

## Sales/Use:

### Massachusetts DOR Clarifies Application of Internet Tax Freedom Act After 2020 Appellate Court Decision

*Technical Information Release (TIR) 21-5: Sales of Internet Access*, Mass. Dept. of Rev. (4/26/21). The Massachusetts Department of Revenue (Department) issued a technical information release (TIR 21-5) explaining its position on the application of the federal Internet Tax Freedom Act (ITFA) to Massachusetts sales and use taxes on internet access services “with regard to the facts presented” in a 2020 Massachusetts Appeals Court (Court) decision involving a telecommunications company [see *Case No. 18-P-1317*, Mass. App. Ct. (9/4/20) for more details on this 2020 decision], which held that the ITFA preempted the imposition of Massachusetts sales and use taxes on certain transactions at issue even though the company had aggregated charges for internet access services with its telecom services for customers. In that 2020 case, the Department explains the telecom successfully showed that it met the ITFA’s:

**URL:** <https://www.mass.gov/technical-information-release/tir-21-5-new-cingular-wireless-pcs-llc-v-commissioner-of-revenue-sales-of-internet-access>

1. “Accounting requirement” because the provider could separate tax-exempt charges for internet access from its taxable charges for other telecommunications services; and
2. “Screening software requirement” designed to protect minors because while the provider did not consistently affirmatively ask customers whether they would like such software, the Court found it was sufficient that the provider simply made the software available to customers, and the software was designed to function on at least some of its devices.

As such, the Department states that it will continue to enforce the statutory imposition of sales and use taxes on the sale of internet access services in instances where the ITFA does *not* apply and that, as confirmed in this 2020 decision, both the ITFA’s accounting requirement and screening software requirement must be met by internet access providers for the prohibition on taxation to apply. Please contact us with any questions.

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