MULTISTATE TAX COMMISSION

White Paper Section on Internet Tax Freedom Act
July 22, 2026

1. Scope

The Digital Products Work Group was formed to draft a Whitepaper on the issues states should consider when including digital products[1] in their sales tax base.[2] This section of the Whitepaper considers the Internet Tax Freedom Act[3] (ITFA). While the Work Group has not formally considered the ITFA, any attempt to include digital product in a sales tax base will interact with the ITFA. This section of the Whitepaper briefly describes the important provisions of the ITFA and makes general recommendations regarding how states should approach the ITFA when considering the addition of digital products to their sales tax bases.

2. Introduction

The ITFA is a federal preemption statute barring states and their political subdivisions[4] from imposing taxes on Internet access and from imposing multiple and discriminatory taxes on electronic commerce.

The context behind the ITFA was the growing Internet of the mid-to-late 1990s. The Internet's inherently interstate nature made it seem uniquely susceptible to disruptive state and local taxation. The perception of the Internet and Internet-based commerce becoming targets of state and local taxation led directly to the creation of the ITFA in 1998.[5]

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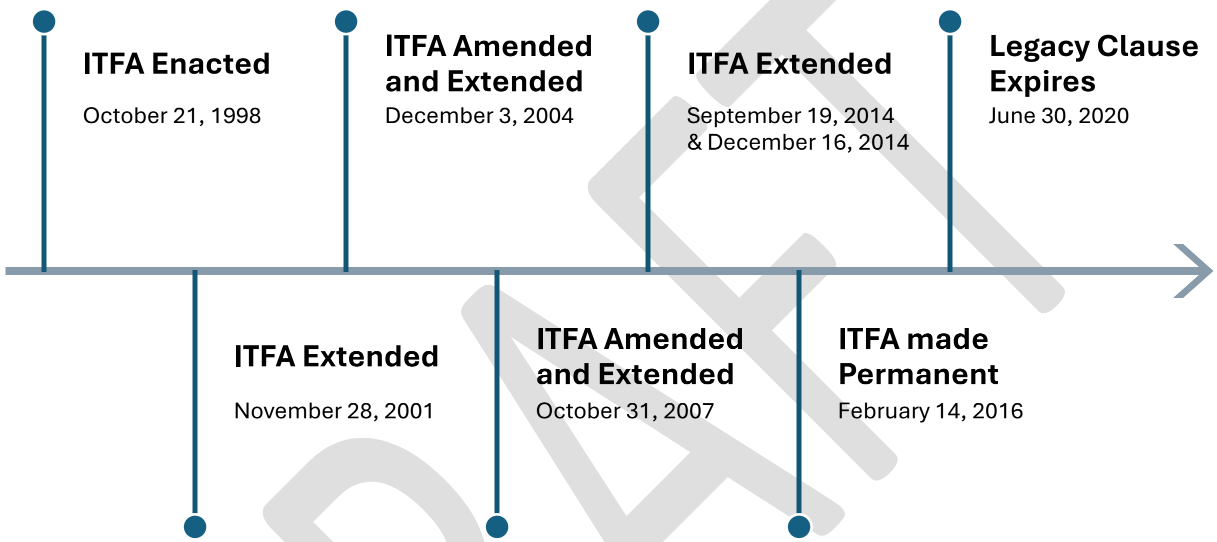
[1] For purposes of this MTC uniformity project, the term "digital product" means both goods and services.
[2] Visit the MTC project page at https://www.mtc.gov/uniformity/sales-tax-on-digital-products/.
[3] 47 U.S.C. § 151, note. See Appendix.
[4] Throughout this Section, the term "State" will be used to refer to states and their subdivisions.
[5] *See generally*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-273, INTERNET ACCESS TAX MORATORIUM: REVENUE IMPACTS WILL VARY BY STATE, 5-6 (2006).

The ITFA was originally temporary[6] but was subsequently amended and extended several times,[7] and eventually made permanent in 2016.[8] ITFA's legacy clause expired in 2020.[9]

ITFA's timeline, visualized:



Because no federal agency is authorized to issue guidance under the ITFA, any guidance or detail is left to the states and the courts to fill in. With the courts the only source of *binding* guidance. There remain significant uncertainties as to the full scope and reach of the ITFA.

ITFA's concept of "electronic commerce" overlaps with, but is not synonymous with, digital products. Thus, simply taxing digital products does not in itself implicate the ITFA. Nonetheless, the ITFA is relevant to the project. This section of the Whitepaper seeks to provide information that state policymakers and the public must know about the ITFA when considering the inclusion of digital products within the tax base.

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[6] Pub.L. No. 105-277, Tit. XI, 112 Stat. 2681-719 (1998).

[7] Pub.L. No. 107-75, § 2, 115 Stat. 703 (2001); Pub.L. No. 108-435, §§ 2-6A, 118 Stat. 2615-2618 (2004); Pub.L. No. 110-108, §§ 2-6, 121 Stat. 1024-1026 (2007); Pub.L. No. 113-235, Tit. VI, § 624, 128 Stat. 2377 (2014).

[8] Pub.L. No. 114-125, Tit. IX, § 922, 130 Stat. 281 (2016).

[9] Pub.L. No. 114-125, Tit. IX, § 922, 130 Stat. 281 (2016).

Since the ITFA's initial enactment, electronic commerce and the Internet have become ubiquitous, leading some to question whether the ITFA and its protections are still needed.[10] While important, these discussions are outside the scope of this Whitepaper.

