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by Maria M. Todorova, Charles C. Kearns, and Olivia Dibb

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by Maria M. Todorova, Charles C. Kearns, and Olivia Dibb

Maria M. Todorova

Charles C. Kearns

Olivia Dibb

Maria M. Todorova is a partner in Eversheds Sutherland (US) LLP's Atlanta office, Charles C. Kearns is a partner in the Washington office, and Olivia Dibb is an attorney in the Atlanta office.

In this installment of A Pinch of SALT, the authors analyze the evolving legal landscape of the Internet Tax Freedom Act, including how states are testing federal protections in pursuit of digital revenue and how courts are responding to the challenges of a rapidly transforming digital economy.

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Introduction

Can a law born in the age of dial-up still govern the complexities of the cloud? This question lies at the heart of the legal and policy debates surrounding the Internet Tax Freedom Act — a landmark federal measure enacted in 1998 to protect consumers from state and local taxes on internet access and to prevent multiple or discriminatory taxation of electronic commerce. Initially enacted as a temporary measure, Congress made ITFA permanent in 2016 to reflect the enduring federal commitment to preserve a tax-neutral digital infrastructure.

The digital economy ITFA was designed to protect has evolved dramatically, as Congress anticipated. Today's internet is no longer defined by static homepages and email alone, but by cloud computing, digital advertising ecosystems, streaming platforms, and bundled online services. As states seek new revenue sources, they are increasingly reinterpreting — and at times, ignoring — ITFA's protections to capture taxes on these modern digital offerings.

This legal tension centers on one question: What constitutes internet access? While ITFA provides a statutory definition of the term, the rapid evolution of technology and the perpetual need for revenue has led states to improperly restrict ITFA's scope — sometimes creatively, sometimes aggressively — in an effort to tax services that blur the line between internet access and taxable digital content.

As digital services become more embedded in both commercial and personal life, the legal stakes surrounding ITFA continue to grow. Courts and lawmakers are now tasked with applying a statute conceived in the infancy of the internet to technologies and business models that were inconceivable when it was drafted. The tension between innovation and state tax ambitions is no longer theoretical; rather, it is actively reshaping tax policy, business models, and legal doctrine across the country.

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Laying the Groundwork: ITFA's Origin and Purpose

ITFA was enacted in October 1998 to impose a three-year federal moratorium on state and local taxes that could hinder the free flow of interstate commerce over the internet.[1] Exercising its authority under the commerce clause, Congress sought to prevent fragmented and burdensome taxation of transactions that were "inherently interstate in nature," and to "facilitate the development of a fair and uniform taxing scheme."[2]

The act was originally set to expire on October 1, 2001.[3] After extending ITFA four times at various intervals, Congress made it permanent in 2016.[4]

ITFA prohibits (1) taxes on internet access, (2) discriminatory taxes on electronic commerce, and (3) multiple taxes on electronic commerce.[5] Here, we focus on the first prong of ITFA, the moratorium, which prohibits taxes on internet access.[6] The act's statutory definitions are particularly important when evaluating whether a given levy is a prohibited tax on internet access under the moratorium. The moratorium's foundational terms are defined as follows, with additional elaboration below:

- **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."[7]
- **Internet access** means "a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet."[8] The term "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."[9]
- **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."[10]
- **Tax on internet access** is defined, in a somewhat circular manner, as "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."[11] A tax on internet access excludes "a tax levied upon or measured by net income, capital stock, net worth, or property value."[12]

The act provides exceptions to the moratorium. Historically, the most notable exception was ITFA's grandfather clause, which permitted some states to tax internet access so

[1] P.L. 105-277, sections 1100 et seq. (1998), codified at 47 U.S.C. section 151.

[2] *Id.*

[3] P.L. 105-277, section 1101(a) (1998).

[4] P.L. 107-75, section 2 (2001) (Internet Tax Nondiscrimination Act); P.L. 108-435, sections 2-6A (2004); P.L. 110-108, sections 2-6 (2007) (Internet Tax Freedom Act Amendments Act); P.L. 113- 235, section 624 (2014); P.L. 114-125, section 922 (2016) (Permanent Internet Tax Freedom Act).

[5] ITFA section 1101(a)(1), -(2).

[6] ITFA section 1101(a)(1).

[7] ITFA section 1105(4).

[8] ITFA section 1105(5)(A).

[9] ITFA section 1105(5)(B).

[10] ITFA section 1105(8)(A).

