

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1105
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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; ~~and~~
 - 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.

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

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 ~~July first~~ 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 ~~from tax collections under this chapter~~ and are appropriated from the ~~telecommunications carriers tax~~ state general fund as a standing and continuing appropriation to the tax commissioner for that purpose.

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

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.

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

57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications carriers tax fund - Continuing appropriation. ~~Net gross~~ Gross receipts tax revenues of up to eight million four hundred thousand dollars ~~per taxable year~~ under this chapter must be deposited in a special fund in the state treasury, the telecommunications carriers tax fund. ~~Net gross~~ Gross receipts tax revenues under this chapter exceeding eight million four hundred thousand dollars ~~in a taxable year~~ must be deposited in the state general fund. ~~For purposes of this section, "net gross receipts tax revenues" means gross receipts tax revenues minus any refunds paid under section 57-34-03.~~ 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 of in the telecommunications carriers tax fund, not exceeding eight million four hundred thousand dollars ~~per taxable year~~, 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 ~~in a taxable~~ 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 ~~for the taxable year~~, results in allocation of eight million four hundred thousand dollars to counties ~~per taxable~~ 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 the tenth working day in March of each year.

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

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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1105.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 38 Nays 8 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State