3. Important Provisions

A. ITFA Prohibits Discrimination Against "Electronic Commerce," as Defined

ITFA's discrimination provision prohibits a state tax from singling out transactions over the Internet for disparate treatment. This is a result of the interplay between two federally defined terms: "discriminatory tax" and "electronic commerce."

A discriminatory tax is:

> **(A)** any tax imposed by a State or political subdivision thereof *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*;
>
> **(ii)** is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information *accomplished through other means*, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;
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> **(iii)** imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information *accomplished through other means;*
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> **(iv)** establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services *delivered through other means;* or[11]

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[10] *See e.g.*, Walter Hellerstein and Andrew Appleby, *The Internet Tax Freedom Act at 25*, 107 State Tax Notes 7, 20 (2023) (discussing whether the original goals behind ITFA have been achieved); *but see* Maria M. Todorova et al., *ITFA: A Federal Shield in an Expanding Digital Economy*, 118 Tax Notes State 557 (2025) (discussing ITFA's relevance in the modern economy).

[11] 47 U.S.C. § 151, note § 1105(2)(A) (47 U.S.C. § 151, note § 1105(2)(B) deems a list of practices related to nexus creation to be discriminatory but the provision is of limited relevance to this Whitepaper).

Electronic commerce is:

> [A]ny transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.[12]

A tax is:

> **(i)** any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or
>
> **(ii)** the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.[13]

Accomplished or delivered through other means

The definition of electronic commerce contemplates transactions conducted over the Internet or through Internet access. For example, sales, leases, licenses, or other transactions conducted over or through the Internet are transactions within the scope of the ITFA. Importantly, electronic commerce is not defined as the sale of, or other transaction involving, a digital product;[14] although it seems reasonably clear that the sale of a digital product may occur in electronic commerce. The definition of discriminatory tax describes the proscribed discrimination as a disparate tax treatment, of electronic commerce, when compared to transactions in similar property, goods, services, or information "accomplished through other means" or with respect to certain providers in comparison to similar information services "delivered through other means."

The ITFA does not prohibit discrimination between transactions in electronic commerce. Accordingly, a state might choose to tax fictional digital books purchased over the Internet and not tax educational books purchased over the Internet without concern for the ITFA discrimination provision. As a result, with respect to transactions in electric commerce, policy makers appear to have wide discretion to make tax distinctions for policy reasons without significant ITFA risks.

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[12] 47 U.S.C. § 151, note § 1105(3).
[13] 47 U.S.C. § 151, note § 1105(8).
[14] For an example of a discrimination provision that does, see S. 765, 116th Cong. (2019) (the proposed Digital Goods and Services Tax Fairness Act, providing an example of what a general discrimination provision protecting digital goods, as such).

Because electronic commerce is defined as transactions conducted over the Internet or through Internet access, "other means" is logically referring to means other than over the Internet or through Internet access. For example, an Arizona court disregarded an ITFA discrimination claim by correctly identifying that the tax distinction relied on the taxpayer's business model rather than on the presence or absence of the Internet.[15] The issue was application of Arizona's Transaction Privilege Tax (TPT) to the taxpayer's payroll automation software. The taxpayer argued the TPT violated the ITFA because the TPT exempted the Taxpayer's work if its employees manually performed it, but the TPT taxed its automated software products.[16] The court rejected the ITFA discrimination claim, concluding the distinction was the taxpayer's business model rather than the presence or absence of the Internet.[17]

In summation, the interaction of these two definitions, electronic commerce and discriminatory tax, makes identifying the Internet a prerequisite to determining if there is an ITFA discrimination risk. The ITFA framework for discrimination requires a disparate tax treatment between a transaction conducted over the Internet or through Internet access and transactions involving similar products accomplished or delivered through other means.

Taxes

The term "taxes" is broad, but it is not all encompassing. A tax requires (1) a government imposition, (2) for the purpose of generating revenues for governmental purposes, and (3) that is not a fee for service or benefit.[18] Accordingly, it seems a relatively straight-forward proposition that the States' impositions designed to raise revenue are taxes as contemplated by the ITFA, and in particular, the States' sales and use taxes. However, the ITFA does not apply to fees or impositions that are not for the purpose of generating revenue. At this time, there are few cases or other authoritative sources addressing these distinctions.[19]

Additionally, there is a specific definition of "tax on Internet access" relevant to the moratorium on Internet access. The term excludes "a tax levied upon or measured by net income, capital stock, net worth, or property value.[20] Thus, the concept of a "tax" for purposes of the discrimination provision is broader than for purposes of the Internet access provision.

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[15] *ADP, LLC v. Arizona Department of Revenue*, 524 P.3d 278, 286 (Ct. App. 2023).
[16] *ADP, LLC v. Arizona Department of Revenue*, 524 P.3d 278, 286 (Ct. App. 2023).
[17] *ADP, LLC v. Arizona Department of Revenue*, 524 P.3d 278, 286 (Ct. App. 2023).
[18] 47 U.S.C. § 151, note § 1105(10).
[19] *But see Coxcom, LLC v. Fairfax County*, 875 S.E.2d 75 (2022) (holding Virginia's Business, Professional and Occupational License Tax, a type of gross receipts tax, was a tax for purposes of the ITFA).
[20] 47 U.S.C. § 151, note § 1105(10)(B).

Resources for evaluating discrimination

The following chart provides a simplified analytic framework for evaluating State taxes under the discrimination provision of the ITFA. The chart does not answer the question of whether a tax is discriminatory, but rather it leads the user through a series of questions to help make that determination.

