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Internet Tax Freedom Act: Internet Access Taxation

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The purpose of this document is to provide a general overview of the Internet Tax Freedom Act's impact on South Dakota and how tax will be applied to Internet access beginning July 1, 2020. It is not intended to answer all questions that may arise. The information contained in this fact sheet is current as of the date of publication.

Internet Tax Freedom Act (ITFA)

The Internet Tax Freedom Act of 1998 temporarily stopped states and local governments from imposing new taxes on Internet access and multiple or discriminatory taxes on electronic commerce. The Act had a grandfather clause allowing states that already taxed Internet access to continue enforcing those taxes. South Dakota was included in the grandfather clause.

Since 1998, there have been multiple extensions of the Internet Tax Freedom Act and the grandfather clause. In 2016, Congress made the Act permanent and only extended the grandfather clause to June 30, 2020.

Starting July 1, 2020, Internet access will no longer be subject to state and municipal sales tax.

Internet Access Defined

According to the Internet Tax Freedom Act, 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.

*Section 1105(5), Internet Tax Freedom Act (See 47 USC § 151, Historical and Statutory Notes).

Bundled Transactions

Internet access can be bundled with other services such as voice or video service. If an Internet service provider can identify the charges related to Internet access, the Internet access charges remain exempt from taxation; otherwise, the bundled charges are taxable. **

- An Internet service provider can identify the charges through invoices, books or records that are kept in the regular course of business.

**Section 1106(a), Internet Tax Freedom Act (See 47 USC § 151, Historical and Statutory Notes).

Application of State and Municipal Tax

Charge	Before July 1, 2020		Beginning July 1, 2020	
	Sales/Use Tax	Wireless Gross Receipts Tax	Sales/Use Tax	Wireless Gross Receipts Tax
Internet Access				
• Internet Access Monthly Charge	Y	N	N	N
• Live Chat or Conferencing Fees	Y	N	N	N
• Prepaid Internet Service	Y	N	N	N
• Internet Activation Fees	Y	Y	N	N
• Internet Disconnect Fees	Y	N	N	N
• Internet Early Termination Fees	Y	N	N	N
• Internet Reconnection Fees	Y	Y	N	N
• Internet Service Upgrade Charge	Y	Y	N	N
Equipment				
• Equipment Sales (cell phone, modem, mi-fi...)	Y	N	Y	N
• Equipment Insurance (by licensed insurance company)	N	N	N	N
• Equipment Extended Warranty	Y	N	Y	N
• Equipment Service Contract	Y	N	Y	N
Cell Phone/Phone				
• Activation Fees	Y	Y	Y	Y
• Basic Monthly Charge	Y	Y	Y	Y
• Data	Y	Y	N	N
• Disconnect Fees	Y	N	Y	N
• Early Termination Fees	Y	N	Y	N
• Reconnection Fees	Y	Y	Y	Y
• Service Upgrade Charge	Y	Y	Y	Y
• Texting	Y	Y	Y	Y
• Voice Over Internet Protocol (VOIP)	Y	N	Y	N
• Voicemail	Y	Y	Y	Y

Contact Us

If you have any questions, please contact the **South Dakota Department of Revenue**.

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