

## Internet Tax Freedom Act (ITFA)

### What is ITFA?

The Internet Tax Freedom Act (ITFA),<sup>1</sup> as codified in 47 U.S.C. § 151 note, prohibits the taxation of Internet access within the United States by states and their political subdivisions. This excise tax advisory (ETA) addresses Washington's taxation of Internet access and telecommunications used to provide Internet access under the ITFA.

### What is Internet access under the ITFA?

Under both RCW 82.04.297 and the ITFA, "Internet access" is a service that:

- Enables users to connect to the Internet;
- In order to access content, information, electronic mail, or other services;
- Which is offered over the Internet.

ITFA also provides that Internet access includes, among other services and activities, telecommunications so long as:

- The telecommunications are purchased, used, or sold to either:
  - Provide an Internet access service; or
  - Otherwise enable users to access content, information, or other services offered over the Internet.

Telecommunications purchased, sold, or used to provide Internet access include transmission capacity over a dial-up connection, coaxial cable, fiber optic cable,

<sup>1</sup> Pub. L. No. 105-277, 112 Stat. 2681 (1998), as amended by Pub. L. No. 107-75, 115 Stat. 703 (2001), Pub. L. No. 108-435, 118 Stat. 2615 (2004), Pub. L. No. 110-108, 121 Stat. 1024 (2007). The ITFA became permanent in Pub. L. No. 114-125, 130 Stat. 122 (2015) – Trade Facilitation and Trade Enforcement Act of 2015.

T-1 line, frame relay service, digital subscriber line (DSL), wireless technology, or by other means, but only to the extent that these services are purchased, used or sold to provide Internet access.

For more information concerning the definition of Internet access, refer to the ITFA, §1105(5), 47 U.S.C § 151 note.

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**Retail sales tax**

Pursuant to RCW 82.04.050, 82.04.065, and 82.08.020, Internet access is exempt from the retail sales tax. In general, Washington law does not provide a retail sales tax exemption for telecommunications used to provide Internet access per RCW 82.04.297.

However, the ITFA prohibits the imposition of retail sales tax on **both** Internet access and telecommunications used to provide Internet access. Under RCW 82.08.0254, Washington must likewise exempt any sale that is prohibited from taxation under the laws of the United States. Therefore, Internet access and telecommunications used to provide Internet access are exempt from Washington's retail sales tax.

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**B&O tax**

The ITFA does not prohibit the imposition of Washington's business and occupation (B&O) tax on either the sale of Internet access or the sale of telecommunications used to provide Internet access.

Thus, under RCW 82.04.290(2) and 82.04.297, Washington imposes service and other activities B&O tax on the sale of Internet access.

Additionally, retailing B&O tax is imposed on the sale of telecommunications used to provide Internet access under RCW 82.04.050, 82.04.190, and 82.04.250.

For more information concerning the imposition of B&O tax on the sale of Internet access and the sale of telecommunications used to provide Internet access, refer to ITFA, §1105(10)(C), 47 U.S.C § 151 note.

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