[11] ITFA section 1105(10)(A).

[12] ITFA section 1105(10)(B).

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long as they did so before October 1, 1998, and met specific conditions.[13] Since the repeal of the grandfather clause on July 1, 2020, however, its importance has faded as open tax periods have dropped off or disputed levies have been resolved by courts. A similarly antiquated exception to the moratorium is when an internet service provider does not provide screening software intended to protect minors from harmful online content. This exception has largely been rendered inapplicable in light of modern security offerings offered by ISPs, again evidencing the evolution of providing internet access since 1998.[14]

There are several other exceptions to the moratorium in which states or localities may impose these levies on internet access if specific criteria are met:

- regulatory fees[15] and, specifically, franchise fees imposed on telecommunications carriers or cable operators;[16]
- net income taxes, capital stock and net worth taxes, and ad valorem property taxes, as well as three specified gross receipts taxes described later in this article;[17]
- universal service, 911, and E-911 fees, subject to conditions described in the act;[18] and
- the Texas municipal access line fee.[19]

Strengthening the Firewall: Legislative Amendments

Since its enactment, ITFA has been refined through a series of targeted amendments, each reinforcing Congress's overarching intent: to establish a broad and durable federal shield against state and local taxation of internet access, responsive to technological evolution and resilient to judicial narrowing.

2004: Clarifying Coverage

The 2004 amendment confirmed that ITFA's moratorium applies to both wireline and wireless internet access.[20] It also overturned judicial interpretations that permitted state taxation of some internet-related services, such as modem management services[21] and data transport services,[22] because of perceived gaps in the original statute. These changes reinforced Congress's intent to broadly shield internet access from state and local taxation.[23]

2007: Expanding the Definition for a Changing Internet Access

In 2007 Congress expanded the statutory definition of internet access to reflect the evolving nature of online services. The revised definition explicitly included "a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic

[13] *See* ITFA section 1104. The act's grandfather clause has a convoluted (and, therefore, complex) history. In general, the grandfather clause in effect as of the Permanent Internet Tax Freedom Act provided that the moratorium "[did] 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 — 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 a State or political subdivision thereof generally collected such tax on charges for Internet access." ITFA section 1104(a) (the 1998 grandfather clause).

[14] *See, e.g.*, *New Cingular Wireless PCS LLC v. Commissioner of Revenue*, 154 N.E.3d 947 (Mass. App. Ct. 2020).

[15] ITFA section 1105(8)(A)(i). The fee exception to the moratorium turns on whether a given levy is a "classic 'tax'" or "classic 'regulatory fee,'" as determined under judicially created tests. *See, e.g.*, *San Juan Cellular Telephone Co. v. Public Service Commission of Puerto Rico*, 967 F.2d 683, 685 (1st Cir. 1992) (describing the general "tax versus fee" analysis); *Cox Communications Hampton Roads LLC v. City of Norfolk*, 105 Va. Cir. 450 (2020) (holding that the business, professional, occupational, and licensing tax "as applied to the gross receipts on Cox's internet access services is a tax and not a fee. . . . The tax applies to 'every person engaging in the city in any business, trade, profession, occupation or calling.'").

[16] ITFA section 1105(8)(B).

[17] ITFA section 1105(10)(B).

[18] ITFA section 1107.

[19] ITFA section 1108.

[20] P.L. 108-435 (2004).

[21] *See America Online Inc. v. Pennsylvania*, 932 A.2d 332 (Pa. Commw. 2007). The court held that the earlier version of ITFA did not bar a Pennsylvania tax on port modem management services.

[22] *See Concentric Network Corp. v. Pennsylvania*, 877 A.2d 542 (Pa. Commw. 2005). The court held that the pre-2004 version of ITFA did not bar a Pennsylvania tax on an ISP's purchase of data transport services used to provide internet access. The court in *Concentric* reasoned that the exclusion was permissible because "it is only in their capacity as public utilities or broadcasters that the telecommunications carriers or cable operators are permitted an exclusion." *Id.* at 549.

[23] P.L. 108-435 (2004).

