

## CHAPTER 176

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**TAXATION**

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**HOUSE BILL 00-1440**

BY REPRESENTATIVES Pfiffner, May, McKay, Paschall, Allen, Fairbank, Grossman, Hagedorn, King, Lawrence, Mitchell, Spence, Stengel, Tool, Young, Gotlieb, Lee, McElhany, Nuñez, Scott, Swenson, S. Williams, and T. Williams; also SENATORS Hillman, Chlouber, Lamborn, Andrews, Arnold, Blickensderfer, Owen, Sullivant, Teck, Congrove, Evans, Lacy, Musgrave, and Tebedo.

**AN ACT**

CONCERNING TAXATION RELATING TO THE INTERNET.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 24-79-102 (2) (b), Colorado Revised Statutes, is amended, and the said 24-79-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**24-79-102. Limitation on sources of revenue.** (1.5) ON AND AFTER APRIL 30, 2001, THE STATE SHALL NOT IMPOSE, ASSESS, OR COLLECT ANY TAX, REGULATION, FEE, OR CHARGE UPON:

(a) THE DIRECT CHARGES FOR PROVISION OF INTERNET ACCESS SERVICES, WHETHER OFFERED SEPARATELY OR AS PART OF A PACKAGE OR BUNDLE OF SERVICES; OR

(b) ANY PROVIDER OF INTERNET ACCESS SERVICES AS A MEANS OF COLLECTING SALES OR USE TAXES FROM PERSONS WHO PURCHASE TAXABLE PROPERTY OR SERVICES THROUGH USE OF THE INTERNET UNLESS SUCH PROVIDER ACTS AS A VENDOR OF TAXABLE PROPERTY OR SERVICES.

(2) As used in this section:

(b) "Internet access services" means services that provide or enable computer access by multiple users to the internet, BUT SHALL NOT INCLUDE THAT PORTION OF PACKAGED OR BUNDLED SERVICES PROVIDING PHONE OR TELEVISION CABLE SERVICES WHEN THE PACKAGE OR BUNDLE INCLUDES THE SALE OF INTERNET ACCESS SERVICES.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**SECTION 2.** 29-1-1001 (3) (b), Colorado Revised Statutes, is amended, and the said 29-1-1001 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**29-1-1001. Moratorium on taxes, fees, and charges - internet and on-line services.** (1.5) (a) ON AND AFTER APRIL 30, 2001, NO STATUTORY OR HOME RULE CITY AND COUNTY, COUNTY, CITY, OR TOWN, OR ANY POLITICAL SUBDIVISION OF THE STATE, INCLUDING, WITHOUT LIMITATION, A SPECIAL PURPOSE AUTHORITY, SPECIAL DISTRICT, OR SCHOOL DISTRICT, SHALL IMPOSE, ASSESS, OR COLLECT ANY TAX, FEE, OR CHARGE, HOWEVER DESIGNATED, UPON THE DIRECT CHARGES FOR PROVISION OF INTERNET ACCESS SERVICES, WHETHER OFFERED SEPARATELY OR AS PART OF A PACKAGE OR BUNDLE OF SERVICES.

(b) PARAGRAPH (a) OF THIS SUBSECTION (1.5) SHALL NOT APPLY TO TAXES ON INTERNET ACCESS SERVICES ACTUALLY COLLECTED AND ENFORCED BY A HOME RULE CITY ON OR BEFORE APRIL 15, 1998.

(c) PARAGRAPH (a) OF THIS SUBSECTION (1.5) SHALL NOT APPLY TO ANY FRANCHISE FEE ON INTERACTIVE COMPUTER SERVICES DELIVERED VIA A CABLE TELEVISION SYSTEM UNLESS THE FEDERAL COMMUNICATIONS COMMISSION OR A COURT OF COMPETENT JURISDICTION DETERMINES THAT SUCH SERVICES ARE NOT CABLE SERVICES WITHIN THE MEANING OF 47 U.S.C. SEC. 522 (6).

(2.5) ON AND AFTER APRIL 30, 2001, NO PROVIDER OF INTERNET ACCESS SERVICES SHALL BE REQUIRED TO COLLECT SALES OR USE TAXES FROM PERSONS WHO PURCHASE TAXABLE PROPERTY OR SERVICES THROUGH USE OF THE INTERNET UNLESS SUCH PROVIDER ACTS AS A VENDOR OF TAXABLE PROPERTY OR SERVICES.

