

Revised Information Regarding the Telecommunications Excise Tax Based on the Federal Internet Tax Freedom Act Amendments Act of 2007

The purpose of this memorandum is to revise information in TSB-M-08(4)C,(2)S, *The Federal Internet Tax Freedom Act Amendments Act of 2007 and its Effect on the New York State Sales Tax and Telecommunications Excise Tax*. The revised information is based on a further review of the 1998 Internet Tax Freedom Act (ITFA), the Internet Tax Nondiscrimination Act (ITNA), and the 2007 Internet Tax Freedom Act Amendments Act (ITFAAA).

The revised information relates to the State telecommunications excise tax (excise tax). Specifically, the revised information affects the statement in the previously issued TSB-M regarding the continued imposition of the excise tax on telecommunications services purchased, used, or sold by Internet Service Providers (ISPs) to provide Internet access until June 30, 2008.

Background

ITFAAA was enacted on October 31, 2007. ITFAAA amended the two-year and four-year grandfather provisions provided in ITFA and ITNA and specified the definition of *Internet access* to which each provision applied.

ITFAAA extended the four-year grandfather provision to November 1, 2014 (the date on which the moratorium is set to expire), and was applied to the original definition of *Internet access* provided in ITFA, which did not include telecommunications services.

ITFAAA retroactively applied the two-year grandfather provision that expired on November 1, 2005, to the definition of *Internet access* that included “*telecommunications purchased, used or sold by a provider of Internet access to provide Internet access.*” The termination of the two-year grandfather clause was extended until July 1, 2008, for states that met certain conditions.

Revised information

TSB-M-08(4)C,(2)S stated that under ITFAAA, telecommunications services purchased, used, or sold by ISPs to provide Internet access would continue to be subject to New York State’s excise tax until June 30, 2008.

However, the language of ITFAAA lends itself to multiple interpretations. Upon reconsideration, it is the department’s view that the appropriate interpretation is that the excise tax imposed by Tax Law section 186-e on the telecommunications purchased, used, or sold by ISPs to provide Internet access was preempted by federal law on and after November 1, 2005. The department believes this interpretation is more consistent with the intent of Congress. Accordingly, those telecommunications services were no longer subject to the excise tax effective November 1, 2005.

TSB-M-08(4.1)C
Corporation Tax
TSB-M-08(2.1)S
Sales Tax
August 29, 2008

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.