

**HOUSE BILL NO. 1105**

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

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

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

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

- 10 6. "Telecommunications service" means transmitting for consideration of two-way  
11 communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or  
12 other means. The term includes:
- 13 a. Essential telecommunications service and nonessential telecommunications  
14 service as defined in section 49-21-01;
  - 15 b. Telecommunications service that originates and terminates in this state and is  
16 billed to a station in this state;
  - 17 c. Interstate telecommunications service that originates or terminates in this  
18 state and is billed to a station in this state; ~~and~~
  - 19 d. Mobile telecommunications service that is deemed to be provided by the  
20 customer's home service provider under chapter 57-34.1, regardless of where  
21 the mobile telecommunications service originates, terminates, or passes  
22 through; and
  - 23 e. Telegraph service.

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

3           2. A telecommunications carrier's retail customer in this state is entitled to a refund  
4 equal to two and one-half percent of the amount of telecommunications service  
5 charges paid to telecommunications carriers by that customer in excess of eight  
6 hundred thousand dollars in a calendar year. A refund claim under this subsection  
7 must be filed with the tax commissioner before ~~July first~~ December thirty-first of the  
8 year following the calendar year for which the refund is claimed. A claim for refund  
9 must be made in the manner prescribed by the tax commissioner. The tax  
10 commissioner shall verify that the telecommunications carrier to which the retail  
11 customer paid telecommunications service charges has paid the  
12 telecommunications gross receipts tax for the year for which the refund is claimed  
13 before a refund may be paid. Refunds under this subsection must be paid by the  
14 tax commissioner ~~from tax collections under this chapter~~ and are appropriated from  
15 the ~~telecommunications carriers tax~~ state general fund as a standing and  
16 continuing appropriation to the tax commissioner for that purpose.

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

19           **57-34-04.3. Claims for credit or refund - Continuing appropriation.**

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

24           2. A claim for credit or refund must be made by filing with the tax commissioner an  
25 amended return, or other report as prescribed by the tax commissioner,  
26 accompanied by a statement outlining the specific grounds upon which the claim  
27 for credit or refund is based.

28           3. Refunds under this section must be paid by the tax commissioner and are  
29 appropriated from the state general fund as a standing and continuing  
30 appropriation to the tax commissioner for that purpose.

1           4. The tax commissioner shall notify the telecommunications carrier if the state board  
2           of equalization disallows all or part of a claim for credit or refund. The decision of  
3           the state board of equalization denying a claim for credit or refund is final and  
4           irrevocable unless the telecommunications carrier brings an action against the  
5           state in district court within six months of the mailing of the notice denying the claim  
6           for credit or refund.

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

9           **57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications**  
10          **carriers tax fund - Continuing appropriation.** ~~Net gross~~ Gross receipts tax revenues of up to  
11          eight million four hundred thousand dollars ~~per taxable year~~ under this chapter must be  
12          deposited in a special fund in the state treasury, the telecommunications carriers tax fund. ~~Net~~  
13          ~~gross~~ Gross receipts tax revenues under this chapter exceeding eight million four hundred  
14          thousand dollars ~~in a taxable year~~ must be deposited in the state general fund. ~~For purposes of~~  
15          this section, "~~net gross receipts tax revenues~~" means ~~gross receipts tax revenues minus any~~  
16          ~~refunds paid under section 57-34-03.~~ The tax commissioner shall allocate moneys in the  
17          telecommunications carriers tax fund among counties in the same proportion that taxes paid by  
18          telecommunications carriers in locally assessed property taxes and taxes assessed under  
19          chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all  
20          taxes paid by telecommunications carriers in locally assessed property taxes and taxes  
21          assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the  
22          state. The balance ~~of~~ in the telecommunications carriers tax fund, not exceeding eight million  
23          four hundred thousand dollars ~~per taxable year~~, is appropriated as a standing and continuing  
24          appropriation to the tax commissioner for annual allocation to counties under this section. If  
25          gross receipts tax revenues available for allocation ~~in a taxable~~ on the first day of March of any  
26          year are less than eight million four hundred thousand dollars, there is appropriated as a  
27          standing and continuing appropriation from the state general fund the amount that, when added  
28          to gross receipts tax revenues available for allocation from the telecommunications carriers tax  
29          fund ~~for the taxable year~~, results in allocation of eight million four hundred thousand dollars to  
30          counties ~~per taxable~~ calendar year. On or before the first day of March of each year, the tax  
31          commissioner shall certify for payment to the state treasurer an amount determined to be due

1 each county. The state treasurer shall remit the certified amount to the county treasurers  
2 according to the allocation made by the tax commissioner under this section not later than the  
3 tenth working day in March of each year.

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

6 1. If a telecommunications carrier refuses or neglects to make the reports required by  
7 this chapter, or refuses or neglects to furnish any information requested, the tax  
8 commissioner shall use the best available facts and estimates to determine  
9 taxation of the gross receipts of that carrier. The tax must be imposed upon the  
10 basis of that information. If any company fails to make the report required under  
11 this chapter on or before the first day of May of any year, the state board of  
12 equalization shall add a penalty of one-quarter of the tax due for failure to make the  
13 required report which must be collected as a part of the tax, but the tax  
14 commissioner, upon application, may grant extensions of time within which the  
15 returns must be filed. For good cause shown, the tax commissioner may waive all  
16 or any part of the penalty that attached under this section.