Step	Question	Direction
1	Is there a governmental imposition that qualifies as a tax under ITFA?	• If yes, proceed to Step 2. • If no, the analysis ends.
2	Does the tax treatment apply to transactions over or through the Internet?	• If yes, proceed to Step 3. • If no, the analysis ends.
3	Is there similar or identical property, goods, services, or information accomplished or delivered through other means?	• If yes, proceed to Step 4. • If no, the analysis ends. *Note: This step may frequently be the most challenging analytical step because it requires an understanding of other products in the market and a careful understanding the attributes of these products. This step is expected to be a significant point in the litigation on many cases.*
4	• Is the similar product(s) through other means taxed the same as the products in electronic commerce? • Is the similar product(s) through other means taxed at a lower rate than products in electronic commerce? Consider applicable exemptions. • Is tax the similar product(s) collected or paid by a different person or entity than for products in electronic commerce? • Do providers of similar information services delivered through other means have a lower	• If yes to any of these questions, proceed to Step 5. • If no to all questions, the analysis ends

	tax rate classification than Internet access service providers or online service providers involved in electronic commerce?	
5	There may be an ITFA discrimination risk.	Re-evaluate and confirm there are similar products with disparate treatment.

B. ITFA Prohibits Taxes on "Internet Access," as Defined

ITFA prohibits taxes on Internet access whether imposed on a service provider or a buyer and regardless of the terminology used.[21] For purpose of this prohibition, a tax on Internet access does not include a tax levied upon or measured by net income, capital stock, net worth, or property value and there are several other specific exceptions that may apply.[22] The definition of Internet access is complicated, expansive, and potentially covers a number of things.

Under the ITFA, the Internet is "collectively the myriad of computer and telecommunications[23] facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio."[24] This definition is broad, but presumably does not capture private networks.

With this in mind and paraphrased, "Internet access" is

- A service (Internet Access Service) that enables users to connect to the Internet to access content, information, or other services offered over the Internet (Internet Access Service or IAS).

[21] 47 U.S.C. § 151, note § 1105(10)(A).
[22] 47 U.S.C. § 151, note § 1105(10)(B).
[23] 47 U.S.C. § 151, note § 1105(9), referring to 47 U.S.C. § 153(50).
[24] 47 U.S.C. § 151, note § 1105(4).

- The purchase, use or sale of telecommunications by a provider of an IAS to the extent these telecommunications are purchased, used or sold either to provide the IAS, or to otherwise enable users to access content, information, or other services offered over the Internet.
- Services that are incidental to the provision of the IAS when furnished to users as part of the IAS, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity.
- 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. Internet access does not include voice, audio or video programming, or other products and services, other than those specifically included in Internet access, that utilize Internet protocol or any successor protocol and for which there is a charge.[25]

Evaluating Internet Access

Whether something falls within Internet access may be clear in many situations. For example, the sale of a service enabling access to the Internet by an Internet access provider is clearly within the scope of the ITFA, as well as the ISP's purchase of the telecommunications services used to provide the Internet access. Also clear is the inclusion of certain items, whether incidental to the Internet access, or not, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity.[26]

However, what the term incidental contemplates, when services like email and homepages are in fact incidental, and when services like homepages are covered by the ITFA separately is far from clear. At least one court has found that where a business sells a service that is not itself Internet access, and uses an independent email service, the independent email service was not incidental to the sale of Internet access nor was it considered to be the provision of email separately under the facts.[27]

[25] 47 U.S.C. § 151, note § 1105(5).
[26] This is generally true except for those taxes specifically excluded from the prohibition.
[27] *j2 Global Communications Inc. v. City of Los Angeles*, 218 Cal. App. 4th 328 (Cal. Ct. App. 2013); 159 Cal. Rptr. 3d 742 (2d Dist. 2013); *see also*, *J2 Cloud Servs., Inc. (f/k/a J2 Glob., Inc. & J2 Glob. Commc'ns, Inc.) v. Comm'r of Revenue*, Docket No. C325426, 2019 WL 1102964, at *17 (Mass. App. Tax. Bd. Feb. 27, 2019).

C. Primary Source of Uncertainty – What is "Similar"

A key part of the definition of discriminatory tax is the phrase "similar property, goods, services or information." ITFA provides no guidance as to what is meant by the term "similar," but its inclusion means identification of "similar" items is critical.

Intuitively, the sale of a book and the sale of a motor vehicle do not seem similar, presumably because they are unrelated in terms of purpose and functionality, even though they might both be personal property and the color blue. In terms of the categorization of things, the similarity or dissimilarity of products exists on a continuum with countless ways to categorize them according to their similarities or dissimilarities. For example, is a physical musical record sold in a store similar to a music streaming service sold via the Internet? Arguably, these two products are not similar because, while they both relate to music, the streaming service has functionality and possibly purpose that distinguishes it from the physical record. Digital products are replete with these types of differences. Moreover, the digital landscape makes this endeavor more complicated because products are ever changing and evolving.

The ITFA provides no brightline rule to identify when products are "similar" for legal purposes, leaving the matter to states to grapple with and the courts to decide on a case-by-case basis. From a practical perspective, the facts will be extremely important in making these distinctions when litigating the ITFA. Those involved in dealing with these issues will benefit from a solid understanding of what products exist in the marketplace and an understanding of the products themselves, allowing a careful weighing of similarity and dissimilarity. Thought should also be given to identifying the important qualitative distinctions for purposes of the ITFA analysis (e.g., distinct purpose or different or additional features) and the potential quantitative distinctions.

