

ASSEMBLY BILL

No. 2184

**Introduced by Assembly Members Low and Calderon
(Coauthors: Assembly Members Bloom, Irwin, and Salas)**

February 18, 2016

An act to add Part 16 (commencing with Section 35100) to Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2184, as introduced, Low. Taxation: Internet access: prohibition.

Existing law imposes various state income, franchise, property, and excise taxes and various user, regulatory, and franchise fees in connection with activity or property within the jurisdiction of this state. Existing law authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions.

This bill would prohibit the imposition by the state and any political subdivisions of the state of a tax on Internet access or use of Internet access.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 16 (commencing with Section 35100) is
2 added to Division 2 of the Revenue and Taxation Code, to read:

1 PART 16. CALIFORNIA INTERNET TAX FREEDOM
2 MODERNIZATION ACT OF 2016
3

4 35100. This part shall be known and may be cited as the
5 California Internet Tax Freedom Modernization Act of 2016.

6 35101. The Legislature finds and declares all of the following:

7 (a) Due to the continued uncertainty created by the United States
8 Congress' failure to make permanent the federal Internet Tax
9 Freedom Act, it is the intent of the Legislature to provide California
10 consumers with certainty that Internet access will never be
11 burdened by rates of taxation that are discriminatory in nature.
12 This concern is especially pertinent because most Californians
13 have never paid taxes on their Internet access.

14 (b) The Internet is inherently a matter of interstate and foreign
15 commerce within the jurisdiction of the United States Congress
16 under Section 8 of Article I of the United States Constitution.

17 (c) The electronic marketplace of services, products, and ideas
18 available through the Internet or online services can be especially
19 beneficial to all Californians, regardless of age, ethnicity, or gender,
20 as well as the physically challenged, citizens in rural areas, and
21 small businesses. It also offers a variety of uses and benefits for
22 educational institutions and charitable organizations.

23 (d) Taxes imposed on Internet access or online services by state
24 and local governments could subject consumers, businesses, and
25 other users engaged in interstate and foreign commerce to multiple,
26 confusing, and burdensome taxation, thereby resulting in additional
27 costs that could reverse the trend of broadband adoption throughout
28 the state. This could threaten Internet access for Californians at
29 home, work, and school, and is counterproductive to established
30 state policies, such as the promotion of telecommuting.

31 (e) Companies providing Internet access are making substantial
32 capital investments in new plants and equipment. Multiple and
33 excessive taxation could place that investment at risk, and
34 discourage the expansion of investment in Internet access
35 equipment, thereby placing California at a long-term competitive
36 disadvantage.

37 (f) Services provided by local governments are important and
38 valuable to both consumers and businesses, and this act is not
39 intended to interfere with existing sources of revenue that provide
40 funding for local government services. This act is intended to

1 impose a moratorium on new taxes imposed on Internet access
2 and online services, as well as the discriminatory application of
3 existing or new taxes, as defined herein, to Internet access or online
4 services. Nothing in this act shall be interpreted as precluding the
5 imposition or collection of new or existing taxes of general
6 application that are imposed or assessed in a uniform and
7 nondiscriminatory manner without regard to whether the activities
8 or transactions taxed are conducted through the use of the Internet,
9 Internet access, or online services.

10 (g) A uniform and coherent national policy concerning national
11 and subnational taxation of the Internet and online services, in a
12 manner which does not unreasonably burden interstate and foreign
13 commerce, may be developed by the United States Congress, acting
14 pursuant to the powers granted to it by clause 3 of Section 8 of
15 Article I of the United States Constitution. Until that national
16 policy is developed, and determined by the Legislature to be in
17 the best interest of the people of the State of California, a limited
18 preemption of local taxing authority of the Internet and online
19 services is appropriate.

20 (h) Currently the state is not imposing any discriminatory taxes,
21 within the meaning of this act, on Internet access or online services.
22 It is the intent of this Legislature that no existing or future state
23 taxes or state fees be imposed by the state in a discriminatory
24 manner upon Internet access or online services. This statement of
25 legislative intent is meant to place the greatest possible barrier to
26 the creation of discriminatory taxes or fees upon this Legislature
27 and all future Legislatures.

28 (i) The Legislature finds and declares that no local government
29 is currently imposing or collecting any tax on Internet access or
30 online services, and further that no local government should impose
31 or collect any tax on Internet access or online services that is
32 discriminatory within the meaning of this act.

