

INTERNET TAX FREEDOM ACT TALK STORY

Uniformity Committee Meeting

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Starring: Deborah Bierbaum & Harley Duncan

Featuring: Jonathan W. White

- We speak for ourselves.
- Our comments do not necessarily represent the views of our employers, past or present.
- Nothing in this presentation should be considered legal advice.

The Internet Tax Freedom Act – Basics



Preempts “taxes on Internet access.”

Preempts “multiple or discriminatory taxes on electronic commerce.”

The Internet Tax Freedom Act has no agency assigned to interpret it, there is no active source of guidance on the meaning of key terms; the court system is the only source of guidance.

“Discriminatory tax” (in part) is any tax on electronic commerce that (i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means.

The Internet Tax Freedom Act – Origin Story

Enacted October 21, 1998.

The Internet Tax Freedom Act establishes federal policy regarding Federal and State taxation of the internet, based upon its unique characteristics as a mode of interstate and global commerce uniquely susceptible to multiple and discriminatory taxation.

- Former U.S. Rep. Cox in *Wayfair* Amicus Brief (2018)

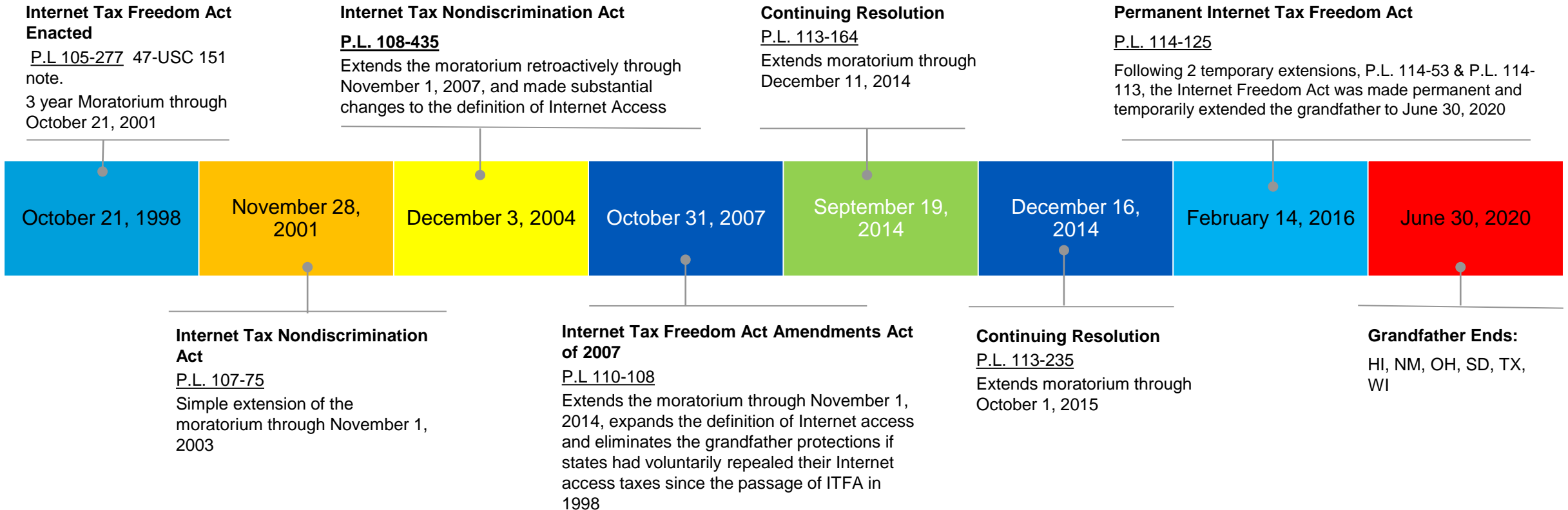
The Internet Tax Freedom Act was intended to be a temporary moratorium to nurture the Internet in its infancy. Today's Internet is very different from the Internet of 1998. The Internet is no longer a nascent idea in need of a federal tax protection to grow.

- U.S. Rep. John Conyers Jr. in Judiciary Committee hearings (2016)



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Significant Milestones and The Path to Permanent



2004 Amendments

- Extended the ITFA retroactively to November 1, 2003 and until November 1, 2007;
- Clarified that the term “tax on Internet access” applies regardless of whether the tax is imposed on a provider or buyer of internet access;
- Clarified that “tax on Internet access” does not include a tax levied on net income, capital stock, net worth, or property value;
- Provided that the terms “Internet access” and “Internet access service” do not include telecommunications services, except if purchased, used, or sold by an internet access provider to provide internet access;
- Extended, to November 1, 2007, the legacy protection for taxes on internet access imposed prior to October 1, 1998;
- Extended, to November 1, 2005, the legacy protection for taxes on internet access that were generally imposed and actually enforced as of November 1, 2004;
- Protected the Texas municipal access line fee;
- Established the accounting rule which states that some charges for internet access could be taxed if bundled with telecommunications services or other charges that are subject to taxation, unless the internet access provider can reasonably identify the charges for internet access;
- Excluded taxes on Voice over Internet Protocol services; and
- Required the Government Accountability Office to study the ITFA and report to Congress on its effects.

2007 Amendments

- Extended the ITFA and legacy clause until November 1, 2014;
- Definition of Internet Access changed;
 - Internet Access includes incidentals such as email, instant messaging, and electronic storage capacity, even if not packaged with the Internet Access;
 - Internet Access does not include voice, audio or video programming, or other products and services that utilize Internet protocol and for which there is a charge, whether separately stated or not;
- Definition of “Telecommunications” replaced definition of “Telecommunications Service;”
 - Telecommunications defined as it is defined in section 3(43) of the Communication Act of 1934 (47 U.S.C. 153(43));
- Clarified that “tax on Internet access” does not include a tax levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business enacted between June 20, 2005 and November 1, 2007, that also meet other requirements.
- Made clear which definition of “Internet Access” applied to each iteration of the legacy clause.
- Denies legacy clause protection to any state that has within the prior 24 months either enacted legislation to repeal a tax on Internet access or issued a rule or other proclamation that the state no longer intends to apply tax to Internet access.

Where to Next?



Deborah Bierbaum
Multistate Associates
dbierbaum@multistate.us

Harley Duncan
KPMG LLP
hduncan@kpmg.com

Moderator:
Jonathan W. White
Counsel, MTC
jwhite@mtc.gov