States are well-advised to consider the ITFA implications when addressing digital products within their tax base with an eye to identifying the risks. In this regard, one option states might consider are laws that require similar products to be taxed the same consistent with the ITFA, requiring either the exemption or taxation of both products upon the final decision in the courts that two products are similar and are not being treated the same for tax purposes.

One example of language that contains the requirement of a judicial or other determination to apply is from a proposed amendment to the Streamlined Sales and Use Tax Agreement. The language is from a proposed amendment that has not been adopted. The language concerns member states' compliance with the Streamlined Agreement, but addresses situations where federal law might require an exemption and would ensure that such an exemption would not result in noncompliance. The proposed language is as follows:

> No member state shall be found out of compliance under subsection A. if its noncompliance is the result of a judicial ruling, legislative determination or formal decision of the executive branch of the member state that the law, rule, regulation or policy at issue is necessary to comply with federal law.[28]

Another example can be found in Wisconsin's sales tax statute, which provides:

> "The sales price from the sale of and the storage, use, or other consumption of specified digital goods or additional digital goods, if the sale of and the storage, use, or other consumption of such goods sold in a tangible form is exempt from, or not subject to, taxation under this subchapter."[29]

A more generic but likely less effective option is a provision prohibiting taxation of anything the "state is prohibited from taxing under the constitution or laws of the United States."[30] Many states' laws contain such language.

Yet another example, regarding the ITFA's Internet access provision rather than its discrimination provision, can be found in Virginia's statute. Virginia law includes an exemption for "Internet access service" and various related services.[31] The exemption defines the term "Internet access service" similarly to how the ITFA defines "Internet access."[32]

If doing this, states should be careful not to overprotect in the name of the ITFA.

In any case, the term "similar" does not alter the definition of discriminatory tax to one that simply compares the treatment of digital goods or services to traditional goods or services. A tax imposed on digital goods is not necessary or sufficient for an ITFA discrimination claim. A tax imposed on physical property would violate ITFA if it was imposed only when that property is sold over the Internet, while the taxation of a digital product itself would not be a violation. Similarly, a tax imposed on a particular digital good when sold over the Internet but not when sold via physical media would also violate ITFA. The limiter is the meaning of the term "similar."

As noted, the only source of authoritative guidance on the meaning of the term "similar" must come from litigation. (See the summary of cases below in Appendix B.) And because

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[28] State and Local Advisory Council Proposed Section 805 Amendment, available here and on file with MTC staff (this language was discussed, edited, and tabled for further discussion at the May 2026 Streamlined meetings, it is not part of the Streamlined Agreement).
[29] WIS. STAT. § 77.54(50).
[30] WIS. STAT. § 77.54(1).
[31] VA. CODE ANN. § 58.1-648.C.
[32] VA. CODE ANN. § 58.1-647.

the term is inherently ambiguous, courts will have to consider the statutory context and Congress's intent.

Below are examples intended to illustrate the concept of electronic commerce, other means, disparate treatment, and what may raise discrimination risks under the ITFA.

> Example 1 – electronic commerce: The sale of electronic and physical books over the Internet from an Internet website falls within "electronic commerce".
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> Example 2 – other means: The sale of electronic (through a store kiosk) and physical books at a bricks and mortar store would fall within "other means".
>
> Example 3 – disparate treatment: The imposition of a sales tax, or a higher rate of tax, on the sale of books in Example 1, with no imposition, or imposition of a lower rate of tax, on the books in Example 2. Note the application of exemptions may present similar ITFA risks.
>
> Example 4 – disparate treatment: The imposition of a sales tax on the sale of an emailed list of names, with no such imposition on the same list if it is delivered in physical paper format. This example assumes the lists contain the exact same information and there are no additional features available for the emailed list that might differentiate it from the paper copy.[33]
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> Example 5 – disparate treatment: The requirement that businesses selling boats exclusively over the Internet must collect a sales tax on those sales, but while relieving physical stores that sell boats in showrooms of any collection obligation.

D. ITFA Prohibits Multiple Taxation of Electronic Commerce

ITFA's multiple tax provision prohibits multiple taxation of electronic commerce.[34]

A multiple tax is:

> any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.[35]

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[33] *But cf. Gartner, Inc. v. Dep't of Revenue*, 455 P.3d 1179 (Wash Ct. App. 2020) (where the tax classification being challenged did require additional features beyond the Internet's involvement).
[34] 47 U.S.C. § 151, note § 1101(a)(2).
[35] 47 U.S.C. § 151, note § 1105(6)(A).

There are two exceptions to the prohibition on multiple taxation of electronic commerce. One excludes allows a single state and one of its political subdivisions to impose a tax without a credit. The other exception ensures that a tax type imposed on a person's business and tax types imposed on transactions themselves, like sales taxes, are not mixed for purposes of the prohibition.[36]

E. The ITFA Accounting Rule

ITFA's accounting rule allows states to tax Internet access if charges for Internet access are aggregated with charges that are subject to taxation. However, even if aggregated, if the Taxpayer can reasonably identify the Internet access charges using its books and records, then the Internet access charges are not subject to tax.[37]

This provision allows Internet access service providers to charge one price, and still receive ITFA protection for their Internet access charges, so long as they can sufficiently identify the Internet access charges. One case has described the accounting rule as "lenient." The court held that exact figures were not necessary and that historical usage patterns were sufficient to reasonably identify Internet access charges.[38]

The accounting rule has implications for how states treat packages of products containing digital products and the Internet. States should consider this feature when designing their tax system as these systems relate to digital products. For example, Washington law provides that bundled transactions, that include Internet access may be subject to sales tax unless the seller can unbundle based on books and records that are kept in the regular course of business.

