. Small</i>			

Minutes: The amendments are introduced to the committee.

RICK CLAYBURGH, ND STATE TAX COMMISSIONER, expands further into what was heard on 1/7/99. CLAYBURGH turns the podium over to MARCY DICKERSON.

MARCY DICKERSON, TELECOMMUNICATIONS TAX ADMIN. for the OFFICE OF THE TAX COMMISSIONER. DICKERSON introduces the amendment that they would like to see put on the bill. SEE WRITTEN TESTIMONY and AMENDMENT.

RICK CLAYBURGH addresses the committee again with the dealings of hotels and motels charging their customers. REP. LUNDGREN asks why it's retro active. DICKERSON replies to provide for refund provisions.

REP. GROSZ also introduces an amendment. SEE AMENDMENT. REP. DEKREY asks if the smaller town telephone cooperatives are for this. GROSZ replies that they are on board.

REP. BELTER also comments to the committee about taxable reasons.

Being there was no further discussion on the amendments, REP. GROSZ asks the committee their wishes. REP. DEKREY moves to accept both amendments, seconded by REP.

NOTTESTAD. The roll call was taken by a voice vote with a DO PASS. REP. DEKREY then moved for a DO PASS AS AMENDED, seconded by REP. PORTER. The roll call was taken with 11 YES, 3 NO, 1 ABSENT. The CARRIER of the bill is REP. GROSZ.

FISCAL NOTE

(Return original and 14 copies)

Bill/Resolution No.: _____

Amendment to: HB 1108

Requested by Legislative Council

Date of Request: 2/16/99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: HB 1108, if enacted as amended, will make technical changes to the telecommunications gross receipts tax to aid in administration; clarifies the tax applies only to retail sales of telecommunications service; provides audit capabilities; reduces the penalty provisions from twelve percent to ten percent per year; and removes places of temporary accommodation from a telecommunications tax liability. There is an anticipated small (less than \$5,000 per biennium) loss of revenue to the state general fund because of the reduction in penalty and loss of approximately \$24,000 annual tax paid by the places of temporary accommodation. However, the revenue loss is likely to be offset by adding audit capability.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						

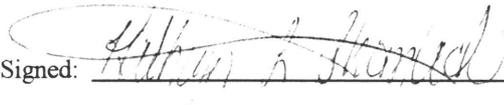
What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: _____
 (Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: _____
 (Indicate the portion of this amount included in the 1999-2001 executive budget:)
- c. For the 2001-03 biennium: _____

4. County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed
attach a supplemental sheet.

Signed: 

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: February 16, 1999

Phone Number: 328-3402

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1108

Amendment to: _____

Requested by Legislative Council

Date of Request: 12-29-98

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: HB 1108, if enacted, will make technical changes to the telecommunications gross receipts tax to aid in the administration of the tax. The amount of penalty for late payment will change from twelve percent for the full year in which the tax is due to ten percent. This change makes the late payment penalty consistent with other tax types and may result in an small but undeterminable loss of revenue to the state's general fund. The bill also will create a penalty of twenty-five dollars per day for each day a supplemental report is filed late by a telecommunications carrier. This penalty may provide an increase in the state's general fund revenue estimated at less than \$5,000 per biennium.

There is no fiscal effect to the counties, cities, or school districts.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	<\$2,500	0	<\$5,000	0	<\$5,000	0
Expenditures	0	0	0	0	0	0

3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: 0
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: 0
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- c. For the 2001-03 biennium: 0

4. County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed
attach a supplemental sheet.

Signed: *Kathryn L. Strombeck*

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: 1-5-99

Phone Number: 328-3402

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1108

Page 8, line 23, replace "notice" with "indexing"

Page 8, line 25, replace "notice" with "indexing"

Page 9, line 6, replace "notice" with "indexing"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1108

Page 4, line 18, overstrike "and"

Page 4, line 19, after "service" insert ": and

f. Internet access service or similar service"

Renumber accordingly

February 11, 1999

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1108

Page 1, line 1, replace "three" with "five"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "carriers" insert ", preservation of records, and resale certificates"

Page 1, line 8, remove "and" and after "application" insert "; to provide an effective date; and to provide an expiration date"

Page 2, line 17, replace "a reasonable time" with "six months"

Page 3, line 6, replace the second "of" with "or"

Page 3, after line 10, insert:

"SECTION 4. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 5. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

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."

Page 3, line 18, remove the overstrike over "~~and~~" and replace the underscored comma with "less"

Page 3, line 20, replace ", and amounts paid to another telecommunications carrier for" with an underscored period

Page 3, remove lines 21 and 22

Page 3, line 26, after "carrier" insert "retail"

Page 4, line 15, after the semicolon insert "and"

Page 4, line 16, overstrike "A hospital, hotel, motel, or similar place of temporary accommodation selling"

Page 4, overstrike lines 17 and 18

Page 4, line 19, overstrike "e."

Page 5, line 6, replace "inter-company" with "intercarrier"

Page 5, line 9, replace "company" with "telecommunications carrier"

Page 5, line 10, replace "inter-company" with "intercarrier"

Page 6, line 23, after "carrier's" insert "retail"

Page 8, line 23, replace "notice" with "indexing"

Page 8, line 25, replace "notice" with "indexing"

Page 9, line 6, replace "notice" with "indexing"

Page 9, line 7, after "**ACT**" insert "**- EFFECTIVE DATE - EXPIRATION DATE**"

Page 9, line 8, after the period insert "The amendments of subsections 1 and 3 of section 57-34-01 as amended by section 6 of this Act are effective for taxable years beginning after December 31, 1998. The amendments to subsections 1 through 3 of section 57-34-02 as amended by section 7 of this Act are effective for the first two taxable years beginning after December 31, 1999, and are thereafter ineffective."

Re-number accordingly

February 11, 1999

VR
2/12/99
1 of 2

HOUSE AMENDMENTS TO HOUSE BILL NO. 1108 NAT. RES. 2/12/99

Page 1, line 1, replace "three" with "five"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "carriers" insert ", preservation of records, and resale certificates"

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HOUSE AMENDMENTS TO HOUSE BILL NO. 1108 NAT. RES. 2/12/99

Page 2, line 17, replace "a reasonable time" with "six months"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1108 NAT. RES. 2/12/99

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Page 3, line 20, replace ", and amounts paid to another telecommunications carrier for" with an underscored period

Page 3, remove lines 21 and 22

Page 3, line 26, after "carrier" insert "retail"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1108 NAT. RES. 2/12/99

Page 4, line 16, overstrike "A hospital, hotel, motel, or similar place of temporary accommodation selling"

Page 4, overstrike line 17

Page 4, line 18, overstrike "stated charge for the service" and insert immediately thereafter "Internet access service or similar service"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1108 NAT. RES. 2/12/99

Page 5, line 6, replace "inter-company" with "intercarrier"

Page 5, line 9, replace "company" with "telecommunications carrier"

Page 5, line 10, replace "inter-company" with "intercarrier"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1108 NAT. RES. 2/12/99

Page 6, line 23, after "carrier's" insert "retail"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1108 NAT. RES. 2/12/99

