

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on February 5, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes  
Scott Wells, Office of the Revisor of Statutes  
Hank Avila, Kansas Legislative Research Department  
Chris Courtwright, Kansas Legislative Research Department  
Kathy Beavers, Committee Assistant

Conferees appearing before the committee:

Dan Jacobsen, President, AT&T Kansas  
Mark Beshears, Vice-President State and Local Tax, Sprint  
John Cmelak, Vice-President State Tax Policy (Written testimony only)  
Kent Eckles, Kansas Chamber of Commerce  
Richard Cram, Kansas Department of Revenue

Others attending:

See attached list.

Introduction of bills:

Representative Carlson made a motion on behalf of Representative Brunk, to introduce two bills. They are:

1. Sales tax exemption for Goodwill Easter Seals.
2. Change the way partner complexes are assessed.

Representative King seconded the motion. The motion carried.

Representative Carlson, on behalf of Representative Shirley Palmer, introduced a bill to exempt Resource Development from sales tax. Representative Menghini seconded the motion. The motion carried.

Representative King, on behalf of Representative Don Hill, introduced a bill to create four separate license plates. Representative Menghini seconded the motion. The motion carried.

Representative Menghini made a motion to introduce a bill allowing senior citizens to pay their taxes quarterly instead of biannually. Representative Frownfelter seconded the motion. The motion carried.

There being no further introductions, the Chairman opened the hearing on **HB 2079**.

**HB 2079 - Sales tax refund on certain purchasers of telecommunications machinery and equipment.**

Staff member Chris Courtwright briefed the committee members on **HB 2079** (Attachment 1) and stood for questions.

Dan Jacobsen, President of AT&T Kansas, testified in favor of **HB 2079** (Attachment 2). He stated that the passage of the bill would encourage companies to invest more in the Kansas telecommunications infrastructure. Investment in modernization of telecommunication is necessary to be competitive in today's market.

Mr. Mark Beshears, Sprint, testified in favor of **HB 2079**. He cited info on the wide range of ways in which technology has progressed and helped our economy (Attachment 3). The passage of this bill will free up capital to spend more on improvements in technology and telecommunication networks. Mr. Beshears stood for questions.

Kent Eckles, Kansas Chamber of Commerce stood for questions on his written testimony (Attachment 4).

Representative Richard Carlson, called attention to the written testimony from John Cmelak, Vice-President -

CONTINUATION SHEET

Minutes of the House Taxation Committee at 9:00 a.m. on February 5, 2009, in Room 535-N of the Capitol.

State Tax Policy, in favor of **HB 2079** (Attachment 5).

Richard Cram, Kansas Department of Revenue, testified in opposition to **HB 2079**. A memo from the Department of Revenue to the Department of Budget, dated February 3, 2009, summarizes their concerns. If the telecommunication companies are exempt on their purchases of machinery and equipment, it would be anticipated that other industries (such as utility companies) would request the same exemption or refund on their machinery and equipment purchases. The question to ask is whether the State can afford to do any tax cutting in the current environment (Attachment 6). Mr. Cram stood for questions.

The Chairman closed the hearing on **HB 2079**.

The next meeting is scheduled for February 9, 2009.

The meeting was adjourned at 10:05 a.m.



February 5, 2009

The Honorable Richard Carlson, Chairperson  
House Committee on Taxation  
Statehouse, Room 411-S  
Topeka, Kansas 66612

Dear Representative Carlson:

SUBJECT: Fiscal Note for HB 2079 by Special Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2079 is respectfully submitted to your committee.

HB 2079 would provide a sales tax refund for purchases of telecommunications machinery and equipment by businesses required by the state to collect sales tax on the products or services they sell. The bill would allow for a refund of 20.0 percent of the tax paid during the period of July 1, 2012, through June 30, 2013; 40.0 percent of the tax paid during the period of July 1, 2013, through June 30, 2014; 60.0 percent of the tax paid during the period of July 1, 2014, through June 30, 2015; 80.0 percent of the tax paid during the period of July 1, 2015, through June 30, 2016; and 100.0 percent of the tax paid on and after July 1, 2016. The request for a refund must be submitted within one year from the date of tax payment, and no local sales tax would be refunded. The bill defines telecommunications machinery and equipment and provides a list of the type of equipment that would qualify for the refund.

