

Gross Receipts/Other Miscellaneous:

Virginia: Internet Tax Freedom Act's Grandfather Clause Deemed Applicable to Local Taxation of Services

Civil Docket No. CL19-4764, Vir. Cir. Ct., City of Norfolk (7/9/21). In a case involving whether the federal Internet Tax Freedom Act (ITFA) – which generally bars state and local governments from imposing taxes on Internet access and multiple or discriminatory taxes on electronic commerce – proscribes a local Virginia taxing authority (*i.e.* the City of Norfolk, Virginia (City)) from imposing its business, professional, and occupational license (BPOL) tax on a communications company's Internet access service for the prior tax periods at issue, a Virginia circuit court (Court) recently held that such imposition was permitted because it fell under the ITFA's "grandfather clause" exception, which allows some taxing jurisdictions to continue enforcing pre-ITFA taxation of Internet access through June 30, 2020. In doing so, the Court reasoned that the local taxing authority generally collected a tax on Internet access services in the City prior to October 1, 1998, and the company failed to successfully show otherwise.

In an earlier ruling in this case, the Court concluded that the BPOL is a "tax" rather than an inapplicable "fee" as applied to the gross receipts associated with the company's Internet access services, and that such imposition may be permitted only if it falls under the ITFA's "grandfather clause" exception. The scope of the Court's earlier decision did not reach whether the City's BPOL tax falls within the "grandfather clause" exception. Please contact us with any questions.

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