

**HOUSE BILL NO. 1479**

Introduced by

Representative R. Kelsch

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact chapter 57-34.1 of the North Dakota Century Code,  
2 relating to the taxation of mobile telecommunications; and to provide an effective date.

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

4 **SECTION 1.** Chapter 57-34.1 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **57-34.1-01. Definitions.** As used in this chapter, unless the context otherwise  
7 requires:

- 8 1. "Charges for mobile telecommunications services" means any charge for or  
9 associated with the provision of commercial mobile radio service, as defined in  
10 section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1,  
11 1999, or any charge for or associated with a service provided as an adjunct to a  
12 commercial mobile radio service which is billed to the customer by or for the  
13 customer's home service provider regardless of whether individual transmissions  
14 originate or terminate within the licensed service area of the home service provider.
- 15 2. "Customer" means the person that contracts with the home service provider for  
16 mobile telecommunications services or for the purpose of determining the place of  
17 primary use, if the end user of mobile telecommunications services is not the  
18 contracting party, the end user of the mobile telecommunications service. The  
19 term does not include a reseller of mobile telecommunications service or a serving  
20 carrier under an arrangement to serve the customer outside the home service  
21 provider's licensed service area.
- 22 3. "Designated data base provider" means a person representing all the political  
23 subdivisions which are providing an electronic data base if the state has not

- 1 provided the electronic data base and is approved by relevant municipal and  
2 county associations.
- 3 4. "Enhanced zip code" means a United States postal zip code of nine or more digits.  
4 5. "Home service provider" means the facilities-based carrier or reseller with which  
5 the customer contracts for the provision of mobile telecommunications services.  
6 6. "Licensed service area" means the geographic area in which the home service  
7 provider is authorized by law or contract to provide commercial mobile radio  
8 service to the customer.
- 9 7. "Mobile telecommunications service" means commercial mobile radio service, as  
10 defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on  
11 June 1, 1999.
- 12 8. "Place of primary use" means the street address representative of where the  
13 customer's use of the mobile telecommunications service primarily occurs, which  
14 must be the residential street address or the primary business street address of the  
15 customer and within the licensed service area of the home service provider.
- 16 9. "Prepaid telephone calling service" means the right to purchase exclusively  
17 telecommunications services that must be paid for in advance which enables the  
18 origination of calls using an access number, authorization code, or both, whether  
19 manually or electronically dialed, if the remaining amount of units of service that  
20 have been prepaid is known by the provider of the prepaid service on a continuous  
21 basis.
- 22 10. "Reseller" means a provider who purchases telecommunications services from  
23 another telecommunications service provider and then resells, uses as a  
24 component part of, or integrates the purchased services into a mobile  
25 telecommunications service and does not include a serving carrier with which a  
26 home service provider arranges for the services to its customers outside the home  
27 service provider's licensed service area.
- 28 11. "Serving carrier" means a facilities-based carrier providing mobile  
29 telecommunications service to a customer outside a home service provider's or  
30 reseller's licensed service area.

1           12. "Taxing jurisdiction" means this state or any political subdivision within this state,  
2                   including those operating under a home rule charter, with the authority to impose a  
3                   tax, charge, or fee.

4           **57-34.1-02. Application.**

5           1. This chapter applies to any tax, charge, or fee levied by a taxing jurisdiction as a  
6                   fixed charge for each customer or measured by gross amounts charged to  
7                   customers for mobile telecommunications services, regardless of whether the tax,  
8                   charge, or fee is imposed on the vendor or customer of the service and regardless  
9                   of the terminology used to describe the tax, charge, or fee.

10          2. This chapter does not apply to:

11           a. Any tax, charge, or fee levied upon or measured by the net income, capital  
12                   stock, net worth, or property value of the provider of mobile  
13                   telecommunications service.

14           b. Any tax, charge, or fee that is applied to an equitably apportioned amount that  
15                   is not determined on a transactional basis.

16           c. Any tax, charge, or fee that represents compensation for a mobile  
17                   telecommunications service provider's use of public rights of way or other  
18                   public property, provided that the tax, charge, or fee is not levied by the taxing  
19                   jurisdiction as a fixed charge for each customer or measured by gross  
20                   amounts charged to customers for mobile telecommunication services.

21           d. Any generally applicable business and occupation tax that is imposed by this  
22                   state, is applied to gross receipts or gross proceeds, is the legal liability of the  
23                   home service provider, and that statutorily allows the home service provider to  
24                   elect to use the sourcing method required in this chapter.

25           e. Any fee related to obligations under section 254 of the Communications Act of  
26                   1934.

27           f. Any tax, charge, or fee imposed by the federal communications commission.

28          3. The provisions of this chapter:

29           a. Do not apply to the determination of the taxing situs of prepaid telephone  
30                   calling services.