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storage capacity."[24] These services are protected whether provided independently or bundled with internet access, reflecting changes in digital connectivity.[25]

Moreover, the 2007 renewal of ITFA created several specified exceptions from the moratorium for some gross receipts taxes. Because the moratorium's general exception for income-based taxes is limited to those imposed on *net* income, Congress agreed to exclude taxes "expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business" thanks to lobbying by Michigan, Ohio, Texas, and Washington.[26] Thus, taxes described in the moratorium's specified taxes exception — and currently in effect — are limited to the Texas franchise (margin) tax, Ohio commercial activity tax, and the Washington business and occupation tax, so long as each tax is not "discriminatory in its application to providers of communication services, Internet access, or telecommunications."[27]

2016: Making the Moratorium Permanent

In 2016 ITFA's temporary moratorium was made permanent, eliminating the need for periodic reauthorization and solidifying its role as a cornerstone of federal digital tax policy.[28] Along with making the act permanent, Congress eliminated the grandfather clause. This marked the full implementation of ITFA's protections nationwide, prohibiting all state and local taxes on internet access, as defined.

Testing the Boundaries: What Counts as Internet Access?

The heart of the moratorium is the ITFA definition of internet access: "a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet."[29] Congress further clarified that internet access includes services incidental to connectivity, such as "a homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity. These services are protected whether provided independently or packaged with Internet access."[30]

However, the term excludes voice, audio or video programming, or other products and services that use internet protocol or any successor protocol and for which there is a charge regardless of whether that charge is separately stated or aggregated with the charge for the other services included in the definition.[31]

This statutory language, while broad, has prompted interpretive challenges as states attempt to delineate the boundaries of protected services. Courts, revenue departments, and taxpayers have been tasked with determining whether specific digital offerings fall within ITFA's scope.

The Front Lines of ITFA Enforcement

State courts and revenue agencies have continually grappled with the definition of internet access (hence whether a given tax is permissible) under ITFA. Their decisions, administrative rulings, and interpretive guidance have addressed an array of internet-hosted services and platforms ranging from broadband connectivity and hosted email solutions to fax transmission, direct inward dialing, cloud storage, and recorded video clip communications.

[24] P.L. 110-108 (2007).

[25] *Id.*

[26] ITFA section 1105(10)(C)(i) (excluding from the definition of tax on Internet access) as of November 1, 2007:

> 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 — 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); 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); is imposed on a broad range of business activity; and is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

[27] The Michigan single business tax and a subsequent business tax have since been repealed.

[28] P.L. 114-125, section 922(a) (2016).

[29] ITFA section 1105(5)(A).

[30] ITFA section 1105(5)(E).

[31] ITFA section 1105(5)(D).

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New York: Broadband Services Are Protected Internet Access

In *Matter of Verizon New York Inc.*, the New York State Tax Appeals Tribunal addressed whether Verizon's broadband services — including asymmetric digital subscriber line and fiber broadband services — were subject to the state franchise tax under N.Y. Tax Law section 184.[32] The tribunal held that ITFA preempted New York's attempt to tax these services because they fell squarely within the act's definition of internet access.[33] The decision emphasized that ITFA's "plain terms" preempt state taxation of internet access, even when bundled with other services, and reaffirmed the statute's broad protective scope.[34] It also confirmed that services enabling internet access — even when sold to ISPs — are protected from state and local taxation.[35]

New York: Hosted Email Services as Protected Access

In TSB-A-24(4)S (June 26, 2024), the New York State Department of Taxation and Finance ruled that a secure hosted exchange email service qualified as internet access under ITFA, exempting it from state sales tax — even though N.Y. Tax Law section 1105(b)(1) generally treats email as a taxable telephony service.[36] This service included features such as unlimited mailbox storage, premium email security, antivirus protection, live phone support, mobile device synchronization (ActiveSync), and integration with Microsoft Exchange and Outlook. The department concluded:

> Electronic mail services are included in ITFA's definition of Internet access, regardless of whether such services are provided independently or packaged with Internet access.[37]

Accordingly, the hosted exchange services were exempt from New York state sales tax, reinforcing ITFA's broad protective scope. The ruling is consistent with recent legal trends and other advisory opinions, underscoring ITFA's role as a bulwark against state efforts to tax digital connectivity and electronic commerce.

California: Fax Services and the Limit of Protection

In *j2 Global Communications*,[38] the taxpayer argued that its purchase of direct inward dial telecommunications services used to deliver fax via email constituted internet access.[39] A California appellate court rejected this claim, finding that while the taxpayer's customers needed to connect to the internet to access e-fax, j2 itself did not provide internet access or qualifying services such as a homepage or electronic mail under ITFA's definition.[40] Instead, customers accessed the e-fax through a third-party internet connection.