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Renumber accordingly

Date: 2/11/99
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.**

House House Natural Resources Committee

Subcommittee on HB 1108
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken accept both amendments

Motion Made By DeKrey Seconded By Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz					
Vice-Chairman Dale Henegar					
Representative David Drovdal					
Representative Pat Galvin					
Representative Duane DeKrey					
Rep. Darrell D. Nottestad					
Representative Jon O. Nelson					
Representative Byron Clark					
Representative Todd Porter					
Representative Jon Martinson					
Representative Lyle Hanson					
Representative Scot Kelsh					
Representative Deb Lundgren					
Representative Sally M. Sandvig					
Representative Dorvan Solberg					

VOICE

Total (Yes) X No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/11/99
 Roll Call Vote #: 2

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.**

House House Natural Resources Committee

Subcommittee on AB 1108
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By DeKrey Seconded By Porter

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz	X				
Vice-Chairman Dale Henegar	X				
Representative David Drovdal	X				
Representative Pat Galvin	X				
Representative Duane DeKrey	X				
Rep. Darrell D. Nottestad	X				
Representative Jon O. Nelson	X				
Representative Byron Clark	X				
Representative Todd Porter	X				
Representative Jon Martinson	X				
Reperesentative Lyle Hanson		X			
Representative Scot Kelsh		X			
Representative Deb Lundgren		X			
Representative Sally M. Sandvig		X			
Representative Dorvan Solberg	X				

Total (Yes) 11 No 3

Absent 1

Floor Assignment Grosz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1108: Natural Resources Committee (Rep. Grosz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1108 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "three" with "five"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "carriers" insert ", preservation of records, and resale certificates"

Page 1, line 8, remove "and" and after "application" insert "; to provide an effective date; and to provide an expiration date"

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Page 3, line 26, after "carrier" insert "retail"

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Page 4, overstrike line 17

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Page 5, line 9, replace "company" with "telecommunications carrier"

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Renumber accordingly

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1108

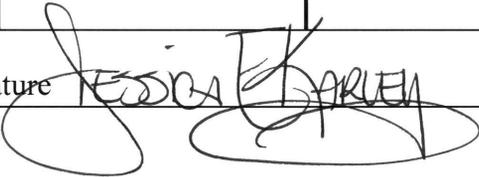
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1108

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date March 1, 1999

Tape Number	Side A	Side B	Meter #
1		x	605-end
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1108. All senators were present.

Marcy Dickerson, Telecommunications Tax Administrator for the office of the State Tax Commissioner, introduced the bill to the committee. Her testimony is included. Senator Krebsbach asked her if the university campuses qualified for this. Ms. Dickerson told her that there isn't any taxes on the university campuses.

David Crothers, North Dakota association of telephone cooperatives, testified in support of HB1108. (meter # 2125-2400)

Mel Kambietz, U.S. West testified in support of HB1108.

Todd Krand, Air Touch Communications, introduced Richard Nelson, Director of Government Relations for Air Touch, who then testified in support to HB1108.

Paul Russinoff, State Policy Council for The Internet Alliance, testified in support to HB1108.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number Hb1108

Hearing Date March 1, 1999

Senator Mutch closed the hearing on HB1108.

Senator Krebsbach motioned for a do pass with amendments committee recommendation on

HB1108. Senator Klein seconded her motion. The motion carried with a 7-0-0 vote.

Senator Krebsbach will carry the bill.

March 8, 1999

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108

Page 4, line 5, after the second period insert "The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49."

Renumber accordingly



**NORTH DAKOTA ASSOCIATION
OF TELEPHONE COOPERATIVES**

Box 1144 - Mandan, ND 58554
Phone 701-663-1099 - FAX 701-663-0707

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1108

Page 6, remove lines 11 through 16.

Renumber accordingly.

March 15, 1999

783
3/16/99

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108
SENATE AMENDMENTS TO ENGR. HB 1108 IBL 3/16/99

Page 4, line 5, after the second period insert "The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49."

SENATE AMENDMENTS TO ENGR. HB 1108 IBL 3/16/99

Page 5, line 7, overstrike "d."

Page 5, line 9, remove "Internet access service or similar service" and overstrike the semicolon

Page 5, line 10, overstrike "e." and insert immediately thereafter "d."

SENATE AMENDMENTS TO ENGR. HB 1108 ib1 3/16/99

Page 6, line 3, replace "4" with "3"

Page 6, line 10, replace "4" with "3"

Page 6, remove lines 11 through 16

Page 6, line 17, replace "4" with "3"

SENATE AMENDMENTS TO ENGR. HB 1108 IBL 3/16/99

Page 7, line 4, replace "4" with "3"

SENATE AMENDMENTS TO ENGR. HB 1108 IBL 3/16/99

Page 10, line 2, replace "through 3" with "and 2"

Renumber accordingly

Date: 3/25/99
Roll Call Vote #:

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1108

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS / AMENDMENTS

Motion Made By KREBSBACH Seconded By KLEIN

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment KREBSBACH

REPORT OF STANDING COMMITTEE

HB 1108, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1108 was placed on the Sixth order on the calendar.

Page 4, line 5, after the second period insert "The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49."

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Page 6, line 3, replace "4" with "3"

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Page 6, remove lines 11 through 16

Page 6, line 17, replace "4" with "3"

Page 7, line 4, replace "4" with "3"

Page 10, line 2, replace "through 3" with "and 2"

Re-number accordingly

1999 HOUSE NATURAL RESOURCES

HB 1108

CONFERENCE COMMITTEE

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1108

House Natural Resources Committee

Conference Committee

Hearing Date 4/1/99

Tape Number	Side A	Side B	Meter #
1	x		0.0-35.0
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes: REP. GROSZ called the conference committee to order. All the members were present.

REP. GROSZ comments about the amendments from the senate side. GROSZ speaks about the Internet access service. Talking about the reform bill 1068, from two years ago.

SEN. MUTCH comments that he hears from other states that this is not working.

SEN. KREBSBACH says that the federal rulings have not come down yet.

SEN. HEITKAMP wonders if the senate amendment flies, will it then tax everyone fairly. REP.

GROSZ says that he feels that we are. Voice over is going to be the big selling point.

HEITKAMP has a fear that they are not clear on how they do this taxation. They may be getting ahead of themselves. GROSZ replies that no one challenged it. Helps the tax dept.

SEN. KREBSBACH says that its not really being promoted in the states. GROSZ comments that Montana does not have sales tax. Be careful not to be prohibitive. The Internet is reselling telecommunication services. McLeoud USA has to pay for reselling.

SEN. HEITKAMP says that we gave the hotels a break, if we pass this will it..... REP. GROSZ replies no, hotels will be okay.

RICK CLAYBURGH, ND TAX COMMISSIONER, spoke to the committee on the issue. RICK says that in 4 to 5 years we change the sales tax. ISP's don't want to be liable.

REP. GROSZ talks about the fiscal note attached. What about a competitively neutral tax. RICK comments about concern from the tax payers.

