

**FIRST ENGROSSMENT
with Conference Committee Amendments**

ENGROSSED HOUSE BILL NO. 1108

Introduced by

Natural Resources Committee

(At the request of the Tax Commissioner)

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

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

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

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

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

21 **Deficiency, protest, and appeal.**

22 1. When tax is understated on a return because of a mathematical or clerical error,
23 the tax commissioner shall notify the telecommunications carrier of the error and

- 1 the amount of additional tax due. This notice is not a notice of deficiency and the
2 telecommunications carrier has no right to protest.
- 3 2. If upon audit the tax commissioner finds additional tax due, the tax commissioner
4 shall notify the telecommunications carrier and the state board of equalization of
5 the deficiency in the tax amount. A notice of deficiency must be sent to the
6 telecommunications carrier by first-class mail and must state the amount of
7 additional tax due and set forth the reasons for the increase.
- 8 3. A telecommunications carrier has thirty days from the date of mailing of the notice
9 of deficiency to file a written protest with the state board of equalization objecting
10 to the assessment of additional tax due. The protest must set forth the basis for
11 the protest and any other information that may be required by the state board of
12 equalization. If a telecommunications carrier fails to file a written protest within the
13 time provided, the amount of additional tax stated in the notice of deficiency
14 becomes finally and irrevocably fixed. If a telecommunications carrier protests
15 only a portion of the tax commissioner's finding, the portion that is not protested
16 becomes finally and irrevocably fixed.
- 17 4. If a protest is filed, the state board of equalization shall reconsider the assessment
18 of additional tax due.
- 19 5. Within six months after the protest is filed, the state board of equalization shall mail
20 to the telecommunications carrier a notice of reconsideration and assessment
21 which must respond to the telecommunications carrier's protest and assess the
22 amount of any additional tax due. The amount set forth in that notice becomes
23 finally and irrevocably fixed unless the telecommunications carrier brings an action
24 against the state in district court within six months of the mailing of the notice of
25 reconsideration and assessment.

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

28 **Claims for credit or refund.**

- 29 1. A telecommunications carrier may file a claim for credit or refund of an
30 overpayment of any tax imposed by this chapter within three years after the due

1 date of the return or within three years after the return was filed, whichever period
2 expires later.

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

7 3. The tax commissioner shall notify the telecommunications carrier if the state board
8 of equalization disallows all or part of a claim for credit or refund. The decision of
9 the state board of equalization denying a claim for credit or refund is final and
10 irrevocable unless the telecommunications carrier brings an action against the
11 state in district court within six months of the mailing of the notice denying the
12 claim for credit or refund.

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

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

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

23 **Resale certificates.** A telecommunications carrier who receives a resale certificate
24 certifying that another telecommunications carrier holds a North Dakota sales and use tax
25 permit for sales or use tax purposes under section 57-39.2-14 is relieved from submitting the
26 telecommunications gross receipts tax upon the sale of telecommunications services to be
27 resold by the telecommunications carrier submitting the certificate. When a
28 telecommunications carrier submits a false resale certificate to another telecommunications
29 carrier, the telecommunications carrier that submitted the certificate is liable for the
30 telecommunications gross receipts tax on the sale. A hospital, hotel, motel, or similar place of

1 temporary accommodation selling telecommunications service to its patients or guests is not a
2 telecommunications carrier under this section.

3 **SECTION 6. AMENDMENT.** Section 57-34-01 of the 1997 Supplement to the North
4 Dakota Century Code is amended and reenacted as follows:

5 **57-34-01. Definitions.** The definitions in this section may not be construed to subject
6 a telecommunications carrier or telecommunications service to the provisions of title 49. As
7 used in this chapter, unless the context or subject matter otherwise clearly requires:

8 1. "Adjusted gross receipts" means telecommunications carrier gross receipts less all
9 amounts paid by the reporting telecommunications carrier on telecommunications
10 service that is taxable under this chapter in state and local sales and use taxes
11 and federal excise taxes and less amounts paid by the reporting
12 telecommunications carrier to another telecommunications carrier for directory
13 assistance originated by a caller in this state.

14 2. "Company" includes any individual, copartnership, business trust, corporation,
15 limited liability company, joint-stock company, association, or any other
16 organization.

17 ~~2.~~ 3. "Gross receipts" means all telecommunications carrier retail revenues from
18 telecommunications service charges billed to any station in this state and from
19 charges to another telecommunications carrier for directory assistance originated
20 by a caller in this state.