The proposal would have no fiscal effect on state revenues until FY 2013. The Department of Revenue estimates that HB 2079 would decrease state revenues by \$3.2 million in FY 2013. Of this amount, the State General Fund is estimated to decrease by \$2,810,000, while the State Highway Fund is estimated to decrease by \$390,000. The fiscal effect to state revenues during subsequent years would be as follows:

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
State General Fund	(\$5,730,000)	(\$8,760,000)	(\$11,910,000)	(\$15,190,000)
State Highway Fund	<u>(800,000)</u>	<u>(1,230,000)</u>	<u>(1,670,000)</u>	<u>(2,130,000)</u>
	(\$6,530,000)	(\$9,990,000)	(\$13,580,000)	(\$17,320,000)

The Honorable Richard Carlson, Chairperson  
February 5, 2009  
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To formulate these estimates, the Department of Revenue reviewed data on sales tax collections on telecommunications machinery and equipment. The estimate provided by the Department of Revenue includes a 2.0 percent annual increase in the purchases of telecommunications equipment.

According to the Department of Revenue, the bill would require revising sales tax publications at a cost of \$18,800. However, the expense of updating these publications would not occur until FY 2013. Any fiscal effect associated with HB 2079 is not reflected in *The FY 2010 Governor's Budget Report*.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Steve Neske, Revenue



Dan Jacobsen  
President-Kansas

AT&T Kansas  
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Suite 500  
Topeka, KS 66603

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Testimony of Dan Jacobsen, President – AT&T Kansas  
In support of HB 2079 – Sales Taxation relating to telecommunications  
machinery and equipment  
Before the House Taxation Committee  
February 5, 2009

Mr. Chairman and Members of the Committee,

My name is Dan Jacobsen. I am the President of AT&T Kansas. I appreciate this opportunity to speak with you regarding an important issue that will affect the way our state's telecom infrastructure is upgraded. House Bill 2079 would gradually eliminate the sales tax burden that telecommunications companies pay in Kansas. This is good policy. It currently applies to Kansas manufacturing and farming. This bill would encourage companies to invest more in the Kansas telecommunications infrastructure. Many nearby states have adopted similar statutes in order to help assure that state-of-the-art telecommunications are available to businesses and consumers.

AT&T understands that 2009 is a very challenging year from an economic point of view. The world is going through a significant economic downturn. Kansas legislators are grappling with a large state revenue shortfall. For this reason, the financial impact of HB 2079 is delayed until 2012 through 2016.

AT&T has invested about \$.5 Billion dollars over the past three years to upgrade telecommunications here. Because we have large wireless, wireline, broadband and Video networks in Kansas, we need to keep investing in order to keep them modernized. Markets are competitive. We also need to keep investing in order to win and retain customers. Despite all of these pressures to invest, capital is always constrained. In a big company like AT&T, there are always more investment opportunities than available capital. Each state competes for available capital. The adoption of a gradual elimination of sales tax on equipment will send a signal to my company that Kansas wants more infrastructure investment. Again, I know this is a very challenging year, but that should not prevent the legislature from adopting good policies that will provide benefits in future years and not add to the financial challenges of 2009 through 2011.

Thank you for this opportunity.