SEN. MUTCH says that this needs to be settled in court. SEN. HEITKAMP says that AOL files under protest. RICK says that this needs to be clarified better. SEN. HEITKAMP says that this bil is retroactive. The hearing was then closed. REP. GROSZ states to the committee that he will look into grandfather clause. There was no action. The conference committee will be rescheduled.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1108 CC #2

House Natural Resources Committee

Conference Committee

Hearing Date 4/5/99

Tape Number	Side A	Side B	Meter #
2	x		0.0-12.5
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes: REP. GROSZ called the conference committee to order. All the members were present.

REP. GROSZ comments about small telephone companies. Doing away with this and then there will be a lot more to it. Talking about changing the senate amendments.

SEN. MUTCH states then we're back where we started from.

REP. CLARK comments that the State Tax Commissioner's office is the ones that wanted this.

REP. GROSZ says that the State Tax Commissioner's office said it would be good idea if it was put in.

SEN. KREBSBACH says if you put in the wording, "in lieu of," is a whole different ball game.

SEN. MUTCH asks about property taxes. Do you pay tax on real property? REP. GROSZ replies no.

SEN. KREBSBACH makes a motion for the House to accede to the Senate amendments.

Seconded by SEN. MUTCH.

Page 2

House Natural Resources Committee

Bill/Resolution Number 1108 CC #2

Hearing Date 4/5/99

SEN. HEITKAMP would like to see the bill further amended which includes the triple RC Committee.

REP. GROSZ says that he would like to see this motion fail. GROSZ comments that this is not the way it should be. GROSZ states again that he would like to see this motion fail.

REP. GROSZ calls for the roll call vote. The vote was 5 YES, 1 NO, 0 ABSENT. The motion passes. The CARRIER of the bill is REP. CLARK. The conference committee was then closed.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1108 CC #3

House Natural Resources Committee

Conference Committee

Hearing Date 4/13/99

Tape Number	Side A	Side B	Meter #
1	x		0.0-20.0
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes: REP. DORSO called the conference committee to order. All members were present.

REP. DORSO then proceeded by handing out the amendments that he brought to the meeting.

SEE AMENDMENTS. REP. DORSO explains the amendments. It puts the ISP's back in, and leaves out the hospitals and hotels, motels.

REP. CLARK makes a motion for the Senate to recede from their amendments and then to further adopt. Seconded by SEN. KREBSBACH for the sake of discussion.

SEN. KREBSBACH asks if the cable company that is going to be hooked up, and they are going to do the same services that the ISP's are doing, is the intent to also tax them? REP. DORSO replies yes it is. SEN. KREBSBACH asks how is the Tax Dept. going to monitor this? REP. DORSO replies that they aren't catching all the ISP's right now. The biggest problem is tax & sales. We have to prove that they have an access and figure out how to tax these people.

SEN. HEITKAMP says there are two schools of thought . One, we're taxing them now, do we really need to do this? Two, the cable issue is a real issue. When the cable comes in it's going to be so much faster than anything else. We can't let them slip through. REP. DORSO replies that he agrees with SEN. HEITKAMP. The problem is going to be when you have to separate out your cable bill. SEN. HEITKAMP replies that dish satellites are going to be used for Internet access. REP. DORSO comments that he would hate to guess what technology is going to bring in two to four years from now. REP. DORSO comments about SEN. DORGAN getting an award for protecting our rights to be able to tax. It's absolutely bogus that congress is trying to take it away from us. SEN. HEITKAMP states that he and REP. DORSO were at the same conference together, when the Senator from Oregon and SEN. DORGAN duked it out and it was pretty clear who the winner was.

SEN. MUTCH asks about the amendment that REP. DORSO is proposing. REP. DORSO says there is no study in his. SEN. HEITKAMP states to the committee that the study that was in the last amendment was ran up the flag pole by REP. DORSO. REP. DORSO comments to the committee that there already is a tax study. What more are we going to learn?

SEN. KREBSBACH states that we should catch it on the end of the retail part. Then it's with out all of the audit procedures. The bigger fish to fry is the sales tax.

SEN. HEITKAMP states that someone bought a computer over the Internet just the other day. That's a thousand dollars worth of sales that aren't being taxed. SEN. KREBSBACH comments that person has an obligation to report it and pay it. The conference committee then bursts into laughter.

REP. SANDVIG asks if taxing the Internet providers is already in place? REP. DORSO says that the law back in 1997 was leaning that way, but it was not very clear. REP. SANDVIG asks if that is legislative intent? REP. DORSO replies no, the way it was wrote was a definition of that person. Internet services were to be included.

SEN. MUTCH comments that it should be in a higher court for a decision. SEN. KREBSBACH comments about the whole sale part of it, and the collection end. REP. DORSO comments that he does not think that we are collecting anything. SEN. KREBSBACH says that her understanding of it is that they can use it as a deduction. REP. DORSO comments that he does not think that AT&T is paying us thing. SEN. KREBSBACH states that we are collecting it and that's where it belongs and should stay.

REP. SANDVIG asks about retroactive to when? REP. DORSO replies 1997.

SEN. HEITKAMP states that these amendments aren't doing anything different.

REP. DORSO asks if there is any further discussion. Being none he asked for the roll call to taken. SEN. MUTCH-NO, SEN. KREBSBACH-NO, SEN. HEITKAMP-YES,

REP. DORSO-YES, REP. CLARK-YES, REP. SANDVIG-NO. 3-3-0 the motion fails, because if tie.

REP. DORSO asks the conference committee how long they want to sit here, SEN. MUTCH ask how long do you got? REP. DORSO replies with we got until the end of April.

REP. SANDVIG asks if we are really going to be able to prove the user's of the Internet.

SEN. KREBSBACH states that the ISP's are feeling that they are being doubled taxed.

REP. DORSO asks what the Senate wants to do with it. SEN. MUTCH replies that they sent a bill over there. What did you do with it? REP. DORSO said that the floor voted against the

conference committee report, 85-11. SEN. MUTCH says that maybe we could change their minds. REP. DORSO comments that he doesn't think that we're going to change 35 people's minds. SEN. MUTCH says we'll have to get the lobbyists busy.

REP. SANDVIG and SEN. KREBSBACH decide to change their votes.

SEN. HEITAKMP makes another motion for the Senate to recede from their amendments and to further amend. Seconded by REP. CLARK. The roll call vote was taken with 6-0-0. The motion carries. The carrier of the bill is REP. CLARK. The conference committee meeting was then closed.

VR
4/7/99
1082

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108 NAT. RES. 4/7/99

That the House accede to the Senate amendments as printed on pages 1035 and 1036 of the House Journal and pages 879 and 880 of the Senate Journal and that Engrossed House Bill No. 1108 be further amended as follows:

Page 1, line 8, after the semicolon insert "to amend and reenact the new section to chapter 49-21 of the North Dakota Century Code as created by section 1 of House Bill No. 1050, as approved by the fifty-sixth legislative assembly, relating to a regulatory reform review commission study;"

Page 1, after line 10, insert:

"SECTION 1. AMENDMENT. The new section to chapter 49-21 of the North Dakota Century Code as created by section 1 of House Bill No. 1050, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

Regulatory reform review commission - Appointments - Compensation - Report to legislative council. The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1999 and 2003 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 2000 and 2002. During the 1999-2000 interim, the regulatory reform review commission shall study the provisions of the gross receipt tax in this state and examine the manner in which internet access service providers are taxed. The regulatory reform review commission shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-seventh legislative assembly. The regulatory reform review commission may review the effects of federal universal service support mechanisms on telecommunications companies and consumers in this state and may review the preservation and advancement of universal service in this state, consistent with the Communications Act of 1934 [47 U.S.C. 151 et seq.], as amended by the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56] during these interims and may include any findings and recommendations in its reports to the legislative council. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and the public service commission staff providing technical assistance while carrying out their duties."