21 ~~3.~~ 4. "Station" means a subscriber service address located in this state with a distinct
22 call number designation or distinct extension number designation. If this is not a
23 defined location, "station" means the location of the primary use of
24 telecommunications equipment as determined by telephone number, authorization
25 code, or billing address.

26 4. 5. "Telecommunications carrier" means a ~~person~~ company that is engaged in the
27 business of furnishing telecommunications service within this state. The term
28 includes a reseller of telecommunications service.

29 ~~5.~~ 6. "Telecommunications service" means transmitting for consideration of two-way
30 communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite,
31 or other means. The term includes:

- 1 a. Essential telecommunications service and nonessential telecommunications
- 2 service as defined in section 49-21-01;
- 3 b. Telecommunications service that originates and terminates in this state and is
- 4 billed to a station in this state;
- 5 c. Interstate telecommunications service that originates or terminates in this
- 6 state and is billed to a station in this state;
- 7 d. ~~A hospital, hotel, motel, or similar place of temporary accommodation selling~~
- 8 ~~telecommunications service to its patients or guests, if there is a separately~~
- 9 ~~stated charge for the service~~ Internet access service or similar service; and
- 10 e. Telegraph service.

11 ~~6.~~ 7. "Telecommunications service charges" means the value of all consideration
12 received by a telecommunications carrier for provision of telecommunications
13 service and recovery within the year of telecommunications service charges written
14 off in a prior year as uncollectible. For a telecommunications carrier operating on
15 any form of mutual basis, the term includes all amounts assessed against the
16 members for the operation and maintenance of the business. The term does not
17 include revenue from merchandising, jobbing and contract work, maintenance or
18 repair of customer premises equipment including equipment leased or rented by
19 the customer from any source, operations not directly related to provision of
20 telecommunications service, amounts charged for billing and collection on behalf
21 of another telecommunications carrier, proceeds from transfer of capital stock, or
22 transfer, sale, or lease of property not directly related to telecommunications
23 service. The term does not include amounts collected for or amounts collected
24 from federal and state mechanisms to preserve and advance universal service.

25 **SECTION 7. AMENDMENT.** Section 57-34-02 of the 1997 Supplement to the North
26 Dakota Century Code is amended and reenacted as follows:

27 **57-34-02. Reports of telecommunications carriers - Penalty.**

- 28 1. Each telecommunications carrier that received intercarrier telecommunications
- 29 revenue in the preceding calendar year shall make and file with the tax
- 30 commissioner, on or before January fifteenth of each year, a list containing the
- 31 name and mailing address of each telecommunications carrier from which the

1 reporting telecommunications carrier received intercarrier telecommunications
2 revenue in the preceding calendar year. This list is to be filed in addition to the
3 report required by subsection 3.

4 2. Each telecommunications carrier that provided telecommunications service in the
5 preceding calendar year to one or more pay telephones owned by another
6 company shall make and file with the tax commissioner, on or before January
7 fifteenth of each year, a list containing the name and mailing address for each
8 company that owned a pay telephone served by the reporting telecommunications
9 carrier in the preceding calendar year. This list is to be filed in addition to the
10 report required by subsection 3.

11 3. Each telecommunications carrier subject to gross receipts taxes under this chapter
12 shall make and file with the tax commissioner, on or before May first of each year,
13 on the form as the tax commissioner may prescribe, a report containing a
14 statement of its gross receipts in this state during the preceding calendar year,
15 amounts paid by the carrier on telecommunications service that is taxable under
16 this chapter during the preceding calendar year in state and local sales and use
17 taxes and federal excise taxes, amounts received from or paid to another
18 telecommunications carrier for directory assistance, and any other information as
19 the tax commissioner may require. The form must include a notice of a
20 telecommunications carrier's right to appeal its assessment to the state board of
21 equalization prior to or at the August meeting of the state board of equalization.
22 Each report must be signed, subject to section 12.1-11-02, by the president,
23 secretary, or other official of the telecommunications carrier.

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

26 **57-34-03. Computation of taxes by tax commissioner - Exemption for**
27 **high-volume customers - Continuing appropriation.**

28 1. On or before July fifteenth of each year, the tax commissioner shall review the
29 report under subsection 3 of section 57-34-02 and compute the ~~tentative~~ total tax
30 to be assessed against each telecommunications carrier in this state at a rate of
31 two and one-half percent of adjusted gross receipts. ~~The~~ If the tax commissioner's

1 computation of the total tax differs from the amount computed by a
2 telecommunications carrier, the tax commissioner shall give ~~ten days'~~ notice of the
3 change by mail to each that telecommunications carrier of its tentative total tax
4 under this section and of its right to contest the determination before the state
5 board of equalization at its August meeting on or before July fifteenth. The state
6 board of equalization shall assess the tax under this section after consideration of
7 any contest presented.