## MEMORANDUM

TO: The Honorable Richard Carlson, Chairperson  
House Committee on Taxation

FROM: Mark Beshears  
Vice-President - State and Local Tax  
Sprint/Nextel

DATE: February 5, 2009

RE: House Bill 2079 – Sales Tax Refunds for Certain Telecommunications Machinery and Equipment

Thank you for the opportunity to appear in support of proposed legislation that would create the right to a refund of sales tax paid on the purchase of telecommunications machinery and equipment in Kansas. I am appearing on behalf of Sprint/Nextel, Verizon Wireless, T-Mobile, Alltel, Cox Communications, Embarq and Kansas Cable Telecommunications Association, The State of Kansas has made significant strides in the past few years in creating a more favorable tax environment for businesses which has had the effect of stabilizing the job market and increasing tax receipts. Kansas still imposes a sales tax on telecommunications companies that purchase equipment to expand and upgrade the state's telecommunications networks. Telecommunications providers are one of the few business taxpayers that pay sales tax on the acquisition of machinery and equipment. Manufacturers have benefitted from a sales tax exemption since 1986. Superior telecommunications networks improve business productivity and remain a high priority for the local economic development officials. A report in the January, 2008 issue of *Governing* magazine found that excessive taxes on wireless and other telecommunications services may actually be harming economic development efforts by discouraging necessary network investment. The elimination of this tax on investment in telecommunications network assets would have significant benefits for Kansas businesses and constitutes sound tax policy:

- A new study by economist John Dunham, graduate of Columbia University and president of John Dunham and Associates, an economic consulting firm based in New York City, shows that the elimination of sales and use taxes on equipment will create as much as \$75 million in new economic activity in the state consisting of \$16.3 million in new network equipment in the first year, additional earnings from employees and suppliers of new equipment of \$24.2 million, and \$31.6 million from productivity gains from firms that have greater access to high speed telecommunications.
- 560 new jobs in the state would result from the increased investment.
- Tax experts universally agree that sales tax should only be imposed on the final consumption of a product, not on the point used to produce the product, in order to

prevent the pyramiding of tax. This is the same rationale for not taxing the purchases of machinery and equipment acquired by manufacturers in the state.

- More states are moving toward the elimination of sales tax on telecommunications equipment. Since 2004, Iowa, Utah and Pennsylvania have eliminated such taxes. In addition, the Missouri Supreme Court has determined that such equipment is exempt as manufacturing machinery and equipment under the Missouri statute addressing such purchases.
- The improvements brought about through increased infrastructure investment will benefit consumers.

The telecommunication industry has invested more than \$36 billion in telecommunications networks nationwide since 2006. This investment includes the installation of fiber optic cable which results in a significant increase in network speeds. In addition, wireless providers are expected to invest an additional \$20 billion to provide better coverage and to upgrade existing coverage to provide seamless high speed internet access and other new services.