- 1           b. Do not affect the taxability of either the initial sale of mobile  
2           telecommunications services or subsequent resale of the services, whether as  
3           sales of the services alone or as a part of a bundled product, if the Internet  
4           Tax Freedom Act [Pub. L. 105-277; 112 Stat. 2681 et seq.] precludes a taxing  
5           jurisdiction from subjecting the charges of the sale of the services to a tax,  
6           charge, or fee.
- 7           c. Do not apply to the determination of the taxing situs of air-ground  
8           radio-telephone service as defined in section 22.99 of title 47 of the Code of  
9           Federal Regulations as in effect on June 1, 1999.

10           **57-34.1-03. Sourcing rules for mobile telecommunications services.**

11 Notwithstanding any other provision of law or any ordinance or resolution of a political  
12 subdivision, including a political subdivision operating under a home rule charter, mobile  
13 telecommunications services provided in a taxing jurisdiction to a customer, the charges for  
14 which are billed by or for the customer's home service provider, are deemed to be provided by  
15 the customer's home service provider. All charges for mobile telecommunications services that  
16 are deemed to be provided by the customer's home service provider under this chapter are  
17 authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial  
18 limits encompass the customer's place of primary use, regardless of where the mobile  
19 telecommunications services originate, terminate, or pass through, and no other taxing  
20 jurisdiction may impose taxes, charges, or fees on charges for the mobile telecommunications  
21 services.

22           **57-34.1-04. Electronic data base.**

23           1. The public service commission may provide an electronic data base to a home  
24           service provider or, if the public service commission does not provide an electronic  
25           data base to home service providers, then the designated data base provider may  
26           provide an electronic data base to a home service provider. The electronic data  
27           base must be provided in a format approved by the American national standards  
28           institute's accredited standards committee X12, which, allowing for de minimis  
29           deviations, designates for each street address in this state including to the extent  
30           practicable any multiple postal street addresses applicable to one street location,  
31           the appropriate taxing jurisdictions, and the appropriate code for each taxing

- 1 jurisdiction, for each level of taxing jurisdiction identified by one nationwide  
2 standard numeric code, and must provide the appropriate code for each street  
3 address with respect to political subdivisions that are not taxing jurisdictions when  
4 reasonably needed to determine the proper taxing jurisdiction. The nationwide  
5 standard numeric codes must contain the same number of numeric digits with each  
6 digit or combination of digits referring to the same level of taxing jurisdiction  
7 throughout the United States using a format similar to federal information  
8 processing standard 55-3 or other appropriate standard approved by the federation  
9 of tax administrators and the multistate tax commission, or their successors. Each  
10 address must be provided in standard postal format.
- 11 2. The public service commission or designated data base provider that provides or  
12 maintains an electronic data base shall provide notice of the availability of the  
13 current electronic data base and any subsequent revisions by publication in the  
14 North Dakota Administrative Code.
- 15 3. A home service provider using the data contained in an electronic data base is to  
16 be held harmless from any tax, charge, or fee liability that otherwise would be due  
17 solely as a result of any error or omission in the data base provided by the public  
18 service commission or designated data base provider. The home service provider  
19 shall reflect changes made to the data base during a calendar quarter not later  
20 than thirty days after the end of the calendar quarter.
- 21 4. If neither this state nor a designated data base provider provides an electronic data  
22 base, a home service provider is to be held harmless from any tax, charge, or fee  
23 liability in this state that otherwise would be due solely as a result of an assignment  
24 of a street address to an incorrect taxing jurisdiction if, subject to subsection 8, the  
25 home service provider employs an enhanced zip code to assign each street  
26 address to a specific taxing jurisdiction for each level of taxing jurisdiction and  
27 exercises due diligence at each level of taxing jurisdiction to ensure that each  
28 street address is assigned to the correct taxing jurisdiction. If an enhanced zip  
29 code overlaps boundaries of taxing jurisdictions of the same level, the home  
30 service provider must designate one specific jurisdiction within the enhanced zip  
31 code for use in taxing the activity for the enhanced zip code for each level of taxing