Louisiana: Cloud Storage as Protected Internet Access

In an unopposed motion for summary judgment hearing in January 2023, the Louisiana Board of Tax Appeals found that a New Orleans sales tax on Apple iCloud personal storage services violated ITFA.[41] New Orleans assessed sales tax against Apple for subscription charges made to New Orleans-based customers between January 2016 and October 2018 for data storage through the company's iCloud services. Apple appealed the assessment to the board.[42] The board agreed with Apple's argument that ITFA's definition of internet access specifically includes personal electronic storage capacity, granting partial summary judgment in Apple's favor.[43] The iCloud services allowing customers to purchase data storage (beyond the storage capacity

[32] *In re Verizon New York Inc.*, DTA No. 829240 (N.Y. Tax App. Trib. July 21, 2025).
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] N.Y. TSB-A-24(4)S (June 26, 2024).
[37] *Id.*
[38] *j2 Global Communications Inc. v. City of Los Angeles*, 159 Cal. Rptr. 3d 742 (2d Dist. 2013).
[39] *Id.*
[40] *Id.*
[41] *Apple Inc. v. Samuel*, BTA Dkt. No. L01283 (La. Bd. Tax App. Jan. 13, 2023).
[42] *Id.* at 1-2.
[43] *Id.* at 4-5.

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provided for free and preinstalled at device purchase) for a monthly fee were found to be consistent with that definition.[44]

Florida: Entertainment Content and the Video Clips Debate

In 2023 the Florida Department of Revenue determined in Technical Assistance Advisement 23A119-001 that some digital offerings — specifically personalized video messages created by social media personalities and delivered via a website or a mobile app — were a taxable video service subject to the state's communications services tax.[45] This ruling raised important questions concerning whether personalized video messages qualify as video clips, and thus internet access, under ITFA.

Customers could use the taxpayer's website and mobile app to request a customized pre-recorded message. The customers then used their internet or mobile data plans to access, view, download, or stream the video messages through the website or app.[46] The taxpayer also allowed customers to schedule live video calls or attend live events that are charged by the minute. Customers could also pay a monthly fee for priority access to the celebrity talent.[47] The taxpayer collected payment from the customers and transferred most of the proceeds to the talent but retained a fixed percentage of the fees for its services.[48]

The DOR determined that the taxpayer's services were subject to the communications services tax because they met the statutory definition of video services by providing the "transmission of video, audio, or other programming service to a purchaser," including digital video.[49]

[44] *Id.*

[45] Florida Technical Assistance Advisement No. 23A19-001 (Mar. 7, 2023).

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

Charting the Road Ahead

The rapid development of technologies such as artificial intelligence, Internet of Things, and immersive digital platforms (for example, virtual reality) tests the boundaries of ITFA's statutory definitions. Recent state efforts to tax digital services and new technologies by narrowing the definition of internet access stand in stark contrast to Congress's clear and repeated intent to broadly protect internet connectivity from state and local taxation. Each time Congress has revised ITFA, it has expanded and clarified its scope to keep pace with technological change, signaling a commitment to nationwide uniformity and tax neutrality for internet access. When states attempt to circumvent these protections, they introduce uncertainty for businesses and consumers and risk undermining the federal framework designed to support digital growth. Continued vigilance — and potentially further legislative action — may be needed to ensure ITFA remains effective as technology and state tax strategies evolve.

Conclusion

ITFA stands as a rare example of enduring federal tax policy that has successfully adapted to technological change while preserving its core purpose: to prevent state and local governments from taxing internet access and discriminating against electronic commerce. Through successive amendments — clarifying coverage, expanding definitions, and ultimately making the moratorium permanent — Congress has consistently reaffirmed its intent to provide broad and resilient protections for digital connectivity.

The expiration of the grandfather clause in 2020 marked the final step in closing legacy loopholes, ensuring that ITFA's protections apply uniformly across all states. Yet as digital services evolve, states have increasingly tested the boundaries of ITFA's definitions — prompting litigation and administrative rulings that reveal divergent interpretations of what constitutes internet access.

Cases and rulings from New York, California, Louisiana, and Florida demonstrate the ongoing tension between federal preemption and state revenue ambitions. Courts have generally upheld ITFA's broad scope, but the variability in state

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enforcement underscores the need for continued vigilance and potentially further legislative clarification.

In an era when digital services are central to economic activity and daily life, ITFA remains a critical statutory safeguard. Its legacy is not merely one of tax exemption, but of preserving open access to the internet as a foundational infrastructure for commerce, communication, and innovation. ■

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