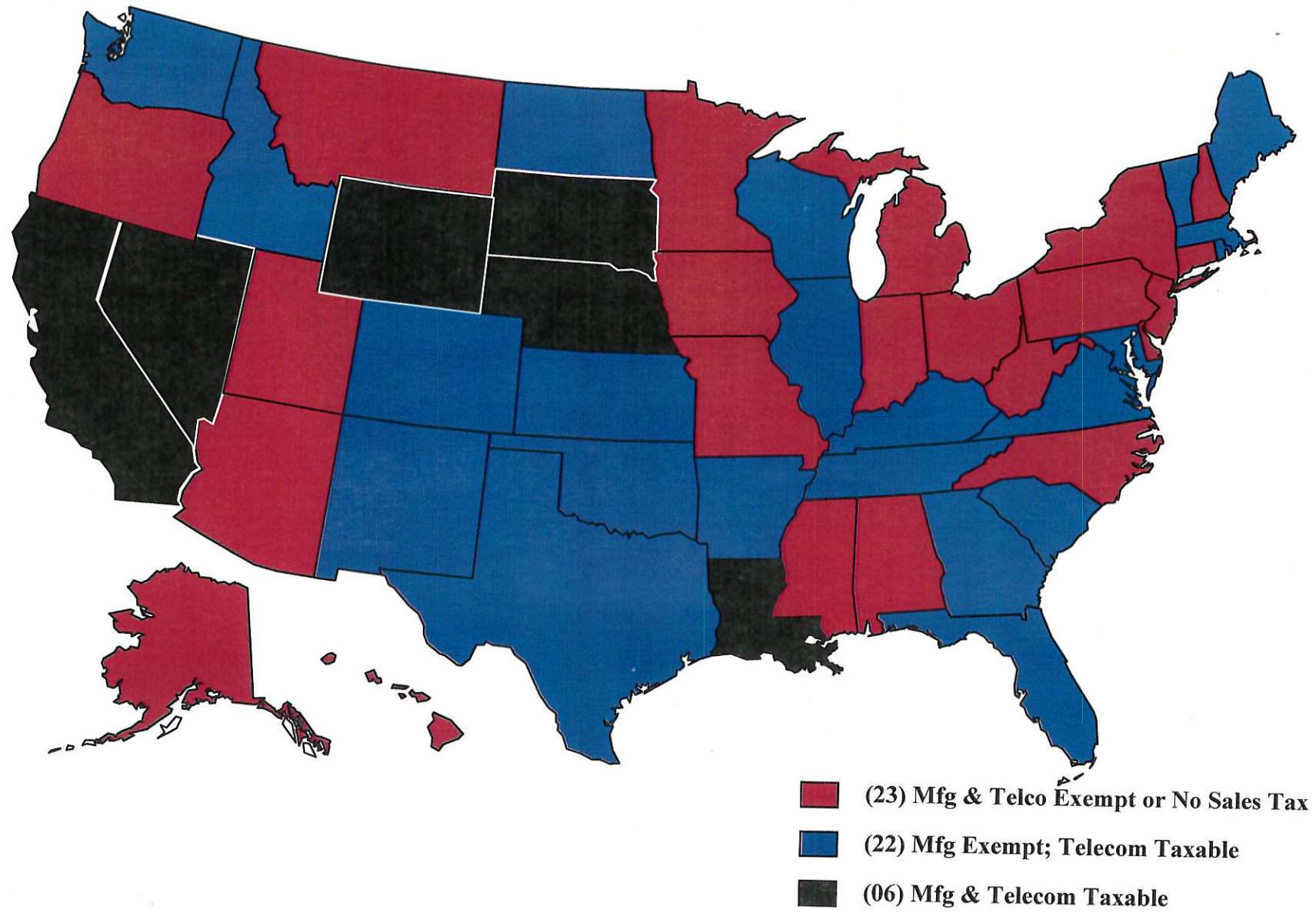
H.B. 2079, has the following features:

- A refund mechanism would be established for all purchases of telecommunications machinery and equipment.
- The refund mechanism would be phased in over 4 years.
- Only the state tax (currently 5.3%) would be subject to the refund provision – there would be no impact on local units of government.
- Any refund claim would need to be filed within one year from date of payment.

Thank you for the opportunity to appear in support of this proposal. On behalf of Sprint/Nextel and the telecommunications industry, I encourage the Legislature to take this necessary step to eliminate the disparate sales tax treatment for telecommunications companies and to further enhance vital telecommunications networks within the State of Kansas.



# Telecommunications/Manufacturing Equipment Sales Tax Exemptions





**Written Testimony before the House Committee on Taxation  
HB 2079 – Sales Tax Refunds for Telecommunications Machinery & Equipment  
Presented by J. Kent Eckles, Vice President of Government Affairs**

**Thursday, February 5<sup>th</sup>, 2009**

The Kansas Chamber of Commerce appreciates the opportunity to submit testimony in favor of House Bill 2079, which would phase-in over time the amount of sales tax refunds paid on the purchase of certain telecommunications machinery and equipment.

The sales tax would be refunded at a rate of 20% in 2012, 40% in 2013, 60% in 2014, 80% in 2015 and would be completely refunded in 2016.

The Kansas Chamber is supportive of equitable tax treatment for all Kansas companies. Business machinery and equipment is exempt from Kansas' sales taxes and telecom equipment should be afforded similar treatment. With the telecommunications industry sector such a large part of the State's economy, we believe equitable tax treatment provided under House Bill 2079 is necessary to allow Kansas to attract high paying jobs and investment in the new media, electronic commerce & high technology industries.

A National Governor's Association (NGA) report entitled "Telecommunications Tax Policies: Implications for the Digital Age," states that to achieve tax reform in telecom, states should extend sales tax exemptions to telecommunications equipment.