33 (j) For these reasons, the Legislature finds that, subject to certain
34 exceptions designed to protect existing local government revenue,
35 preemption of local government authority to levy taxes on online
36 services and access to the Internet is a matter of statewide concern.

37 35102. (a) The state and any political subdivision of the state
38 shall not impose, assess, or collect a tax on Internet access or use
39 of Internet access.

1 (b) For purposes of this part, all of the following definitions
2 shall apply:

3 (1) “Direct costs” means costs incurred by a governmental
4 authority solely because of an Internet access provider’s use of the
5 public right-of-way, that is determined in a manner consistent with
6 generally accepted accounting principles, but does not include
7 costs that the governmental authority would have incurred if the
8 Internet access provider did not make such use of the public
9 right-of-way.

10 (2) “Internet” means collectively the myriad of computer and
11 telecommunications facilities, including equipment and operating
12 software, which comprise the interconnected worldwide network
13 of networks that employ the Transmission Control Protocol/Internet
14 Protocol (TCP/IP), or any predecessor or successor protocols to
15 that protocol, to communicate information of all kinds by wire or
16 radio.

17 (3) (A) “Internet access” means a service that enables users to
18 connect to the Internet to access content, information, or other
19 services offered over the Internet, without regard to whether the
20 service is referred to telecommunications, communications,
21 transmission, or similar services, and without regard to whether a
22 provider of the service is subject to regulation by the Federal
23 Communications Commission as a common carrier under Section
24 201 and following of Title 47 of the United States Code. Internet
25 access includes all of the following:

26 (i) The purchase, use, or sale of communications services,
27 including telecommunications services by a provider of a service
28 described in this subparagraph, to the extent the communications
29 services are purchased, used, or sold to do either of the following:

30 (I) Provide that service.

31 (II) Otherwise enable users to access content, information, or
32 other services offered over the Internet.

33 (ii) Services that are incidental to the provision of Internet access
34 when furnished to users as part of that access, such as a home page,
35 electronic mail and instant messaging, including voice- and
36 video-capable electronic mail and instant messaging, video clips,
37 and personal electronic storage capacity.

38 (iii) A homepage, electronic mail and instant messaging,
39 including voice- and video-capable electronic mail and instant
40 messaging, video clips, and personal electronic storage capacity,

1 that are provided independently or not packaged with Internet
2 access.

3 (B) “Internet access” does not include voice, audio or video
4 programming, or other products and services, except services
5 described in clause (i), (ii), or (iii) of subparagraph (A), that utilize
6 Internet protocol or any successor protocol and for which there is
7 a charge, regardless of whether that charge is separately stated or
8 aggregated with the charge for services described in clause (i), (ii),
9 or (iii) of subparagraph (A).

10 (4) “Political subdivision” means a city, county, or city and
11 county, including a charter city or county, any special district, or
12 any other local or regional governmental entity.

13 (5) (A) “Tax” means a tax as that term is defined in subdivision
14 (b) of Section 3 of Article XIII A of, or subdivision (e) of Section
15 1 of Article XIII C of, the California Constitution.

16 (B) “Tax” does not include any franchise fee or similar fee
17 imposed by a local franchising authority, pursuant to Section 622
18 or 653 of the federal Communications Act of 1934 (47 U.S.C.
19 Secs. 542 and 573), or any other fee related to obligations or
20 telecommunications carriers under the federal Communications
21 Act of 1934 (47 U.S.C. Sec. 151 et seq.), as those laws read on the
22 effective date of this section, except to the extent that any of the
23 following are true:

24 (i) The fee is not imposed for the purpose of recovering direct
25 costs incurred by the local franchising authority or other
26 governmental authority from providing the specific privilege,
27 service, or benefit conferred to the payor of the fee.

28 (ii) The fee is imposed for the use of a public right-of-way based
29 on a percentage of the service revenue and the fee exceeds the
30 incremental direct costs incurred by the governmental authority
31 associated with the provision of that right-of-way to the provider
32 of Internet access.

33 (6) (A) “Tax on Internet access or use of Internet access” means
34 a tax on Internet access or the use of Internet access, regardless of
35 whether the tax is imposed on a provider of Internet access or a
36 purchaser of Internet access and regardless of terminology used
37 to describe the tax.

38 (B) “Tax on Internet access or use of Internet access” does not
39 include a tax levied upon or measured by net income, capital stock,
40 net worth, or property value.

- 1 (7) “Use of Internet access” includes the exercise of any right
- 2 to Internet access.

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