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 (Appendix A) is attached. 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

The interim Political Subdivision Taxation Committee identified various items of data and testimony that would need to be collected to effectively analyze the telecommunications infrastructure sales tax exemption. The following list identifies the information the committee sought to collect and the receipt of that information throughout the course of the 2015-16 interim.

1. The number of claimants and the fiscal impact of the incentive.

   - Information (Appendix B) provided to the Political Subdivision Taxation Committee by the Tax Department on December 2, 2015, indicated the number of claimants and the amount claimed is as follows:

     In fiscal year 2011, exemptions totaling $1,251,630 were claimed by five claimants;

     In fiscal years 2012 and 2013, the exemption was not claimed by any claimants;

     In fiscal year 2014, exemptions totaling $1,772,462 was claimed by seven claimants; and

     In fiscal year 2015, the total amount of exemptions claimed could not be disclosed due to confidentiality restrictions as the exemption was claimed by fewer than five claimants.

2. The use of similar incentives in other states.

   - Incentives similar to this state's telecommunications infrastructure sales tax exemption (Appendix C) were found in four other states.

3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive.

   - Information (Appendix D) pertaining to this item was provided by the Department of Commerce on September 13, 2016.

4. Negative impacts created as a result of the incentive.

   - The committee did not receive information pertaining to negative impacts created as a result of the incentive.

5. Benefits that flow to out-of-state concerns resulting from the incentive.

   - The committee did not receive information pertaining to benefits that flow to out-of-state concerns resulting from the incentive.

6. Testimony from interested parties.

   - The following parties provided testimony in support of retaining the telecommunications infrastructure sales tax exemption.

     Ms. Connie Ova, Chief Executive Officer, Jamestown-Stutsman Development Corporation, and President, Economic Development Association of North Dakota (Appendix E).

     Ms. Cheryl Riley, President, Northern Plains States, AT&T (Appendix F).

     Mr. Todd Kranda, Kelsch Kelsch Ruff & Kranda Law Firm, appearing on behalf of Verizon Wireless (Appendix G).

     Mr. David Crothers, Executive Vice President, North Dakota Association of Telecommunications Cooperatives (Appendix H).

     Mr. Kent Blickensderfer, North Dakota and South Dakota Director of Legislative and Regulatory Affairs, Century Link (Appendix I).

     Ms. Deana Wiese, Executive Director, Information Technology Council of North Dakota (Appendix J).

   - Testimony was not received from parties in opposition to retaining the telecommunications infrastructure sales tax exemption.

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