Source: <http://www.nga.org/Files/pdf/000202TELECOM.PDF>

Additionally, according to a Committee On State Taxation (COST) study of how states tax the telecommunications industry, surcharges imposed on telecommunications in Kansas amount to a rate of 15.910% compared to just 6.35% for products sold by most other businesses.

Source: <http://www.statetax.org/StateTaxLibrary.aspx?id=17768>

We urge the Committee to pass favorably House Bill 2079 to better improve the State's business tax climate and help spur investment and job creation in the State.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium, and large employers all across Kansas. Please contact me directly if you have any question regarding these comments.





TESTIMONY OF JOHN CMELAK  
VICE PRESIDENT – STATE TAX POLICY

The Honorable Richard Carlson, Chairperson  
House Taxation Committee

Sales Tax Refund on Telecommunications Equipment, HB 2079  
February 5, 2009

Thank you for the opportunity to support the testimony of Sprint Corporation. Verizon Communications and Verizon Wireless (“Verizon”) respectfully offers the following additional comments in support of HB 2079.

The telecomm industry respectfully requests that the Kansas legislature extend its existing sales tax exemption to include the purchase of equipment used in the business of providing telecommunications services to Kansans. Local exchange carriers, inter-exchange carriers, and wireless providers universally view this 2009 legislative objective as very important.

- **It’s a responsible goal that this legislature can achieve this session; one that would place Kansas in a strong competitive position to attract new investment and create new jobs.**

Economists and policymakers have long recognized that consumption taxes should be imposed at final sale. Imposing taxes at final consumption allows companies to choose the most economically efficient mix of capital and labor to produce goods as inexpensively as possible. Taxes on inputs distort these investment decisions. They result in “pyramiding” or “cascading” of taxes – the imposition of a tax on a tax. Pyramiding occurs when taxes paid for machinery, equipment, and other inputs to production are then added to the price of a good, which is then taxed at final sale. Kansas policymakers have already endorsed this important tax policy principle by providing the manufacturing sector with a sales tax equipment exemption.

- **We are merely requesting that the legislature promote parity in taxation by treating the fiercely competitive telecommunications industry on a footing equal to the manufacturing industry.**

There are compelling economic reasons why a telecommunications equipment exemption is a key ingredient to Kansas’ future economic development and prosperity. I urge each respected member of this committee to ask yourself the question:

- **“Is Kansas doing all that it should to attract new and speedier telecommunications technologies?”**

As a Vice President for the nation’s second largest wireless telecommunications service provider, I can offer this committee my own perspective. The hard economic reality is that telecommunications service providers no longer can tap a virtually unlimited supply of investment capital to upgrade our networks within each venue. Investors remain nervous. The rapid slowdown in our economy in the early 2000’s and the resulting deterioration in capital markets have forced companies such as Verizon to carefully scrutinize each capital investment decision to generate maximum return. And although it would be disingenuous to suggest that all capital investment decisions are driven exclusively by state tax policy, it is absolutely accurate to state that the increased cost of Kansas’s state and local sales tax is factored into the “rate of return” computations that companies use to determine where to make new capital investment.

Once again, the telecomm industry speaks with a common voice, and our message remains consistent: we respectfully request that the Kansas legislature extend its current sales tax exemption to include the purchase of equipment used in the business of providing telecommunications services to Kansans.

- **Your support will send a strong signal to senior management of Verizon and its telecommunications competitors that Kansas not only recognizes the value of tax parity, but that it has also taken affirmative steps to modernize its tax code to foster the continued deployment of 21<sup>st</sup> century, high-speed telecommunications infrastructure.**

Thank you for your consideration.

House Taxation Committee  
2-5-09  
Attachment 5

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Testimony to the House Taxation Committee

Richard Cram

February 5, 2009

**Department Concerns with House Bill 2079**

Representative Carlson, Chair, and Members of the Committee:

House Bill 2079 would provide a refund of state sales tax to telecommunications providers on their purchases of certain machinery & equipment, to be phased in over 5 fiscal years, starting with FY 2013 at a 20% refund level (-\$3.2 million fiscal impact) and reaching the 100% refund level in FY 2017 (-\$17.3 million fiscal impact) and thereafter. The Department's fiscal note is attached.