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108 NAT. RES. 4/7/99

Page 10, line 1, replace "6" with "7"

Page 10, line 3, replace "7" with "8"

2 of 2

Renumber accordingly



(Bill Number) 1108 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Sen. Mutch Y
Sen. Krebsbach Y
Sen. Heitkamp Y

For the House:

Rep. Gross N
Rep. Clark Y
Rep. Brading Y

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 S724/H726 S723/H725
the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

and place 1108 on the Seventh order.
727

, adopt (further) amendments as follows, and place
1108 on the Seventh order:

having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

DATE: 4/5/99

CARRIER: Clark

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

HB 1108, as engrossed: Your conference committee (Sens. Mutch, Krebsbach, Heitkamp and Reps. Grosz, Clark, Sandvig) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1035-1036, adopt further amendments as follows, and place HB 1108 on the Seventh order:

That the House accede to the Senate amendments as printed on pages 1035 and 1036 of the House Journal and pages 879 and 880 of the Senate Journal and that Engrossed House Bill No. 1108 be further amended as follows:

Page 1, line 8, after the semicolon insert "to amend and reenact the new section to chapter 49-21 of the North Dakota Century Code as created by section 1 of House Bill No. 1050, as approved by the fifty-sixth legislative assembly, relating to a regulatory reform review commission study;"

Page 1, after line 10, insert:

"SECTION 1. AMENDMENT. The new section to chapter 49-21 of the North Dakota Century Code as created by section 1 of House Bill No. 1050, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

Regulatory reform review commission - Appointments - Compensation - Report to legislative council. The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1999 and 2003 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 2000 and 2002. During the 1999-2000 interim, the regulatory reform review commission shall study the provisions of the gross receipt tax in this state and examine the manner in which internet access service providers are taxed. The regulatory reform review commission shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-seventh legislative assembly. The regulatory reform review commission may review the effects of federal universal service support mechanisms on telecommunications companies and consumers in this state and may review the preservation and advancement of universal service in this state, consistent with the Communications Act of 1934 [47 U.S.C. 151 et seq.], as amended by the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56] during these interims and may include any findings and recommendations in its reports to the legislative council. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and the public service commission staff providing technical assistance while carrying out their duties."

Page 10, line 1, replace "6" with "7"

Page 10, line 3, replace "7" with "8"

Renumber accordingly

Engrossed HB 1108 was placed on the Seventh order of business on the calendar.

VR
4/13/99

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108 NAT. RES. 4/13/99

That the Senate recede from its amendments as printed on pages 1035 and 1036 of the House Journal and pages 879 and 880 of the Senate Journal and that Engrossed House Bill No. 1108 be amended as follows:

Page 4, line 5, after the second period insert "The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49."

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108 NAT. RES. 4/13/99

Page 6, line 3, replace "4" with "3"

Page 6, line 10, replace "4" with "3"

Page 6, remove lines 11 through 16

Page 6, line 17, replace "4" with "3"

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108 NAT. RES. 4/13/99

Page 7, line 4, replace "4" with "3"

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108 NAT. RES. 4/13/99

Page 10, line 2, replace "through 3" with "and 2"

Re-number accordingly

Roll call #1

(Bill Number) 1108 (, as (re)engrossed):

Your Conference Committee

For the Senate:

For the House:

<u>Witch</u>	<u>N</u>
<u>Krebsbach</u>	<u>N</u>
<u>Weitkamp</u>	<u>Y</u>

<u>Norse</u>	<u>Y</u>
<u>Clark</u>	<u>Y</u>
<u>Sandig</u>	<u>N</u>

recommends that the (SENATE) (HOUSE) (ACCEDE) (to) (RECEDE) (from)
723/724 725/726 5724/8726 5723/8725
 the (Senate) (House) amendments on (SJ/HJ) page(s) 1035 - 1036

3-3

and place _____ on the Seventh order.
727

, adopt (further) amendments as follows, and place
1108 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.
690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4 / /

CARRIER: _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

(Bill Number) 1108 (, as (re)engrossed):

*Roll
Call Vote
#2*

Your Conference Committee

For the Senate:

<u>Butch</u>	<u>Y</u>
<u>Krebsback</u>	<u>Y</u>
<u>Heitkamp</u>	<u>Y</u>

For the House:

<u>Deaso</u>	<u>Y</u>
<u>Clark</u>	<u>Y</u>
<u>Sandberg</u>	<u>Y</u>

recommends that the SENATE (ACCEDE to) RECEDE (from) the (Senate/House) amendments on (SJ/HJ) page(s) 1035 - 1036

6-0

and place _____ on the Seventh order.

, adopt (further) amendments as follows, and place 1108 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4 / 13 / 99

CARRIER: Rep. Clark

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

HB 1108, as engrossed: Your conference committee (Sens. Mutch, Krebsbach, Heitkamp and Reps. Dorso, Clark, Sandvig) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1035-1036, adopt amendments as follows, and place HB 1108 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1035 and 1036 of the House Journal and pages 879 and 880 of the Senate Journal and that Engrossed House Bill No. 1108 be amended as follows:

Page 4, line 5, after the second period insert "The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49."

Page 6, line 3, replace "4" with "3"

Page 6, line 10, replace "4" with "3"

Page 6, remove lines 11 through 16

Page 6, line 17, replace "4" with "3"

Page 7, line 4, replace "4" with "3"

Page 10, line 2, replace "through 3" with "and 2"

Re-number accordingly

Engrossed HB 1108 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

HB 1108

HOUSE BILL 1108

House Natural Resources Committee - January 7, 1999

Testimony of Marcy Dickerson

Mr. Chairman, members of the Committee, my name is Marcy Dickerson and I am the Telecommunications Tax Administrator for the Office of State Tax Commissioner. I am here to explain House Bill 1108.

The purposes of House Bill 1108 are to clarify certain provisions in the existing telecommunications gross receipts tax law; to make compliance less cumbersome for taxpayers; to provide for audit, appeal, assessment, and refund similar to other tax types; and to facilitate efficient administration of the tax. I would like to go through the proposed changes, and I will be glad to answer any questions as we go along.

Section 1 of House Bill 1108 provides a three-year period for the Tax Commissioner to audit returns of telecommunications carriers, and provides for the State Board of Equalization to assess any additional tax found due. Section 2 sets out procedures to be followed by the Tax Commissioner and the State Board of Equalization when additional tax is found due, provides for appeal by the taxpayer, and provides a six-month period for the taxpayer to bring an action in district court.

Section 3 provides a three-year period for a credit or refund of an overpayment of the telecommunications gross receipts tax, and provides a six-month period for the taxpayer to bring an action in district court if the State Board of Equalization denies a refund.

