

Gross Receipts:

Virginia Supreme Court Says ITFA Exempts Certain Internet Services from Local BPOL Taxation

Case No. 210568, Va. (7/14/22). The Virginia Supreme Court (Court) reversed a circuit court ruling to hold that a communications company was entitled to a refund of local business, professional and occupational license (BPOL) taxes paid to a Virginia county on the sale of certain internet access services, because:

URL: <https://www.vacourts.gov/opinions/opnscvwp/1210568.pdf>

1. The federal Internet Tax Freedom Act (ITFA) preempts the Virginia county's collection of such taxes, and
2. ITFA's "grandfather clause" does not apply to the claims at issue.

In doing so, the Court explained that the ITFA's grandfather clause essentially provides that certain preexisting taxes on internet access services were exempt from the ITFA's moratorium if generally imposed and actually enforced prior to October 1, 1998; however, in this case, the Virginia county failed to meet its burden of proving that it had collected the BPOL tax on such services prior to October 1, 1998. Accordingly, the Court remanded the case back to the circuit court for a determination of the refund due to the company. Please contact us with any questions.

— Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

Jennifer Alban-Bond (McLean)
Senior Manager
Deloitte Tax LLP
jalbanbond@deloitte.com

Ryan Trent (Charlotte)
Senior Manager
Deloitte Tax LLP
rtrent@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.