

Internet Tax Freedom Act temporarily extended

September 24, 2014

Update: On December 16, 2014, President Obama signed H.R. 83 to further extend ITFA through September 2015

In brief

On September 18, 2014, President Obama signed [House Joint Resolution 124](#), which includes provisions extending the Internet Tax Freedom Act (ITFA) through December 11. The Act was previously scheduled to expire November 1, 2014, and the extension gives Congress a chance to consider the ITFA's long-term future during the lame-duck session after the midterm elections.

In detail

The Internet Tax Freedom Act Amendments of 2007, [[House Resolution 3678](#)], extended to November 1, 2014, a moratorium on the state and local taxation of Internet access and on multiple and discriminatory taxes on electronic commerce. While another extension of the ITFA remains politically popular, most debate focuses on whether to make it permanent and whether the grandfather clause permitting some states to continue taxing Internet access should be retained.

Extend or make permanent

The temporary extension gives Congress a brief window during the lame-duck session to consider whether to re-extend the moratorium for another set period of time or make the ITFA

permanent. The Permanent Internet Tax Freedom Act (PITFA), for example, was passed by the House on July 15, 2014, and is now with the Senate. [[House Resolution 3086](#)]. The PITFA would permanently ban state and local taxation of Internet access and multiple and discriminatory taxes on electronic commerce. A companion bill, the Internet Tax Freedom Forever Act, was introduced in the Senate on August 1, 2014 [[S. 1431](#)].

Grandfathered states

States that imposed a tax on Internet access prior to October 1, 1998, continue to be grandfathered under the ITFA. States are no longer grandfathered, however, if they repealed or otherwise no longer applied their tax to Internet access as of a date more than two years prior to the enactment

date of HR 3678. A handful of states are still taxing Internet access under the grandfather clause, including Hawaii, New Mexico, North Dakota, Ohio, South Dakota, Texas, and Wisconsin. While the grandfather clause may be retained, under some proposed legislation, such as the PITFA, the grandfather provision would be removed so that no states could tax Internet access.

Another option would be to phase-in an elimination of the grandfather clause over time. The grandfathered states oppose these proposals because a permanent ban would result in state and local tax losses of several hundred million dollars annually.

Marketplace and Internet Tax Fairness Act (MITFA)

In other proposed legislation, on July 15, 2014, US Senator Mike

Enzi introduced the Marketplace and Internet Tax Fairness Act [SB 2609], which combines the Marketplace Fairness Act (MFA) of 2013 and the Internet Tax Freedom Act (ITFA) ([click here](#) for our summary of the MFA). The legislation includes certain technical changes to the Senate-passed MFA ([SB 743](#)) and would extend the ITFA for another 10 years. It would also preserve the current law's grandfather clause.

State guidance if ITFA not extended

A coalition of Internet service providers have requested published guidance from states with unclear tax policy regarding Internet access charges if the ITFA expires. Several states have offered guidance:

- Georgia stated Internet access charges are currently nontaxable and will remain nontaxable if ITFA expires [Policy Bulletin [SUT-2014-01](#), 8/28/2014].

- Kansas stated Internet access charges are not currently taxable and will remain nontaxable unless Kansas law is changed [Private Letter Ruling No. [P-2014-003](#), Kansas Department of Revenue, 8/26/2014].
- Massachusetts stated vendors may continue to rely on the lists of taxable and nontaxable services including Internet access charges, as published in TIR 05-8, until further notice [Massachusetts Technical Information [Release 14-10](#), 9/11/2014].
- Michigan stated a service that directly enables users to connect to the Internet is not subject to the sales tax [[Sales and Use Tax Information](#), Michigan Department of Treasury (9/18/2014)].

- Washington indicated in response to an informal survey that if ITFA expires, Internet access services would become subject to the state's retail sales and use taxes under RCW 82.04.297(2)(b).

The takeaway

Issues and considerations regarding the ITFA include whether the Act should expire, continue to be extended, or made permanent; the impact to certain states if the grandfather clauses are removed; and the impact to Internet service providers and consumers should the moratorium expire. While some form of ITFA legislation seems likely to pass, the lame-duck session provides Congress with only a brief period for substantive deliberation, especially if an ITFA extension is combined with some version of the Marketplace Fairness Act.

Let's talk

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