4. States Should Consider the Following Focus Points

A. There is no Federal Administrative Guidance on the ITFA, only Litigation

The only binding guidance on the ITFA has been developed through litigation. No federal agency is authorized to issue guidance under the ITFA, nor has the federal government delegated, explicitly or implicitly, rulemaking authority to the states. Further, state law might not authorize state agencies to undertake formal rulemaking regarding a federal statute.

[36] 47 U.S.C. § 151, note § 1105(6)(B).
[37] 47 U.S.C. § 151, note § 1106(a).
[38] *University City v. AT&T Wireless, Inc.*, 2026 WL 934817, No. ED113046 (Mo. Ct. App. 2026).

This diminishes the role of formal rulemaking and guidance and enhances the role of litigation results. Additionally, state court rulings may apply only in the forum state and rulings of any court may be limited to the facts of the case.

B. Broad-based Taxes are Less Likely to Create an ITFA Discrimination Challenge

If the tax includes everything in the taxable base, it is less likely to discriminate against electronic commerce. If everything is taxed, there is less potential for disparate treatment. In one case considering Seattle's Telephone Utility Tax, the court rejected the ITFA discrimination claim by pointing out that all similar services and taxpayers are taxed under the tax type. The court also pointed out that this is true under Washington's Business and Occupation Tax.[39]

C. The ITFA Can Hinder Legitimate State Tax Policy

There is no intentionality or de minimis exclusion in the ITFA. A tax policy that inadvertently imposes even a trivial amount of discrimination against electronic commerce could be invalidated under ITFA, regardless of the wisdom of, or reason for, the underlying policy. A court could create a de minimis exception, as the Supreme Court did for P.L. 86-272 in *Wrigley*.[40] This possibility only highlights the lack of clarity under the ITFA and the reliance on litigation.

D. The ITFA's Discrimination Provision Can be Accommodated

States should be cautious not to base their tax treatment on the presence of the Internet, or use of the Internet, in the transaction. Further, states should be careful in selecting language that might invite such a conclusion. For example, a tax treatment that relies on the non-Internet characteristics of a product or service will likely survive an ITFA discrimination challenge, whereas one that overtly relies on whether the transaction occurs over the Internet to determine the tax treatment may not.[41]

E. The ITFA Should not be Incorporated into State Law

ITFA is a federal preemption statute and must be respected, but this has its limits. How much ITFA should be incorporated into state law is an important question. Many considerations suggest minimizing this.

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[39] *Community Telecable, Inc. v. City of Seattle*, 149 P.3d 380, 390 (Wash. App. 2006).
[40] *Wisconsin Dep't of Rev. v. Wrigley*, 505 U.S. 214 (1992).
[41] *See, e.g.*, *IMT, Inc. v. City of Lumberton*, 219 N.C. App. 36, 724 S.E.2d 588 (N.C. Ct. App. 2012), *rev'd on other grounds*, 738 S.E.2d 156 (N.C. 2013) and *Performance Marketing Ass'n v. Hamer*, 998 N.E.2d 54 (Ill. 2013).

First, it is unnecessary because federal preemption applies regardless of whether it is specifically incorporated into, or even acknowledged in, state law. Second, the ITFA, as a federal preemption of state taxation, should not be interpreted expansively.[42] Incorporating the ITFA into state statute potentially gives federal preemption a wider berth than it might otherwise have. Third, incorporating the ITFA into state statute can only go in one direction: toward greater restriction of state taxing authority than the ITFA requires. Fourth, incorporating the ITFA into state statute risks multiple and diverging interpretations across multiple state and federal versions of the ITFA. As the federal ITFA is interpreted by a court, the state version of the ITFA may be interpreted in different ways.

States should limit any attempts to address the ITFA to administrative rules or to simple references to the federal law.

5. Appendices

A. Internet Tax Freedom Act – 47 U.S.C. § 151 note

SEC. 1100. SHORT TITLE.

"This title may be cited as the 'Internet Tax Freedom Act'.

SEC. 1101. MORATORIUM.

"(a) Moratorium. — No State or political subdivision thereof may impose any of the following taxes:

"(1) Taxes on Internet access.

"(2) Multiple or discriminatory taxes on electronic commerce.

"(b) Preservation of State and Local Taxing Authority. —

Except as provided in this section, nothing in this title shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.

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[42] *See, e.g.*, *Dep't of Rev. of Or. v. ACF Indus.*, 510 U.S. 332, 345 (1994) (the power to tax is central to state sovereignty); *Nat'l Priv. Truck Council, Inc. v. Okla. Tax Comm'n*, 515 U.S. 582, 590 (1995) (stating there is a "strong background presumption against interference with state taxation"); *Arkansas v. Farm Credit Servs. of Cent. Ark.*, 520 U.S. 821, 826 (1997) (stating the power to tax is basic to the power of the State to exist).

"(c) Liabilities and Pending Cases. —

Nothing in this title affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this title affect ongoing litigation relating to such taxes.

"(d) Exception to Moratorium. —

"(1) In general. —

Subsection (a) shall also not apply in the case of any person or entity who knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors unless such person or entity has restricted access by minors to material that is harmful to minors—

"(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;

"(B) by accepting a digital certificate that verifies age; or

"(C) by any other reasonable measures that are feasible under available technology.