There is a typographical error on line 6 of page 3. After the word "all", replace "of" with "or".

Section 4 clarifies certain existing definitions. The proposed language on page 3 refers to

amounts that may be deducted from gross receipts to arrive at adjusted gross receipts. Beginning on line 19 of page 3, the wording "originated by a caller in this state" is intended to limit the deduction for amounts paid for directory assistance to amounts attributable to North Dakota only. The similar language beginning on line 28 limits taxable gross receipts from directory assistance to North Dakota gross receipts only. These provisions conform to the rest of the definition of "gross receipts".

The language beginning on line 20 of page 3 "... and amounts paid to another telecommunications carrier for service billed to a station in this state and included in the gross receipts of the reporting carrier" is intended to prevent double taxation of gross receipts. This applies to hotels, motels, private pay telephone operators, i.e., anyone who receives telephone service billed to a station in this state and who then charges someone else for use of that service. For example, a local exchange carrier (LEC) charges a \$40 monthly fee, or \$480 per year, for service to a pay telephone in a restaurant (a station in this state). The LEC pays gross receipts tax on the \$480. The restaurant owner takes in \$550 per year from the pay telephone. If he is required to pay gross receipts tax on the entire \$550, \$480 of that will be taxed twice - once to the LEC and once to the restaurant owner. The proposed language allows the restaurant owner to deduct the \$480 from his taxable gross receipts, and he pays tax on his markup, \$70 of gross receipts. For the 1998 tax, the Tax Commissioner administratively permitted the deduction, under § 57-34-12 (1) which states, "The tax commissioner shall adopt rules as necessary to avoid double taxation of gross receipts ..." We have encountered situations where a pay telephone annually took in less than what the LEC charged to serve it, but the business owner continued to provide the pay telephone as a service to his patrons. Without the deduction, that business owner would pay gross receipts tax on the revenue from his pay telephone, even though he actually lost money

on it.

The definition of “company” beginning on line 23 of page 3 has been added for clarification.

I have already explained the change beginning on line 28 of page 3, which limits taxable revenue from directory assistance to North Dakota revenue.

The change of the word “person” to “company” on line 4 of page 4 has been made for clarification.

The language on lines 12 and 13 of page 4 “and is billed to a station in this state” has been added for clarification and to harmonize with the definition of “gross receipts” and existing language on line 15 of page 4 and in Section 5 (shown as subsection 4 of § 57-34-02 on page 5).

Subsection 1 of Section 5, beginning on line 6 of page 5, requires a telecommunications carrier that received telecommunications revenue from another telecommunications carrier, i.e., revenue that was not billed to a station in this state and is not subject to the gross receipts tax, to provide a list of those carriers. The purpose of this language is to assist the Tax Commissioner in contacting all resellers of telecommunications service that are subject to the gross receipts tax. The Public Service Commission (PSC) is very helpful in providing information to the Tax Department, but there are telecommunications carriers who are operating in North Dakota unknown to the PSC, and this subsection is intended to help the Tax Department discover them.

As I reviewed my testimony, I felt I should recommend amendments to the wording of subsection 1 to clarify exactly what is wanted on the list. On line 6 of page 5, replace “inter-company” with “inter-carrier”. On line 9, replace “company” with “telecommunications carrier”. On line 10, replace “inter-company” with “inter-carrier”.

Subsection 2 of Section 5, beginning on line 13 of page 5, requires a telecommunications

carrier that provides telecommunications service to pay telephones owned by other companies to provide a list of those pay telephone companies. There is no other source from which the Tax Department can obtain that information.

Subsection 3 of Section 5, beginning on line 20 of page 5, provides a penalty for failure to provide the information required in subsections 1 and 2, and provides that for good cause the Tax Commissioner may excuse any or all penalties imposed under this section.

The language beginning on line 3 of page 6 requires that the telecommunications gross receipts tax reporting form include a notice of a taxpayer's right to appeal to the State Board of Equalization. This harmonizes with the proposed revisions in Section 6.

Section 6 eliminates the requirement for a notice of tentative assessment to be mailed to each taxpayer. In 1998, we found the required notice of tentative assessment created a great deal of confusion for taxpayers. Some had no idea what it was; some thought it was a tax statement and sent in payment based on that notice, before the State Board of Equalization had assessed the tax. The notice of tentative assessment was adopted from the property tax law, which provides for a notice of the tentative valuation the Tax Commissioner places on public utility property. In that case, the taxpayer would not know whether he had a reason to protest to the State Board of Equalization unless he received the notice. For the telecommunications gross receipts tax, a notice of tentative assessment is not necessary, because the taxpayer has calculated the tax amount before filing the return and knows what the tax will be. The language beginning on line 15 of page 6 requires the Tax Commissioner to notify a taxpayer of any change in the tax amount shown on the return submitted by that taxpayer. The taxpayer may then appeal the change to the State Board of Equalization. These changes will prevent a lot of misunderstanding by taxpayers and will eliminate a lot of paper work and postage expense.

Section 7 provides that taxes will not be distributed to a taxing district that has dissolved, and that the revenue will be allocated to the successor district.

Section 8 specifies that the penalty provided in subsection 1 of § 57-34-10 applies only to the telecommunications gross receipts tax report due May 1 of each year, and not to the required list of carriers from which the taxpayer received inter-carrier telecommunications revenue or the required list of pay telephone operators served by the taxpayer.

Deleting language beginning on line 27 of page 7 removes the existing interest provisions that follow the property tax law. These provisions are replaced by the new language beginning on line 7 of page 8. The new interest provisions make it possible to process delinquent accounts through the Tax Department's computer program; the existing property-tax-law provisions cannot be handled by the program. This change reduces the first year's interest by 2 percent, because only 1 percent interest attaches after March 1 on a delinquent account. Under the property-tax-law provisions, 3 percent interest attaches on March 1. If an account remains delinquent after the first year, subsequent interest would be 12 percent per year under either method.

Going back to line 4 of page 8, a provision has been added to excuse payment of a tax liability of less than \$5. This is similar to individual and corporate income tax provisions. The State Board of Equalization voted to approve that policy for the 1998 tax.

The changes beginning on line 12 of page 8 revise lien provisions to conform to current tax lien law for other tax types.

It is intended that the proposed changes apply to the 1998 telecommunications gross receipts tax, when possible. Obviously, activities that have already taken place will not be changed by enactment of this bill. However, provisions concerning protests, claims for refund,

audits, deficiencies, interest and liens should apply for the 1998 tax.

Statistics concerning the 1998 telecommunications gross receipts tax are as follows:

Number of taxpayers assessed	447
Total taxes assessed	\$8,286,431.33

These figures do not include 76 taxpayers having tax liabilities of less than \$5.00, for a total of \$84.03, who were excused from paying the tax.

That concludes my prepared testimony. I will be happy to answer any questions.

WRITTEN TESTIMONY OF REPRESENTATIVE GROSZ IN SUPPORT OF PROPOSED
AMENDMENTS TO HOUSE BILL 1108 PREPARED BY THE LEGISLATIVE COUNCIL
STAFF ON JANUARY 22, 1999.

