

ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - TELECOMMUNICATIONS INFRASTRUCTURE SALES TAX EXEMPTION

Pursuant to North Dakota Century Code Section 54-35-26, created by 2015 Senate Bill No. 2057, a variety of economic development tax incentives are to be reviewed by a Legislative Management interim committee over the ensuing six-year period. The study is aimed at ensuring that economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the telecommunications infrastructure sales tax exemption and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE TELECOMMUNICATIONS INFRASTRUCTURE SALES TAX EXEMPTION

Sections 57-39.2-04.9 and 57-40.2-03.3 provide for a sales and use tax exemption for purchases of tangible personal property used to construct or expand telecommunications service infrastructure that is capable of providing telecommunications service in this state. The tangible personal property must be incorporated into telecommunications infrastructure owned by a telecommunications company in order to qualify for the exemption. A purchaser may receive the sales tax exemption at the time of purchase if the purchaser applies for and receives a certificate from the Tax Commissioner verifying the tangible personal property the purchaser intends to purchase qualifies for the exemption. If a certificate of exemption is not received before the purchase, the telecommunications company may apply to the Tax Commissioner for a refund of the applicable amount of tax paid. If a contractor purchases or installs the tangible personal property, the telecommunications company may apply for a refund of the amount of sales or use tax paid by the contractor on qualifying items. The exemption is effective for purchases made through June 30, 2017.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE TELECOMMUNICATIONS INFRASTRUCTURE SALES TAX EXEMPTION

The provisions of Section 57-39.2-04.9 were originally found in Section 57-39.2-04.7, which was created through the passage of 2009 Senate Bill No. 2040. The bill was recommended for introduction by the 2008-09 interim Industry, Business, and Labor Committee following its study of issues relating to wireless service providers and the impact of wireless service on the business climate in North Dakota. The concepts found in 2009 Senate Bill No. 2040 originated in failed 2007 House Bill No. 1027 that was recommended for introduction by the 2005-07 interim Economic Development Committee following the committee's review of testimony indicating business development may be hindered in areas of the state that lacked wireless service. Upon a review of the legislative history related to 2009 Senate Bill No. 2040, the perceived goal of the Legislative Assembly in creating this exemption was to encourage telecommunications companies to expand telecommunications service infrastructure in North Dakota. The exemption was viewed as a tool to help enhance business opportunities in rural areas. The provisions of Senate Bill No. 2040 provided for a sales and use tax exemption for tangible personal property used to construct or expand telecommunications service infrastructure. Refund provisions were also incorporated for purchases made by contractors or purchases for which an exemption certificate was not received in advance of making the purchase. It was estimated that the telecommunications infrastructure sales tax exemption would result in a reduction of \$5.15 million in general fund and state aid distribution fund revenues during the 2009-11 biennium.

The provisions of 2009 Senate Bill No. 2040, set to expire on June 30, 2011, were extended during the 2011 legislative session through the passage of Senate Bill No. 2171. Senate Bill No. 2171 extended the availability of the exemption to taxable events occurring through December 31, 2012. Following the expiration of Section 57-39.2-04.7, substantially similar provisions were placed in newly created Section 57-39.2-04.9 through the passage of 2013 Senate Bill No. 2142. Section 57-39.2-04.9 was made retroactively effective to include purchases occurring after December 31, 2012. It was estimated that the telecommunications infrastructure sales tax exemption would result in a reduction of \$6.44 million in general fund and state aid distribution fund revenues during the 2011-13 and 2013-15 biennia. A copy of the fiscal note is attached as an [appendix](#).

Information provided to the Political Subdivision Taxation Committee by the Department of Commerce on July 29, 2015, indicated the amount of the sales tax exemption realized by all claimants during the 2013-15 biennium was over \$1,772,462. The exemption is currently set to expire on July 1, 2017.

**DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF
THE TELECOMMUNICATIONS INFRASTRUCTURE SALES TAX EXEMPTION**

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive;
5. Benefits that flow to out-of-state concerns resulting from the incentive; and
6. The use of this type of incentive in other states.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department; and
3. The North Dakota Economic Development Foundation.

ATTACH:1