"(2) Scope of exception. —

For purposes of paragraph (1), a person shall not be considered to [be] making a communication for commercial purposes of material to the extent that the person is—

"(A) a telecommunications carrier engaged in the provision of a telecommunications service;

"(B) a person engaged in the business of providing an Internet access service;

"(C) a person engaged in the business of providing an Internet information location tool; or

"(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

"(3) Definitions. —

In this subsection:

"(A) By means of the world wide web. —

The term 'by means of the World Wide Web' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

"(B) Commercial purposes; engaged in the business. —

"(i) Commercial purposes. — A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

"(ii) Engaged in the business.— The term 'engaged in the business' means that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person's sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

"(C) Internet. —

The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

“(D) Internet access service. —

The term ‘Internet access service’ means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term ‘Internet access service’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.

“(E) Internet information location tool. —

The term ‘Internet information location tool’ means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

“(F) Material that is harmful to minors. —

The term ‘material that is harmful to minors’ means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

> “(i) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;
>
> “(ii) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and
>
> “(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

“(G) Minor. —

The term ‘minor’ means any person under 17 years of age.

“(H) Telecommunications carrier; telecommunications service. —

The terms ‘telecommunications carrier’ and ‘telecommunications service’ have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

“(e) Additional Exception to Moratorium. —

“(1) In general. —

Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is designed to permit the customer to limit access to material on the Internet that is harmful to minors.

“(2) Definitions. —

In this subsection:

“(A) Internet access provider. —

The term ‘Internet access provider’ means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

“(B) Internet access services. —

The term ‘Internet access services’ means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

“(C) Screening software. —

The term ‘screening software’ means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

“(3) Applicability. —

Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act.

SEC. 1102. ADVISORY COMMISSION ON ELECTRONIC COMMERCE.

"(a) Establishment of Commission. —

There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the 'Commission'). The Commission shall—

"(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

"(2) conduct its business in accordance with the provisions of this title.

"(b) Membership. —

"(1) In general. —

The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

"(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

"(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose an income tax).

"(C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of—

"(i) 5 individuals appointed by the Majority Leader of the Senate;

"(ii) 3 individuals appointed by the Minority Leader of the Senate;

"(iii) 5 individuals appointed by the Speaker of the House of Representatives; and "(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

"(2) Appointments. —

Appointments to the Commission shall be made not later than 45 days after the date of the enactment of this Act. The chairperson shall be selected not later than 60 days after the date of the enactment of this Act.

"(3) Vacancies. —

Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

"(c) Acceptance of Gifts and Grants. —

The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

"(d) Other Resources. —

The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to use the facilities of any such Department or Office for purposes of conducting meetings.

"(e) Sunset. —

The Commission shall terminate 18 months after the date of the enactment of this Act.

"(f) Rules of the Commission. —

"(1) Quorum. —

Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

"(2) Meetings. —

Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

"(3) Opportunities to testify. —

The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.

"(4) Additional rules. —

The Commission may adopt other rules as needed.

"(g) Duties of the Commission. —

"(1) In general. —

The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities.

"(2) Issues to be studied. —

The Commission may include in the study under subsection (a) —

"(A) an examination of—

"(i) barriers imposed in foreign markets on United States providers of property, goods, services, or information engaged in electronic commerce and on United States providers of telecommunications services; and

"(ii) how the imposition of such barriers will affect United States consumers, the competitiveness of United States citizens providing property, goods, services, or information in foreign markets, and the growth and maturing of the Internet;

"(B) an examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, and the impact of such collection on the global economy, including an examination of the relationship between the collection and administration of such taxes when the transaction uses the Internet and when it does not;

"(C) an examination of the impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986 [26 U.S.C. 4251];

"(D) an examination of model State legislation that—

"(i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and

"(ii) would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales;

"(E) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers; and

"(F) the examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services.

"(3) Effect on the communications act of 1934. —

Nothing in this section shall include an examination of any fees or charges imposed by the Federal Communications Commission or States related to—

"(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

"(B) the implementation of the Telecommunications Act of 1996 [Pub. L. 104–104, see Short Title of 1996 Amendment note set out under section 609 of this title] (or of amendments made by that Act).

"(h) National Tax Association Communications and Electronic Commerce Tax Project. —

The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

SEC. 1103. REPORT.

"Not later than 18 months after the date of the enactment of this Act, the Commission shall transmit to Congress for its consideration a report reflecting the results, including such legislative recommendations as required to address the findings of the Commission's study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

"(a) Pre-October 1998 Taxes. —

"(1) In general. —

Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date—

"(A) the tax was authorized by statute; and

"(B) either—

"(i) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

"(ii) a State or political subdivision thereof generally collected such tax on charges for Internet access.

"(2) Termination.

"(A) In general.

Except as provided in subparagraph (B), this subsection shall not apply after June 30, 2020.

"(B) State telecommunications service tax.

"(i) Date for termination. —

This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in clause (ii).

“(ii) Description of tax. — A State telecommunications service tax referred to in subclause (i) is a State tax—

“(I) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

“(II) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.

“(3) Exception.

Paragraphs (1) and (2) shall not apply to any State that has, more than 24 months prior to the date of enactment of this paragraph, enacted legislation to repeal the State’s taxes on Internet access or issued a rule or other proclamation made by the appropriate agency of the State that such State agency has decided to no longer apply such tax to Internet access.

“(b) Pre-November 2003 Taxes.

“(1) In general. — Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

“(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) Termination. —

This subsection shall not apply after November 1, 2005.

“(c) Application of Definition. —

“(1) In general. —

Effective as of November 1, 2003—

"(A) for purposes of subsection (a), the term 'Internet access' shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

"(B) for purposes of subsection (b), the term 'Internet access' shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act.

"(2) Exceptions. —

Paragraph (1) shall not apply until June 30, 2008, to a tax on Internet access that is—

"(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

"(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

"(3) No inference. —

No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to June 30, 2008, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).

