

Grandfathering Provisions that Allowed Certain Jurisdictions to Tax Internet Access Set to Expire on June 30, 2020

Overview

On June 30, 2020, provisions pursuant to the Internet Tax Freedom Act's (ITFA) grandfathering provisions, that permitted states and localities to tax certain internet access, will expire.¹ Impacted jurisdictions include Texas, Hawaii, Ohio, New Mexico, South Dakota, and Wisconsin and grandfathered cities such as Colorado home rule cities.

Internet Tax Freedom Act

The ITFA was enacted in 1998 as a 3-year moratorium, preventing governments at the local, state, and federal levels from imposing transaction taxes on internet access, one of the exceptions being that states already taxing internet access as of October 1, 1998 were grandfathered in. Congress extended the ITFA multiple times before making the ITFA permanent in 2016 under the Trade Facilitation and Trade Enforcement Act of 2015 (TFTE).² In making the ITFA permanent, the TFTE also repealed the grandfathering provisions, effective June 30, 2020, that allowed some states to continue taxing internet access.

State Acknowledgement

Texas, South Dakota, and Wisconsin have indicated that they will no longer tax internet access after June 30, 2020.

- *Texas:*
 - The Texas Comptroller of Public Accounts announced that Texas will no longer impose sales tax on separately stated internet access charges.³
- *South Dakota:*
 - The South Dakota Department of Revenue announced that internet access will no longer be subject to state and municipal sales taxes effective July 1, 2020.⁴
- *Wisconsin:*
 - The Wisconsin Department of Revenue announced that the state will no longer tax internet access services after June 30, 2020.⁵
- *Ohio:*
 - The Ohio Department of Taxation acknowledged the expiration of the grandfathering clause but stated that transactions currently defined as automatic data processing, electronic information services, and computer services remain subject to the Ohio sales and use tax except for in certain instances.⁶

¹ P.L. 105-277 (codified at 47 U.S.C. § 151).

² P.L. 114-125, § 922 (2016).

³ Tax Policy News, Tex. Comptroller of Pub. Accts. (May 2020), <https://comptroller.texas.gov/taxes/tax-policy-news/2020-may.php>.

⁴ Are You Up to Date with the Internet Tax Freedom Act?, Winter 2020 Newsletter (S.D. Dep't of Revenue), 2020, at 4, <https://dor.sd.gov/media/v1tpj1ke/winter2020newsletter.pdf#page=4>; Internet Tax Freedom Act: Internet Access Taxation, S.D. Dep't of Revenue (December 2019), <https://dor.sd.gov/media/qmbavimi/tax-fact-itfa.pdf>.

⁵ Wisconsin Sales and Use Tax Information, Wis. Dep't of Revenue Pub. 201, at 48-49 (January 2019), <https://www.revenue.wi.gov/DOR%20Publications/pb201.pdf>.

⁶ On-Line Services and Internet Access, Ohio Dep't of Tax'n, Info. Release ST 1999-04, <https://stateandlocaltax.lexblogplatform.com/wp-content/uploads/sites/525/2020/06/internet-tax-freedom-act-ir-2020-01-Ohio.pdf> (last updated Sept. 2016).

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- *Hawaii and New Mexico:*
 - At the time of this writing, neither the Hawaii Department of Taxation nor the New Mexico Taxation & Revenue Department have issued guidance on the expiration of the ITFA grandfathering clauses and the effect on their taxes on internet access.
- *Home Rule City Sales Taxes:*
 - Some home rule cities in various states (e.g., Colorado) have previously asserted that their sales tax applies to internet access charges and were grandfathered under the ITFA.

Considerations

Taxpayers should review internet services charges from their internet service providers for service periods after June 30, 2020, to determine if sales tax is still being charged. If sales taxes are still being charged for services periods after June 30, 2020, clients are advised to consult with their tax advisors for further analysis.

Contacts:

If you have questions regarding this tax alert, please contact any of the following Deloitte professionals:

Rick Heller

Managing Director – MTS
Deloitte Tax LLP, Parsippany
+1 973 602 4088
rickheller@deloitte.com

Lindsay Crews

Tax Senior Manager
Deloitte Tax LLP, San Francisco
+1 408 704 2012
lcrews@deloitte.com

Evita Lopez

Tax Senior Manager
Deloitte Tax LLP, Costa Mesa
+1 714 436 7284
evlopez@deloitte.com

Brian Hickey

Managing Director – MTS
Deloitte Tax LLP, Cincinnati
+1 513 335 0774
bhickey@deloitte.com

The authors of this alert would like to acknowledge the contributions of Aaron Adams to the drafting process. Aaron is a Tax Consultant II working in the Phoenix Multistate Tax practice of Deloitte Tax LLP.

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