(3) As used in this section:

(b) "Internet access services" means services that provide or enable computer access by multiple users to the internet, BUT SHALL NOT INCLUDE THAT PORTION OF PACKAGED OR BUNDLED SERVICES PROVIDING PHONE OR TELEVISION CABLE SERVICES WHEN THE PACKAGE OR BUNDLE INCLUDES THE SALE OF INTERNET ACCESS SERVICES.

(4) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(I) ACCESS TO THE INTERNET INSURES ACCESS TO INFORMATION AND GOVERNMENT SERVICES, THEREFORE, IT IS CRUCIAL THAT ALL PEOPLE LIVING IN COLORADO HAVE EQUAL ACCESS TO THE INTERNET REGARDLESS OF ECONOMIC STANDING, EDUCATIONAL BACKGROUND, OR LOCATION. IT IS IN THE STATE'S INTEREST TO ENSURE THAT LOCAL GOVERNMENTS DO NOT IMPOSE TAXES ON INTERNET ACCESS, AS SUCH LOCAL TAXATION WOULD INHIBIT EQUAL ACCESS TO THE INTERNET AND THE ACCESSABILITY OF ON-LINE SERVICES FOR THE PEOPLE LIVING IN ANY LOCAL JURISDICTION THAT IMPOSES AN INTERNET ACCESS TAX.

(II) ANY TAX ON INTERNET ACCESS IMPOSED BY A LOCAL GOVERNMENT WOULD PRESENT UNIQUE ADMINISTRATIVE CHALLENGES FOR THE INTERNET SERVICE PROVIDERS REQUIRED TO COLLECT THAT TAX. SUCH ISSUES INCLUDE, BUT ARE NOT LIMITED TO, TRACKING WHICH LOCAL GOVERNMENTS IMPOSE A TAX, ASCERTAINING

THE LOCATION OF EVERY CUSTOMER, AND DETERMINING THE CUSTOMERS FROM WHICH A TAX MUST BE COLLECTED. THESE LOGISTICAL CONCERNS MAY RESULT IN AN INTERNET SERVICE PROVIDER REFUSING TO OFFER SERVICE TO CUSTOMERS LIVING IN LOCAL JURISDICTIONS THAT IMPOSE A TAX ON INTERNET ACCESS, THUS REDUCING COMPETITION AND DISENFRANCHISING CERTAIN LOCALITIES FROM AFFORDABLE ON-LINE SERVICES.

(III) THE PROMOTION OF ECONOMIC DEVELOPMENT IS OF THE UTMOST IMPORTANCE FOR COLORADO. TO FOSTER THE STATE'S ECONOMIC GROWTH, COLORADO STRIVES TO BECOME A CENTER FOR ELECTRONIC COMMERCE AND TAXING INTERNET ACCESS ON THE STATE OR LOCAL LEVEL WOULD IMPEDE THAT GOAL.

(b) THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT THE IMPOSITION, ASSESSMENT, OR COLLECTION OF ANY TAX, FEE, OR CHARGE, HOWEVER DESIGNATED, UPON THE DIRECT CHARGES FOR THE PROVISION OF INTERNET ACCESS SERVICE IS A MATTER OF STATEWIDE CONCERN AND THE PROVISIONS OF THIS SECTION SHALL PREEMPT ANY PROVISIONS OF ANY LOCAL GOVERNMENT ORDINANCE, RESOLUTION, REGULATION, OR OTHER RESTRICTION TO THE CONTRARY.

**SECTION 3.** 39-26-114 (1) (a) (XXVI), Colorado Revised Statutes, is amended to read:

**39-26-114. Exemptions - disputes - credits or refunds - definitions - creation of fund - repeal.** (1) (a) There shall be exempt from taxation under the provisions of this part 1 the following:

(XXVI) From May 1, 1998, to and including April 30, 2001, AND AFTER APRIL 30, 2001, internet access services, as defined in sections 24-79-102 (2), C.R.S.

**SECTION 4.** 39-26-203 (1) (gg), Colorado Revised Statutes, is amended to read:

**39-26-203. Exemptions - definitions.** (1) This part 2 is declared to be supplementary to the "Emergency Retail Sales Tax Law of 1935", part 1 of this article, and shall not apply:

(gg) From May 1, 1998, to and including April 30, 2001, AND AFTER APRIL 30, 2001, to internet access services, as defined in section 24-79-102 (2), C.R.S.

**SECTION 5. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 23, 2000