**Opinion Letter**

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| **Letter Number:** | **O-2015-001** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Internet Tax Freedom Act (ITFA)** |
| **Keywords:** |  |
| **Effective Date:** | **09/16/2015** |
| **Approval Date:** | **09/16/2105** |

**Body:**

September 16, 2015

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RE: Your e-mail received September 9, 2015

Dear XXXX:

Thank you for your recent e-mail inquiry. The Internet Tax Freedom Act (ITFA) imposes a Federal moratorium on state taxation of customer charges for internet access services. The moratorium was first enacted by Congress in 1998 with a fixed expiration date. Congress extended that date a number of times. Currently, the moratorium is set to expire on October 1, 2015. You ask what the department will do if Congress fails to take action to extend the moratorium before October 1, 2015. The answer is nothing.

K.S.A. 79-3603(b) imposes Kansas sales tax on charges for telecommunication services. K.S.A. 79-3602(aaa) defines "telecommunication service," and subsection (aaa)(6) specifically excludes "internet access service" from its meaning. See K.S.A. 79-3602(aaa) *("Telecommunications service does not include: . . (6) internet access service.").* The express exclusion of "internet access service" from the definition and imposition on "telecommunication service" establishes the Kansas legislature did not intend to tax such services, absent another imposition statute that imposes tax on "internet access service" by name. There is no such statute.

Charges for internet access services sourced to a Kansas location are not and will not be subject to Kansas sales tax as long as K.S.A. 79-3602(aaa)(6) remains in place. Because of this, a repeal of ITFA will not affect the ongoing exemption of internet access services under Kansas sales tax law. Charges for internet access services sitused to Kansas residents will continue to be exempt on and after October 1, 2015, even if the ITFA moratorium expires due to Congressional inaction.

This guidance shall remain in effect for at least 60 days after the department publishes notice on its website that indicates that Congress has repealed ITFA and the Kansas legislature has taken steps to impose Kansas sales tax on internet access service. Such legislative action would require amending or repealing K.S.A. 79-3602(aaa)(6).

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 09/17/2015 Date Modified: 09/17/2015**