- 1 jurisdiction. Any enhanced zip code assignment changed in accordance with  
2 subsection 8 is in compliance with this subsection. For purposes of this  
3 subsection, there is a rebuttable presumption that a home service provider has  
4 exercised due diligence if the home service provider demonstrates that it has:
- 5 a. Expended reasonable resources to implement and maintain an appropriately  
6 detailed electronic data base of street address assignments to taxing  
7 jurisdictions;
  - 8 b. Implemented and maintained reasonable internal controls to promptly correct  
9 misassignments of street addresses to taxing jurisdictions; and
  - 10 c. Used all reasonably obtainable and usable data pertaining to municipal  
11 annexations, incorporations, reorganizations, and any other changes in  
12 jurisdictional boundaries that materially affect the accuracy of the data base.
- 13 5. Subsection 4 applies to a home service provider that is in compliance with the  
14 requirements of subsection 4, with respect to an electronic data base that is not  
15 provided under subsection 1 until the later of eighteen months after the nationwide  
16 standard numeric code described in subsection 1 has been approved by the  
17 federation of tax administrators and the multistate tax commission or six months  
18 after this state or a designated data base provider in this state provides the data  
19 base as prescribed in subsection 1.
- 20 6. A home service provider is responsible for obtaining and maintaining the  
21 customer's place of primary use. Subject to subsection 8 and if the home service  
22 provider's reliance on information provided by its customer is in good faith, a taxing  
23 jurisdiction shall allow a home service provider to rely on the applicable residential  
24 or business street address supplied by the home service provider's customer and  
25 not hold a home service provider liable for any additional taxes, charges, or fees  
26 based on a different determination of the place of primary use for taxes, charges,  
27 or fees that are customarily passed on to the customer as a separate itemized  
28 charge.
- 29 7. Except as provided in subsection 8, a taxing jurisdiction shall allow a home service  
30 provider to treat the address used by the home service provider for tax purposes  
31 for any customer under a service contract or agreement in effect on or before

1 July 28, 2002, as that customer's place of primary use for the remaining term of the  
2 service contract or agreement, excluding any extension or renewal of the service  
3 contract or agreement, for purposes of determining the taxing jurisdictions to which  
4 taxes, charges, or fees on charges for mobile telecommunications services are  
5 remitted.

- 6 8. A taxing jurisdiction or the state on behalf of any taxing jurisdiction may:
- 7 a. Determine that the address used for purposes of determining the taxing  
8 jurisdictions to which taxes, charges, or fees for mobile telecommunications  
9 services are remitted does not meet the definition of place of primary use and  
10 give binding notice to the home service provider to change the place of  
11 primary use on a prospective basis from the date of notice of determination if  
12 the taxing jurisdiction making the determination is not the state, the taxing  
13 jurisdiction obtains the consent of all affected taxing jurisdictions within this  
14 state before giving the notice of determination, and before the taxing  
15 jurisdiction gives the notice of determination, the customer is given an  
16 opportunity to demonstrate in accordance with applicable state or local tax,  
17 charge, or fee administrative procedures that the address is the customer's  
18 place of primary use.
- 19 b. Determine that the assignment of a taxing jurisdiction by a home service  
20 provider under subsection 4 does not reflect the correct taxing jurisdiction and  
21 give binding notice to the home service provider to change the assignment on  
22 a prospective basis from the date of notice of determination if the taxing  
23 jurisdiction making the determination is not the state, the taxing jurisdiction  
24 obtains the consent of all affected taxing jurisdictions within the state before  
25 giving the notice of determination and the home service provider is given an  
26 opportunity to demonstrate in accordance with applicable state or local tax,  
27 charge, or fee administrative procedures that the assignment reflects the  
28 correct taxing jurisdiction.
- 29 9. Nothing in this chapter modifies, impairs, supersedes, or authorizes the  
30 modification, impairment, or supersession of, any law allowing a taxing jurisdiction

1 to collect a tax, charge, or fee from a customer that has failed to provide its place  
2 of primary use.

3 10. If a taxing jurisdiction does not otherwise subject charges for mobile  
4 telecommunications services to taxation and if these charges are aggregated with  
5 and not separately stated from charges that are subject to taxation, then the  
6 charges for nontaxable mobile telecommunications services may be subject to  
7 taxation unless the home service provider can reasonably identify charges not  
8 subject to the tax, charge, or fee from its books and records that are kept in the  
9 regular course of business.

10 11. If a taxing jurisdiction does not subject charges for mobile telecommunications  
11 services to taxation, a customer may not rely upon the nontaxability of charges for  
12 mobile telecommunications services unless the customer's home service provider  
13 separately states the charges for nontaxable mobile telecommunications services  
14 from taxable charges or the home service provider elects, after receiving a written  
15 request from the customer in the form required by the provider, to provide verifiable  
16 data based upon the home service provider's books and records that are kept in  
17 the regular course of business that reasonably identifies the nontaxable charges.

18 **57-34.1-05. Nonseverability.** If a court of competent jurisdiction enters a final  
19 judgment on the merits that is based on federal law, is no longer subject to appeal, and  
20 substantially limits or impairs the essential elements of the Mobile Telecommunications  
21 Sourcing Act [Pub. L. 106-252; 114 Stat. 626], then the provisions of this chapter are invalid  
22 and have no legal effect as of the date of entry of the judgment.

23 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective for customer bills issued  
24 on August 1, 2002.