The 1997 Legislative Assembly enacted House Bill 1068 which provided a new method for taxing telecommunication services provided by telecommunication carriers. S.L. 1997, ch. 483. This legislation was the product of a study that was done by the 1995-1997 Interim Committee on Finance and Taxation. I served on that Committee and participated in the deliberations that preceded the drafting of House Bill 1068.

During the 1997 Legislative Session, House Bill 1068 was assigned to the Finance and Taxation Committee of the House of Representatives. I served on that Committee and participated in the deliberations that preceded the enactment of House Bill 1068.

At all times during the previously described deliberations, it was my understanding that Internet access services and similar services were included in the telecommunication services subject to the new tax imposed under House Bill 1068. It is my further understanding that the State Board of Equalization treated these services as taxable under House Bill 1068 for the 1998 tax year.

However, it has come to my attention that some Internet Service Providers are of the opinion that their services were not included as taxable services under House Bill 1068. In order to remove any misunderstanding about this issue, I am offering the following amendments to

House Bill 1108:

Page 4, line 18, overstrike “and”

Page 4, line 19, after “service” insert “and”

f. Internet access service or similar service”

Renumber accordingly

The sole purpose of these amendments is to clarify any possible ambiguity in the law regarding the taxation of Internet access services or similar services as it is my understanding that these services were always intended to be subject to the tax imposed under House Bill 1068.

HOUSE BILL 1108 - PROPOSED AMENDMENTS

House Natural Resources Committee - February 11, 1999

Testimony of Marcy Dickerson

Mr. Chairman, members of the Committee, for the record my name is Marcy Dickerson and I am the Telecommunications Tax Administrator for the Office of State Tax Commissioner. Thank you for the opportunity to explain these amendments to House Bill 1108. These amendments include changes requested by US WEST and, at the same time, preserve the original intent of House Bill 1108 to clarify provisions in the telecommunication gross receipts tax law; to make compliance less cumbersome for taxpayers; to provide for audit, appeal, assessment, and refund similar to other tax types; and to facilitate efficient administration of the tax.

The first four amendments to Page 1 merely amend the header of the bill to correspond with the other proposed amendments.

The amendment on Page 2, line 17 specifies the time within which the State Board of Equalization must respond to a telecommunications carrier's protest, and was requested by US WEST.

The amendment on Page 3, line 6 corrects a typographical error.

The new Sections 4 and 5 were requested by US WEST. They set out requirements for preservation of telecommunications carriers' records, and relieve telecommunications carriers from submitting the telecommunications gross receipts tax on wholesale transactions.

The last three lines of Section 5 make a sale of telecommunications service to a hospital, hotel, motel, or similar place of temporary accommodation a retail sale subject to the gross receipts tax. You will see as I continue that another amendment eliminates a hospital, hotel,

motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests from the definition of telecommunications service. This change is necessary if the law is amended to tax only retail transactions. It is impossible for a telecommunications carrier to know, when it provides service to a hospital or hotel, etc., how much, if any, of that service is resold by that hospital or hotel to its patients or guests. It is impossible for that carrier to know how much of the service should be considered retail or wholesale. Hotels and motels were taxed a total of \$24,000 for 1998; no hospital reported any liability.

The amendment on Page 3, line 18 is for clarification only.

The amendments on Page 3, lines 20, 21, and 22 remove provisions that are not necessary if taxable telecommunications service is limited to retail transactions.

The amendment on Page 3, line 26 limits taxable telecommunications service to retail transactions and was requested by US WEST.

The amendments on Page 4, lines 15, 16, 17, 18, and 19 eliminate a hospital, hotel, motel, or similar place of temporary accommodation from the definition of telecommunications service.

The amendments of Page 5, lines 6, 9, and 10 are for clarification and limit the required lists to just wholesale customers of a telecommunications carrier.

The amendment on Page 6, line 23 clarifies that only a retail customer is eligible for a refund of telecommunications gross receipts tax paid on amounts in excess of \$800,000 in a calendar year (\$20,000 tax).

The amendments on Page 8, lines 23 and 25 are technical corrections.

The amendment on Page 9, line 6 is a technical correction.

The amendments on Page 9, line 8 are to eliminate the need to recalculate 1998 taxes that

have already been assessed and paid but to put the new provisions in place for the 1999 assessment; to limit the requirement to file lists of wholesale customers and owners of pay telephones, and the penalty for not filing those lists, to a two-year period; and to allow the two-year period to begin for the 2000 tax year, because the filing date for 1999 has already passed.

HOUSE BILL 1108

Senate Industry, Business and Labor Committee - March 1, 1999

Testimony of Marcy Dickerson

Mr. Chairman, members of the Committee, my name is Marcy Dickerson and I am the Telecommunications Tax Administrator for the Office of State Tax Commissioner. Thank you for the opportunity to explain House Bill 1108.

The purposes of House Bill 1108 are to clarify certain provisions in the existing telecommunications gross receipts tax law; to make compliance less cumbersome for taxpayers; to provide for audit, appeal, assessment, and refund similar to other tax types; and to facilitate efficient administration of the tax. I would like to go through the proposed changes, and I will be glad to answer any questions as we go along.

Section 1 of House Bill 1108 provides a three-year period for the Tax Commissioner to audit returns of telecommunications carriers, and provides for the State Board of Equalization to assess any additional tax found due. Section 2 sets out procedures to be followed by the Tax Commissioner and the State Board of Equalization when additional tax is found due, provides for appeal by the taxpayer, and provides a six-month period for the taxpayer to bring an action in district court.

Section 3 provides a three-year period for a credit or refund of an overpayment of the telecommunications gross receipts tax, and provides a six-month period for the taxpayer to bring an action in district court if the State Board of Equalization denies a refund.

Sections 4 and 5 set out requirements for preservation of telecommunications carriers' records, and relieve telecommunications carriers from submitting the telecommunications gross receipts tax on wholesale transactions. These provisions were requested by US West. The last three lines of Section 5 make a sale of telecommunications service to a hospital, hotel, motel, or similar place of temporary

accommodation a retail sale subject to the gross receipts tax. You will see as I continue that another section eliminates a hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests from the definition of telecommunications service. This change is necessary, because it is impossible for a telecommunications carrier to know, when it provides service to a hospital or hotel, etc., how much, if any, of that service is resold by that hospital or hotel to its patients or guests. It is impossible for that carrier to know how much of the service should be considered retail or wholesale. Hotels and motels were taxed a total of \$24,000 for 1998; no hospital reported any liability.

Section 6 clarifies certain existing definitions. On line 12 of page 4, the wording “originated by a caller in this state” is intended to limit the deduction for amounts paid for directory assistance to amounts attributable to North Dakota only. The similar language beginning on line 18 limits taxable gross receipts from directory assistance to North Dakota gross receipts only. These provisions harmonize with the rest of the definition of “gross receipts” which limits taxable gross receipts to charges billed to a station in this state.

The definition of “company” beginning on line 13 of page 4 has been added for clarification.

I have already explained the change beginning on line 18 of page 4, which limits taxable revenue from directory assistance to North Dakota revenue.

The change of the word “person” to “company” on line 25 of page 4 has been made for clarification.