SEC. 1105. DEFINITIONS.

"For the purposes of this title:

"(1) Bit tax. —

The term 'bit tax' means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications.

“(2) Discriminatory tax. — The term ‘discriminatory tax’ means—

“(A) any tax imposed by a State or political subdivision thereof 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;

“(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

“(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

“(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

“(B) any tax imposed by a State or political subdivision thereof, if—

“(i) the sole ability to access a site on a remote seller’s out-of-State computer server is considered a factor in determining a remote seller’s tax collection obligation; or

“(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of —

“(I) the display of a remote seller’s information or content on the out-of-State computer server of a provider of Internet access service or online services; or

"(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

"(3) Electronic commerce. —

The term 'electronic commerce' means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

"(4) Internet. —

The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

"(5) Internet access. —

The term 'Internet access' —

"(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

"(B) 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—

"(i) to provide such service; or

"(ii) to otherwise enable users to access content, information or other services offered over the Internet;

"(C) 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 home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

"(D) 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

"(E) 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.

"(6) Multiple tax. —

"(A) In general. —

The term 'multiple tax' means any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

"(B) Exception. —

Such term shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon.

"(C) Sales or use tax. —

For purposes of subparagraph (B), the term 'sales or use tax' means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service.

"(7) State. —

The term 'State' means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

"(8) Tax. —

"(A) In general. —The term 'tax' means—

"(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

"(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

"(B) Exception. —

Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

"(9) Telecommunications. —

The term 'telecommunications' means 'telecommunications' as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43) [now 153(50)]) and 'telecommunications service' as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46) [now 153(53)]), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).

"(10) Tax on internet access. —

"(A) In general. —

The term 'tax on Internet access' means a tax on Internet access, regardless of whether such 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.

"(B) General exception. —

The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.

"(C) Specific exception. —

"(i) Specified taxes. — Effective November 1, 2007, the term 'tax on Internet access' also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

"(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

"(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

"(III) is imposed on a broad range of business activity; and

"(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

"(ii) Modifications. —

Nothing in this subparagraph shall be construed as a limitation on a State's ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

"(iii) No inference. —

No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.

SEC. 1106. ACCOUNTING RULE.

"(a) In General. —

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.

"(b) Definitions. — In this section:

"(1) Charges for internet access. —

The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

"(2) Charges for telecommunications. —

The term 'charges for telecommunications' means all charges for telecommunications, except to the extent such telecommunications are purchased, used, or sold by a provider of Internet access to provide Internet access or to otherwise enable users to access content, information or other services offered over the Internet.

SEC. 1107. EFFECT ON OTHER LAWS.

"(a) Universal Service. —

Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

"(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

"(2) in effect on February 8, 1996.

"(b) 911 and E–911 Services. —

Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

"(c) Non-Tax Regulatory Proceedings. —

Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.

[SEC. 1108. Repealed. Pub. L. 110–108, § 5(b), Oct. 31, 2007, 121 Stat. 1026].

SEC. 1109. EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.

> "Nothing in this Act shall prohibit Texas or a political subdivision thereof from imposing or collecting the Texas municipal access line fee pursuant to Texas Local Govt. Code Ann. ch. 283 (Vernon 2005) and the definition of access line as determined by the Public Utility Commission of Texas in its 'Order Adopting Amendments to Section 26.465 As Approved At The February 13, 2003 Public Hearing', issued March 5, 2003, in Project No. 26412."

B. List of Cases and Other Guidance

Discrimination provision

Community Telecable, Inc. v. City of Seattle, 149 P.3d 380 (Wash. App. 2006) – a broader tax is less likely to discriminate on account of it taxing more items and making fewer distinctions that might be ascribed to use of the Internet.

Village of Rosemont v. Priceline.com, Inc., No. 09 C 4438 (N.D. Ill. Oct. 14, 2011); *Mayor & City Council of Baltimore v. Priceline.com, Inc.*, No. 1:08-cv-03319-MJG (D. Md. July 24, 2012) – ITFA discrimination challenge failed because higher taxes on online travel companies were due to differences in business model rather than use of the Internet.

IMT, Inc. v. City of Lumberton, 724 S.E.2d 588 (N.C. Ct. App. 2012), *rev'd on other grounds*, 738 S.E.2d 156 (N.C. 2013) – ITFA discrimination challenge to a privilege license tax was rejected because the tax turned on the use of a computer or gaming terminal rather than the Internet.

Performance Marketing v. Hamer, 998 N.E.2d 54 (Ill. 2013) – online performance marketing was held to be advertising and similar to other untaxed advertising.

Labell v. City of Chicago, 147 N.E.3d 732 (Ill. App. Ct. 2019) – streaming is not similar to pinball machines and jukeboxes.

Gartner, Inc. v. Dep't of Revenue, 455 P.3d 1179 (Wash. Ct. App. 2020) – tax survived challenge despite no similar, offline, taxed item being identified.

ADP, LLC v. Arizona Department of Revenue, 524 P.3d 278 (Ct. App. 2023) – ITFA discrimination challenge was rejected due to the taxation turning on the taxpayer's business model rather than the fact that one business model is primarily exercised over the Internet.

Apple, Inc. v. Romy Samuel, Dkt. No. L01283 (La. Bd. Of Tax Appeals 2024) – Apple Music is similar to satellite radio and a federal statute preempts state taxation of satellite radio. Even if a federal statute preempts taxation of the similar item, ITFA's discrimination provision still applies.

