

# Internet Access - Primarily Tax-Free

Right now the internet is like a really cool town with something for everyone. It has shopping and history and places to hang out. But, how long will your access to this cool place remain free of charge? Where does the issue of internet taxation stand? The federal moratorium barring states and local governments from imposing taxes on internet access was enacted in 1998. That moratorium banned taxes on internet access, double taxation (by two or more states or other entities) of a product or service bought over the internet, and discriminatory taxes that treat internet purchases differently from other types of sales.

Congress originally instituted the internet tax moratorium to encourage the growth of online commerce, as well as protect educational and informational resources. The moratorium was renewed in 2001 and 2004, and was scheduled to expire on November 1, 2007. However, on October 31, 2007 in its final hours of life, the moratorium on state and local taxes on internet access was extended for seven years and signed into law by President George W. Bush.

The **Internet Tax Freedom Act Amendments Act of 2007** includes the following provisions:

- The moratorium on state and local taxes on internet access and multiple or discriminatory taxes on electronic commerce has been extended until November 1, 2014.
- The grandfather clause that permits internet access taxes that were generally imposed and enforced prior to October 1, 1998, has been extended until November 1, 2014.
- A new definition of "internet access" has been enacted. It means "a service that enables a user to connect to the internet to access content, information or other services." Through the amendment, the definition has been expanded to include the purchase, use, or sale of telecommunications by an internet service provider to provide the service, or otherwise enable users to access content, information or other services offered over the internet. It also includes incidental services such as home pages, electronic mail, instant messaging, video clips, and personal storage capacity. However, "internet access" does not include voice, audio, video programming, or other products and services using internet protocol for which there is a charge, regardless of whether the charge is bundled with charges for "internet access."
- The language in the moratorium has been amended to clarify that it does not apply to state-regulated general business taxes (such as gross receipts taxes) that are structured in such a way as to be a substitute for or supplement the state corporate income tax. Therefore, internet access providers may still be taxed on their receipts attributable to providing access under certain existing taxes, including the Michigan Business Tax, Ohio Commercial Activity Tax, Texas Margin Tax, and Washington Business and Occupation Tax.



Proponents of the ban believe that keeping internet access tax-free is important to both the country's economic growth and the expansion of the internet as a communication and information tool. Internet access is an untaxed service just as many other services are untaxed by the states. While the ban on internet taxation is great for some businesses, it is critical for businesses to keep in mind the basic rules of sales taxability in the states in which they do business.

## Understanding and complying with sales and use taxes

Currently, a company that sells goods over the internet is required to register and collect sales tax on all taxable goods, but only if the company has a presence in the state of delivery (e.g., has employees, an office, or maintains property in that state). However, in many situations, an internet sale will not involve "nexus" (doing business in the receiving state), and the US Supreme Court has prevented states from imposing sales tax on out-of-state supplies in that situation. Arguably, use tax provisions should then step in to shift the burden of remitting sales tax to the purchaser on the sale. Did you know that if you purchase goods from out-of-state, Florida generally requires you to accrue and pay use tax?

Some business owners feel that a state taxing authority lacks the ability to find traces or records of such transactions, thus motivating taxpayers to become complacent with sales and use tax filing responsibilities. But, as state taxing authorities continue to feel the revenue pinch, they continue to aggressively pursue state sales taxes. Florida is no exception.

Take the time now to identify potential use tax exposure and implement ways to minimize such exposure. You may want to begin by conducting a reverse audit through a qualified consultant to determine if you have overpaid sales or use taxes, and then seek the relevant refunds. Because state tax audits significantly outnumber Internal Revenue Service audits, you must make sure that you are in compliance or are fully prepared before you are audited.



**Faith Gorman** is the Director of Daszkal Bolton's State and Local Tax practice. She assists companies in restructuring their operations to minimize state and local income taxes, represents individuals and corporations in multi-state tax planning and audit defense, and provides assistance for mergers, acquisitions and dispositions with multi-state interests.