The language on lines 3 and 4 of page 5 “and is billed to a station in this state” has been added for clarification, and to harmonize with the definition of “gross receipts” and with the existing requirement in Section 7 that a telecommunications carrier must report “... a statement of its gross receipts in the state ...” (shown on line 20 of page 6).

The overstrike beginning on line 7 of page 5 excludes hospitals, hotels, motels, or similar places

of temporary accommodation from the definition of telecommunications service. This is necessary because of the amendment I explained previously that makes all sales of telecommunications service to a hospital, hotel, motel, or similar place of temporary accommodation retail sales. If those entities are deemed telecommunications carriers, taxation of their gross receipts will result in double taxation of the amounts they pay to telephone companies for telecommunications service. This amendment may result in the need to refund \$24,000 of 1998 gross receipts taxes paid by hotels and motels.

The underscored language on line 9 of page 5 was added by the House Natural Resources Committee to clarify the intent of the legislation enacted in 1997.

Subsection 1 of Section 7, beginning on line 28 of page 5, requires a telecommunications carrier that received telecommunications revenue from another telecommunications carrier to provide a list of those carriers. The purpose of this language is to assist the Tax Commissioner in contacting all resellers of telecommunications service that are subject to the gross receipts tax. The Public Service Commission (PSC) is very helpful in providing information to the Tax Department, but there may be telecommunications carriers operating in North Dakota unknown to the PSC, and this subsection is intended to help the Tax Department discover them.

Subsection 2 of Section 7, beginning on line 4 of page 6, requires a telecommunications carrier that provides telecommunications service to pay telephones owned by other companies to provide a list of those pay telephone companies. There is no other source from which the Tax Department can obtain that information.

Subsection 3 of Section 7 provides a penalty for failure to provide the information required in subsections 1 and 2, and provides that for good cause the Tax Commissioner may excuse any or all penalties imposed under this section. Subsections 1, 2, and 3 are effective for taxable years 2000 and 2001, and are thereafter ineffective (see lines 2 through 4 of page 10).

The language beginning on line 25 of page 6 requires that the telecommunications gross receipts

tax reporting form include a notice of a taxpayer's right to appeal to the State Board of Equalization.

This harmonizes with the proposed revisions in Section 8.

Section 8 eliminates the requirement for a notice of tentative assessment to be mailed to each taxpayer. In 1998, we found the required notice of tentative assessment created a great deal of confusion for taxpayers. Some had no idea what it was; some thought it was a tax statement and sent in payment based on that notice, before the State Board of Equalization had assessed the tax. The notice of tentative assessment was adopted from the property tax law, which provides for a notice of the tentative valuation the Tax Commissioner places on public utility property. In that case, the taxpayer would not know whether he had a reason to protest to the State Board of Equalization unless he received the notice. For the telecommunications gross receipts tax, a notice of tentative assessment is not necessary, because the taxpayer has calculated the tax amount before filing the return and knows what the tax will be. The language beginning on line 6 of page 7 requires the Tax Commissioner to notify a taxpayer of any change in the tax amount shown on the return submitted by that taxpayer. The taxpayer may then appeal the change to the State Board of Equalization. These changes will prevent a lot of misunderstanding by taxpayers and will eliminate a lot of paper work and postage expense.

Section 9 provides that taxes will not be distributed to a taxing district that has dissolved, and that the revenue will be allocated to the successor district.

Section 10 specifies that the penalty provided in subsection 1 of § 57-34-10 applies only to the telecommunications gross receipts tax report due May 1 of each year, and not to the required list of carriers from which the taxpayer received inter-carrier telecommunications revenue or the required list of pay telephone operators served by the taxpayer.

Deleting language beginning on line 17 of page 8 removes the existing penalty and interest provisions that follow the property tax law. These provisions are replaced by the new language beginning on line 28 of page 8. The new interest provisions make it possible to process delinquent

accounts through the Tax Department's computer program; the existing property-tax-law provisions cannot be handled by the program. This change reduces the first year's interest by 2 percent, because only 1 percent interest attaches after March 1 on a delinquent account. Under the property-tax-law provisions, 3 percent interest attaches on March 1. If an account remains delinquent after the first year, subsequent interest will be 12 percent per year under either method.

Going back to line 25 of page 8, a provision has been added to excuse payment of a tax liability of less than \$5. This is similar to individual and corporate income tax provisions. The State Board of Equalization voted to approve that policy for the 1998 tax.

The changes beginning on line 3 of page 9 revise lien provisions to conform to current tax lien law for other tax types.

Section 11, beginning on line 29 of page 9, provides for retroactive application of this act to tax year 1998. This permits audit, appeal, assessment, and refund provisions to apply to the 1998 tax.

Language beginning of line 31 of page 9 provides that the changes in provisions relating to taxation and deduction of charges for directory assistance, and the clarification that the gross receipts tax applies to only retail revenues from telecommunications service charges are effective for tax years beginning with 1999. The purpose of this is to avoid the necessity of recalculating 1998 taxes that have already been assessed and, in most cases, paid. The rest of Section 11 provides that the requirement that telecommunications carriers file a list of carriers from which they received inter-carrier telecommunications revenue, and a list of pay telephone operators they served, and penalty for failure to file, are effective for taxable years 2000 and 2001, and are thereafter ineffective.

Statistics concerning the 1998 telecommunications gross receipts tax are as follows:

Number of taxpayers assessed	447
Total taxes assessed	\$8,286,431.33

These figures do not include 76 taxpayers having tax liabilities of less than \$5.00, for a total of \$84.03,

who were excused from paying the tax.

That concludes my prepared testimony. I will be happy to answer any questions.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1108

By Richard Nelson, Air Touch Communications

Page 2, line 8, replace "thirty" with "sixty"

Page 3, line 17, after "require" insert "within standard business practice"

Page 6, remove lines 11 through 16

Page 8, line 7, after "any" insert "relevant and reasonable"

Renumber accordingly

**TESTIMONY OF PAUL RUSSINOFF
STATE POLICY COUNSEL, INTERNET ALLIANCE
BEFORE THE INDUSTRY, BUSINESS AND LABOR COMMITTEE
NORTH DAKOTA STATE SENATE
MARCH 1, 1999**

Mr. Chairman and Members of the Committee:

Good morning, my name is Paul Russinoff, I am the State Policy Counsel of the Internet Alliance. The Internet Alliance is the leading trade association representing companies developing consumer-based interactive services for the Internet. Our members comprise over 100 corporations doing business online, including America Online, Bell Atlantic, CompuServe, IBM, Microsoft, Netscape, Prodigy and US West.

I want to thank the Committee for the opportunity to be here today. On behalf of our members, I am testifying in opposition to HB 1108, as it is currently written. HB 1108, which reenacts and modifies certain sections of North Dakota's telecommunications tax, was amended in Committee on the 12th of February to include Internet Service Providers commonly know as ISP's as telecommunications services and thus subjecting ISPs and North Dakota consumers to an Internet access tax.

We are very opposed to this amendment for two reasons. First this is a new legislatively-based consumer tax on Internet access. Second it wrongly classifies ISP as telecommunications services. That is a classification with some very serious ramifications.