Disney v. City of Santa Barbara, Superior Ct. No. 24CV02313 (Ca. Ct. App. 2025) – Streaming is not similar to DVD rental. The court rejected the argument that the similar content within streaming and DVD rental made the two similar.

Definition of "Internet access"

Tenn. Ltr. Rul. No. 08-29 (March 24, 2008) – Tennessee determined that "Layer 2 communications services" were not Internet access. The services were found to be part of telecommunications services that ITFA was not intended to disturb and were merely a service that allows communication between points of presence (POPs) and the Internet.

New York State Department of Taxation and Finance, TSB-M-8(4)C, (2)S (May 2, 2008) – New York described the exclusion of "voice, audio or video programming, or other products and services that utilize Internet protocol or any successor protocol" as excluding "any form of telephony (e.g., private telecommunications networks), including Voice over Internet Protocol (VOIP), network services and data transmission services, other than telecommunications services used by an Internet Service Provider (ISP) to connect customers to the Internet."

j2 Global Communications Inc. v. City of Los Angeles, 218 Cal. App. 4th 328 (Cal. Ct. App. 2013); 159 Cal. Rptr. 3d 742 (2d Dist. 2013). See also, *J2 Cloud Servs., Inc. (f/k/a J2 Glob., Inc. & J2 Glob. Commc'ns, Inc.) v. Comm'r of Revenue*, Docket No. C325426, 2019 WL 1102964 (Mass. App. Tax. Bd. Feb. 27, 2019 – ITFA Internet access challenge failed because the product at issue required users to provide their own Internet connections and email accounts. Users merely received email messages.

Viriginia Public Documents 14-130 (August 7, 2014), 15-217 (December 8, 2015), 18-210 (December 18, 2018), and 18-209 (December 18, 2018) – ITFA Internet access challenge failed. Virginia found that taxes on broadband recovery fees, service activation and reactivation fees, and early termination fees were not barred by ITFA as these were not the type of incidental services considered by ITFA.

Florida Tech. Assistance Adv. TAA 14A19-002 (May 22, 2014) – Florida found that voice over Internet protocol, Multiprotocol Label Switching, and Session Initiation Protocol services were not Internet access because they were "other products and services that utilize Internet protocol."

Colo. Pvt. Ltr. Ruls. 15-001 & 003 (Feb. 4, 2015) – Colorado found that "notification" and "production" email services that allow customers to create and send high volumes of emails to be Internet access as they are akin to email services of Google and Yahoo. See also, New York State Department of Taxation and Finance, TSB-A-20(30)S (July 14, 2020).

General Information Letter No. ST 15-0034-GIL (June 18, 2015) – Internet bandwidth purchases qualified as Internet access to the extent an Internet provider purchased Internet bandwidth from another company that they then sold to a customer to enable access to the Internet. See also, Illinois Department of Revenue, General Information Letter No. ST 19-0037-GIL (December 13, 2019).

Virginia Department of Taxation, Ruling of the Tax Comm'r, Public Document 16-195 (Oct. 13, 2016) – Taxation of Internet access is taxing what subscribers pay for Internet access from Internet service providers. ITFA Internet access provision challenge failed because the product required customers to provide their own Internet connections.

S.C. Revenue Ruling 17-2 (March 10, 2017) – South Carolina found that access to a database like a website was not Internet access.

Apple, Inc. v. Romy Samuel, Dkt. No. L01283 (La. Bd. Of Tax Appeals 2023) – iCloud storage is Internet access as "personal electronic storage capacity."

In the Matter of the Petition of Verizon New York Inc., DTA No. 829240 (N.Y. Tax Appeals 2023) *aff'd*, DTA No. 829240 at 16 (N.Y. Tax Appeals Tribunal 2025) – ITFA's concept of Internet access is broad. Also, the tribunal confuses the assignment of the different definitions of Internet access for a limited extension of the legacy clause applicable to pre-November 2003 taxes.

Definition of "tax"

City of Chicago v. Comcast Cable Holdings, L.L.C., 872 N.E. 2d 368 (Ill. App. 2007) – Cable franchise fees are "not a tax prohibited by ITFA." Though there is little analysis in the opinion.

Virginia Public Document 17-94 – Virginia discussed the Business, Professional and Occupational License Tax and determined that ITFA's prohibition on taxes on Internet access applied to the tax. See also, *Coxcom, LLC v. Fairfax County*, 875 S.E.2d 75 (2022).

Virginia Public Document 24-120 – Virginia discussed its Telecommunications Minimum Tax and determined it was based on gross income and that ITFA's prohibition on taxes on Internet access applied to the tax.

Accounting rule

University City v. AT&T Wireless, Inc., 2026 WL 934817, No. ED113046 (Mo. Ct. App. 2026). – The ITFA accounting rule is "lenient" and use of historical usage patterns rather than exact figures is sufficient.

Kansas Priv. Ltr. Rul. 2011-003 – Kansas advised taxpayers to both separately state their charges for Internet access and keep books and records to substantiate the amounts.

New York State Department of Taxation and Finance, TSB-A-08(47)S (October 16, 2008) – New York determined that an Internet cafe's charges for Internet access and taxable software were separately determinable for purposes of the accounting rule. The Department cited to the end screen shown at the close of each session that displayed the time spent and charges for accessing the Internet and the time spent and charges for using the software.

New York State Department of Taxation and Finance, TSB-A-17(2)S (February 27, 2017) – New York provided that to satisfy the accounting rule the charges for Internet access must be "readily identifiable," determined using an "objective and verifiable" standard, and reasonable in relation to the total charge. See also, TSB-A-09(17)C/TSB-A-09(60)S (December 15, 2009.