The Department is concerned with the magnitude of this bill's negative fiscal impact and permanent decrease to the tax base, even though that impact does not begin until FY 2013 and phases in over 5 years.

The Department is also alarmed at the ability of the State to meet the basic needs of its citizens if the tax base continues to shrink with proposals like this. Tax cuts in the range of \$143 million through FY 2009 have been enacted in the past four sessions, and if those tax cuts are cumulated through FY 2013, the number is over \$1 billion. The question that needs to be asked is not whether a particular tax cut proposal is a good idea, but whether the State can afford to do any tax cutting in the current environment.

## MEMORANDUM

**To:** Mr. Duane Goossen, Director  
Division of Budget

**From:** Kansas Department of Revenue

**Date:** 02/03/2009

**Subject:** House Bill 2079  
Introduced as a House Bill

### **Brief of Bill**

House Bill 2079, as Introduced, provides for a sales tax exclusion on the purchase of telecommunications machinery and equipment by persons providing services taxable pursuant to K.S.A 79-3603 (b). The proposal would require the purchaser to pay the sales tax and then seek a refund of tax from the department of revenue on the purchase of telecommunications machinery and equipment. The proposal allows for refunds on machinery and equipment based on the following schedule:

- 20% refund on purchases from July 1, 2012 through June 20, 2103
- 40% refund on purchases from July 1, 2013 through June 20, 2104
- 60% refund on purchases from July 1, 2014 through June 20, 2105
- 80% refund on purchases from July 1, 2015 through June 20, 2106
- 100% refund on purchases on and after July 1, 2016

The request for refund must be submitted within one year from the date of payment of the tax and only state tax is to be refunded. Telecommunication machinery and equipment is defined as machinery, equipment and software that is used directly and predominantly for the purpose of sending, receiving or storing voice or data communications and all equipment that is used to enable, facilitate, maintain or monitor such machinery, equipment and software. A list of the type of machinery and equipment is included in the proposal

The Act would be effective July 1, 2009.

### **Fiscal Impact**

The proposal does not take effect until fiscal year 2013. For FY 2013, the loss is estimated at \$3.2 million. The loss to the state general fund is estimated at \$2.81 million and \$0.39 million to the state highway fund. As the amount of purchases that qualifies for refund increases each year from 20% in FY 2013, to 40% in FY 2014, to 60% in FY 2015, to 80% in FY 2016, and 100% of purchases in FY 2017 and after, the fiscal note's growth is considerable for each of the next four (4) years before leveling off. The table below shows the fiscal impact for the next five (5)

years. A 2% annual increase in purchases, and therefore in sales tax refund is built into the estimate.

Fiscal Year	Total	SGF	Hwy
2013	\$3.20	\$2.81	\$0.39
2014	\$6.53	\$5.73	\$0.80
2015	\$9.99	\$8.76	\$1.23
2016	\$13.58	\$11.91	\$1.67
2017	\$17.32	\$15.19	\$2.13

**Administrative Impact**

Sales tax publications will require revision at a cost of \$18,800.

**Administrative Problems and Comments**

It is the department's interpretation of the proposal that telecommunication machinery and equipment must be purchased on or after July 1, 2012 to qualify for the sales tax refund.

The department anticipates there will be administrative issues and potentially litigation over what companies and what machinery and equipment qualify for the exemption. For example, cellular and land line telephone companies would be exempt but what about cable and satellite television companies providing VOIP (voice over internet protocol).

If telecommunication companies are exempt on their purchases of machinery and equipment, it would be anticipated that other industries (such as utility companies) would request the same exemption or refund on their machinery and equipment purchases.

**Taxpayer/Customer Impact**

Refunding of state sales tax on machinery and equipment purchases to telecommunication and related companies.

**Legal Impact**

Approved By:

