



Internet Tax Freedom Act Amendments Act of 2007

TB-62 – Issued January 29, 2009
Tax: Sales and Use Tax

On October 31, 2007, President Bush signed the Internet Tax Freedom Act Amendments Act of 2007, P.L.110-108, which extended the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce until November 1, 2014. The moratorium had been scheduled to expire on November 1, 2007.

GENERAL

The moratorium applies to a tax on Internet access, regardless of whether the tax is imposed on a provider of Internet access or a buyer of Internet access, and regardless of the terminology used to describe the tax. Effective November 1, 2007, the term "Internet access":

- means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;
- includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—
 - to provide such service; or
 - to otherwise enable users to access content, information or other services offered over the Internet;
- includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a homepage, electronic mail and instant messaging (including voice and video capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;
- does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and
- includes a homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access. (H.R. 3678, §4).

Thus, the amendment revised the definition of Internet access to include: a homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and

instant messaging), video clips, and personal electronic storage capacity that are provided independently or not packaged with Internet access.

NOTE: The New Jersey Sales and Use Tax Act does not impose Sales Tax on Internet access charges, so the effect of the federal law is only in the area of the underlying telecommunications services purchased by an Internet service provider.

Purchases of Intermediate Telecommunications Services by Internet Service Providers Since the definition of "Internet access" above applies to the purchase, use or sale of telecommunications by a provider of Internet access service as described above, on and after June 30, 2008, intermediate telecommunications services may be purchased without the payment of tax.

ACCOUNTING

If charges for Internet access are aggregated with and not separately stated from charges for telecommunications or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business. (P.L.110-108, §5).

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