Today, Less than 10 states currently tax Internet access. And in those states, legislatures from Montana to Texas to Hawaii are now consider eliminating and prohibiting Internet access taxes. Two weeks ago Montan's Senate passed legislation exempting ISP from Telecommunications taxes in that state, and last week the Hawaiian Senate passed the Hawaii Internet Tax Freedom Act. Iowa, Maryland, Wisconsin, Tennessee and Texas each have bills which would prohibit telecommunications taxes imposed on Internet access providers. Last year a host of states which have never tax Internet access took a stand against these taxes and prohibited tax assessors in their states from considering Internet Access taxes. States have come out against these taxes for because they want to encourage their citizens to access this critical new mass medium, and they believe that electronic commerce, not confusing patchwork taxation will be more important to their bottom line.

I have been looking at Internet legislation for the 1998 and 1999 sessions and can say with some certainty that today North Dakota is the only state actually considering

Internet access tax legislation. This is a tax that will burden both North Dakota citizens who use the Internet, and North Dakota small businesses who provide Internet access; all the while generating less than \$75,000 for the state.

To subject Internet service providers to telecommunications tax, HB 1108 erroneously defines Internet services as telecommunications services. In fact, the telephone and the Internet are absolutely distinct mediums and providers of telecommunications services and Internet services are equally distinct. Providers of telecommunications services are governed by a formidable level of regulation at the federal and state levels which are designed to address the natural monopoly positions these services occupy. Internet service providers do not enjoy a natural monopoly. In fact, over 4,000 different companies provide Internet access in the United States, including a number of North Dakota small businesses. By defining Internet services as telecommunications services, HB 1108 opens the door to telecommunications regulation. Requiring the thousands of small business who provide Internet services to comply with telecommunications style regulation will be devastating.

The Internet Alliance and our membership strongly believe in policies designed to foster the growth of the Internet. Since 1996, our association has endorsed the notion that as businesses we should pay our fair share of taxation and support a simplified, uniform system of state and federal taxation. That's why we strongly supported passage of the Internet Tax Freedom Act last year. The Act does not exempt the Internet from taxation, it simply provides a time out period while the Advisory Commission on Electronic Commerce, which the Act establishes, can formulate a coherent, consensus taxation policy for the Internet. When that commission returns its recommendation next year, states will be presented with a fair, comprehensive and durable system that will generate satisfying levels of revenue for both state and federal government.

Today, while the promise of electronic commerce is great, the actual amount of business transacted on the Internet, as compared with Main Street, is still fractional. This year consumer-based electronic commerce actually doubled in the United States during the Holiday season (estimated at between 4-8 billion dollars overall). To put it in perspective, this figure represents less than 23% of Wal-Mart sales for 1997 and only a fraction of overall holiday spending (less than 2%). In truth, the Internet has great potential, but its not there yet. Nothing demonstrates this better than the \$75,000 dollars the state will generate from an access tax.

The actual assessments this state is charging are small. Microsoft and America Online are assessed at less than \$10,000 dollars apiece. However, we are here on principle. And in this case we believe that we stand with both consumer in this state who use the Internet, and the North Dakota small businesses who provide Internet access.

Thank you again for the opportunity to be here today, I would be happy to answer any questions you may have.



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March 9, 1999

Senator Duane Mutch
Chairman -- Industry, Business and Labor Committee
North Dakota State Capitol
600 East Blvd.
Bismarck, ND 58505

RE: HB 1108 -- Taxing Internet Access Charges

Dear Chairman Mutch,

I would like to advocate AT&T's opposition to the provision in House Bill 1108 which would levy the 2.5% telecommunications gross receipts tax on Internet access charges.

House Bill 1108 expands the definition of "telecommunications services" to include "Internet access service or similar service". Therefore, I would like to explain what "Internet access service" is - and what it is not. Generally, consumers pay a monthly charge (typically \$19.95 per month) for unlimited access to the data on the Internet through the Internet access provider's server¹. The provider's server searches, selects, packages, and sorts data for the consumer. And this is why a vast majority of states do not consider Internet access charges "telecommunications services." The \$19.95 per month represents a fee paid to access the provider's server. Clearly, the \$19.95 per month is not the charge for the local telephone call (i.e., "telecommunication services") between your home computer and the Internet service provider's server. This phone call is already subject to the North Dakota gross receipts tax as part of your phone bill.

AT&T's second objection to HB 1108 concerns the unfairness which will ultimately be caused by the proposed taxation of Internet access charges. In the landmark decision of Quill v. North Dakota, the United States Supreme Court concluded that a company whose only connection with customers in a taxing State is by common carrier or the United States mail is free from state-imposed duties to collect and remit State taxes. In other words, a company must have some connection or physical presence in the state, beyond mere sales (such an office, employees, or property) in order to be subject to the

¹ "Server" is a computer with specialized software connected directly to other computer networks and/or the Internet.

State's taxes. Because the Quill company was essentially a mail order company and had no real physical presence (i.e., "substantial nexus") in North Dakota, the U. S. Supreme Court ruled that the Quill company could not be required to comply with North Dakota taxing statutes.

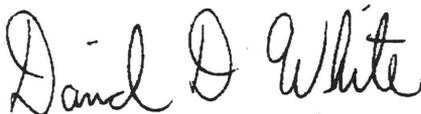
Many Internet service providers are similar to mail order companies. They have no offices, employees, or property in North Dakota and they advertise their services only over common carriers such as television, radio, or through the mail. Therefore, they may not have the requisite "substantial nexus" with North Dakota to require them to collect and remit the gross receipts tax on their Internet access services. On the other hand, there is no question that AT&T has "substantial nexus" with North Dakota. We have invested significant capital in North Dakota and have hired North Dakota citizens as employees. Therefore, because some companies will be required to collect and remit the tax (because they have "nexus") and other companies will not be required to do so (because they lack "substantial nexus"), the imposition of a tax on Internet access will inevitably lead to an un-even playing field among Internet service providers.

I also wanted to address the Federal Internet Tax Freedom Act. Although North Dakota is clearly statutorily "grandfathered" from the provisions of the three year State and local tax moratorium, AT&T believes that it would be short sighted for North Dakota to begin implementing a taxing scheme on Internet access. Our world is evolving from the industrial age to an information-based society. Through this evolution, the Internet has eliminated many of the physical and geographical disadvantages which historically limited North Dakota's economy. Through the Internet, people can work from their home in North Dakota just as well as from an office in New York City. North Dakota farmers can check up-to-the-minute wheat prices or the latest agricultural technology. Children and schools have access to the Library of Congress from the remotest parts of North Dakota. Without question, the Internet is the window to the world for many North Dakota citizens. Therefore, in the opinion of AT&T, levying a 2.5% tax on the instrument which is revolutionizing North Dakota's economy is not good public policy.

And finally, as the new gross receipts tax appears on the customer's Internet access bill, I believe that many North Dakota citizens will interpret HB 1108 as an outright tax increase. On behalf of AT&T, I would like to reiterate our opposition to imposing a 2.5% toll to the onramp of North Dakota's information superhighway.

We at AT&T look forward to working with you and the North Dakota Senate on this very important issue.

Sincerely,



David White
Regional Director
AT&T External Tax Policy