

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1479
(Representative R. Kelsch)
(Approved by the Delayed Bills Committee)

AN ACT to create and enact chapter 57-34.1 of the North Dakota Century Code, relating to the taxation of mobile telecommunications; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Charges for mobile telecommunications services" means any charge for or associated with the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for or associated with a service provided as an adjunct to a commercial mobile radio service which is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.
2. "Customer" means the person that contracts with the home service provider for mobile telecommunications services or for the purpose of determining the place of primary use, if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service. The term does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.
3. "Enhanced zip code" means a United States postal zip code of nine or more digits.
4. "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.
5. "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.
6. "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.
7. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.
8. "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance which enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.
9. "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or

integrates the purchased services into a mobile telecommunications service and does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

10. "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.
11. "Taxing jurisdiction" means this state or any political subdivision within this state, including those operating under a home rule charter, with the authority to impose a tax, charge, or fee.

57-34.1-02. Application.

1. This chapter applies to any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether the tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.
2. This chapter does not apply to:
 - a. Any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service.
 - b. Any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis.
 - c. Any tax, charge, or fee that represents compensation for a mobile telecommunications service provider's use of public rights of way or other public property, provided that the tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication services.
 - d. Any generally applicable business and occupation tax that is imposed by this state, is applied to gross receipts or gross proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect to use the sourcing method required in this chapter.
 - e. Any fee related to obligations under section 254 of the Communications Act of 1934.
 - f. Any tax, charge, or fee imposed by the federal communications commission.
3. The provisions of this chapter:
 - a. Do not apply to the determination of the taxing situs of prepaid telephone calling services.
 - b. Do not affect the taxability of either the initial sale of mobile telecommunications services or subsequent resale of the services, whether as sales of the services alone or as a part of a bundled product, if the Internet Tax Freedom Act [Pub. L. 105-277; 112 Stat. 2681 et seq.] precludes a taxing jurisdiction from subjecting the charges of the sale of the services to a tax, charge, or fee.
 - c. Do not apply to the determination of the taxing situs of air-ground radio-telephone service as defined in section 22.99 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

57-34.1-03. Sourcing rules for mobile telecommunications services. Notwithstanding any other provision of law or any ordinance or resolution of a political subdivision, including a political

subdivision operating under a home rule charter, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, are deemed to be provided by the customer's home service provider. All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under this chapter are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for the mobile telecommunications services.

57-34.1-04. Electronic data base.

1. A home service provider is to be held harmless from any tax, charge, or fee liability in this state that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to subsection 4, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within the enhanced zip code for use in taxing the activity for the enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with subsection 4 is in compliance with this subsection. For purposes of this subsection, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:
 - a. Expended reasonable resources to implement and maintain an appropriately detailed electronic data base of street address assignments to taxing jurisdictions;
 - b. Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and
 - c. Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of the data base.
2. A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to subsection 4 and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer and not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.
3. Except as provided in subsection 4, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on or before July 28, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.
4. A taxing jurisdiction or the state on behalf of any taxing jurisdiction may:
 - a. Determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use and give binding notice to the home service provider to change the place of primary use on a prospective basis from

the date of notice of determination if the taxing jurisdiction making the determination is not the state, the taxing jurisdiction obtains the consent of all affected taxing jurisdictions within this state before giving the notice of determination, and before the taxing jurisdiction gives the notice of determination, the customer is given an opportunity to demonstrate in accordance with applicable state or local tax, charge, or fee administrative procedures that the address is the customer's place of primary use.

- b. Determine that the assignment of a taxing jurisdiction by a home service provider under subsection 1 does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if the taxing jurisdiction making the determination is not the state, the taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the state before giving the notice of determination and the home service provider is given an opportunity to demonstrate in accordance with applicable state or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.
5. Nothing in this chapter modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of, any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.
6. If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.
7. If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

57-34.1-05. Customer's procedures and remedies for correcting taxes and fees.

1. If a customer believes that an amount of tax, assignment of place of primary use, or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction of the tax assignment, a description of the error asserted by the customer, and any other information the home service provider reasonably requires to process the request. Within sixty days of receiving a notice, the home service provider shall review its records and the electronic data base or enhanced zip code to determine the customer's taxing jurisdiction. If as a result of this review the home service provider finds that the amount of tax, assignment of place of primary use, or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.
2. If the customer is dissatisfied with the response of the home service provider under this section, the customer may seek correction or refund from the taxing jurisdiction affected.

3. The procedure in this section is the sole and exclusive remedy available to customers seeking correction of assignment of place of primary use, taxing jurisdiction, a refund, or other compensation for taxes or fees erroneously collected by the home service provider.

57-34.1-06. Nonseverability. If a court of competent jurisdiction enters a final judgment on the merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of the Mobile Telecommunications Sourcing Act [Pub. L. 106-252; 114 Stat. 626], then the provisions of this chapter are invalid and have no legal effect as of the date of entry of the judgment.

SECTION 2. EFFECTIVE DATE. This Act becomes effective for customer bills issued on or after August 1, 2002.

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-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1479.

House Vote: Yeas 95 Nays 1 Absent 2

Senate Vote: Yeas 48 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State