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

18 **SECTION 9. AMENDMENT.** Section 57-34-06 of the 1997 Supplement to the North
19 Dakota Century Code is amended and reenacted as follows:

20 **57-34-06. Duties of county treasurer.** The county treasurer shall allocate taxes
21 received under this chapter to the state, the county, and the various taxing districts within the
22 county according to the proportion that taxes paid by telecommunications carriers in locally
23 assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and
24 received by the state, the county, and each currently existing taxing district in the county bears
25 to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes
26 assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county,
27 and all taxing districts in the county.

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

30 **57-34-10. Penalties - Interest - Lien for tax.**

- 1 1. If a telecommunications carrier refuses or neglects to make the reports required by
2 this chapter, or refuses or neglects to furnish any information requested, the tax
3 commissioner shall use the best available facts and estimates to determine
4 taxation of the gross receipts of that carrier. The tax must be imposed upon the
5 basis of that information,~~and. If any company fails to make the report required~~
6 under this chapter on or before the first day of May of any year, the state board of
7 equalization shall add a penalty of one-quarter of the tax due for failure to make
8 the required report which must be collected as a part of the tax, but the tax
9 commissioner, upon application, may grant extensions of time within which the
10 returns must be filed.
- 11 2. Taxes levied under this chapter are due and payable to the tax commissioner on
12 January first following the year in which the taxes were assessed. ~~The unpaid~~
13 ~~principal balance of taxes on the following March first is subject to a penalty of~~
14 ~~three percent, on the following May first an additional penalty of three percent, on~~
15 ~~the following July first an additional penalty of three percent, and on the following~~
16 ~~October fifteenth an additional penalty of three percent. Beginning January first of~~
17 ~~the year following the year the taxes became due, simple interest at the rate of~~
18 ~~twelve percent per annum applies to the unpaid principal balance until the taxes~~
19 ~~and penalties are paid. Interest penalties must be prorated to the nearest full~~
20 ~~month for a fractional year of delinquency. A remittance of tax need not be made~~
21 ~~and any assessment or collection of tax may not be made unless the amount is at~~
22 least five dollars, including penalty and interest.
- 23 3. If any amount of tax imposed by this chapter is not paid on or before March first, or
24 if upon audit an additional tax is found to be due, there must be added to the tax
25 remaining due interest at the rate of one percent of the additional tax for each
26 month or fraction of a month during which the tax remains unpaid, computed from
27 March first to the date paid.
- 28 ~~3.~~ 4. ~~Taxes under this chapter constitute a first and paramount lien in favor of the state~~
29 ~~upon all property and rights to property of the taxpayer. The lien may be~~
30 ~~foreclosed in the same manner provided by law for mortgages on real or personal~~
31 ~~property. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or~~

1 neglects to pay the liability, the amount, including any interest, penalty, or addition
2 to the tax, and the additional costs that may accrue are a lien in favor of the state
3 of North Dakota upon all property and rights to property, whether real or personal,
4 belonging to the taxpayer. The lien attaches at the time the tax becomes due and
5 payable and continues until the liability for the amount is satisfied.

6 5. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any
7 interest in, or lien on, any property situated in the state, prior to the tax
8 commissioner filing in the central indexing system maintained by the secretary of
9 state a notice of the lien provided for in subsection 4, takes free of, or has priority
10 over, the lien. The tax commissioner shall index in the central indexing system the
11 following data:

- 12 a. The name of the taxpayer.
13 b. The tax identification number or social security number of the taxpayer.
14 c. The name "State of North Dakota" as claimant.
15 d. The date and time the notice of lien was indexed.
16 e. The amount of the lien.

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

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

23 **SECTION 11. RETROACTIVE APPLICATION OF ACT - EFFECTIVE DATE -**

24 **EXPIRATION DATE.** This Act applies retroactively to all tax years beginning after
25 December 31, 1997. The amendments of subsections 1 and 3 of section 57-34-01 as
26 amended by section 6 of this Act are effective for taxable years beginning after December 31,
27 1998. The amendments to subsections 1 and 2 of section 57-34-02 as amended by section 7
28 of this Act are effective for the first two taxable years beginning after December 31, 1999, and
29 are thereafter ineffective.