

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2184**

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

February 18, 2016

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~~An act to add Part 16 (commencing with Section 35100) to Division 2~~  
~~An act to amend Section 30166.1 of the Revenue and Taxation Code,~~  
relating to taxation.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2184, as amended, Low. ~~Taxation: Internet access: prohibition.~~  
~~Cigarette tax: stamps and meter machines: report.~~

*The Cigarette and Tobacco Products Tax Law imposes a tax on distributors of cigarettes at the rate of \$0.87 per package of 20 cigarettes. That law requires that tax be paid through the use of stamps or meter impressions, and requires that these stamps or meter impressions be affixed to each package of cigarettes distributed. That law requires stamps and meter register settings to be sold at their denominated values less 0.85% to licensed distributors.*

*Existing law, no later than July 1, 2005, required the Board of Equalization to submit a report to the Legislature that evaluates the average actual costs, including labor, for applying indicia or impressions, bonding, warehousing, and leasing stamping equipment, including case cutters and packers, associated with applying stamps or meter impressions to cigarette packages and requires that report to be updated every 2 years.*

*This bill instead would require a report making the same evaluation to be submitted to the Legislature no later than January 1, 2018, and*

would require that report to be updated and submitted to the Legislature every 2 years.

~~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~~ yes.  
State-mandated local program: no.

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

1     SECTION 1. Section 30166.1 of the Revenue and Taxation  
2     Code is amended to read:

3     30166.1. (a) No later than ~~July 1, 2005~~, January 1, 2018, the  
4     board shall submit a report to the Legislature that evaluates the  
5     average actual costs, including labor for applying indicia or  
6     impressions, bonding, warehousing, and leasing stamping  
7     equipment, including case cutters and packers, associated with  
8     applying stamps or meter impressions to cigarette packages. ~~This~~  
9     report shall be updated every two years.

10    (b) (1) A report to be submitted pursuant to subdivision (a)  
11    shall be submitted in compliance with Section 9795 of the  
12    Government Code.

13    (2) Notwithstanding Section 10231.5 of the Government Code,  
14    the report required by subdivision (a) shall be updated and  
15    submitted to the Legislature every two years.

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

18  
19     PART 16. CALIFORNIA INTERNET TAX FREEDOM  
20     MODERNIZATION ACT OF 2016

21  
22     35100. ~~This part shall be known and may be cited as the~~  
23     California Internet Tax Freedom Modernization Act of 2016.

24     35101. ~~The Legislature finds and declares all of the following:~~

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

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

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

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

25    ~~(e) Companies providing Internet access are making substantial~~  
26    ~~capital investments in new plants and equipment. Multiple and~~  
27    ~~excessive taxation could place that investment at risk, and~~  
28    ~~discourage the expansion of investment in Internet access~~  
29    ~~equipment, thereby placing California at a long-term competitive~~  
30    ~~disadvantage.~~

31    ~~(f) Services provided by local governments are important and~~  
32    ~~valuable to both consumers and businesses, and this act is not~~  
33    ~~intended to interfere with existing sources of revenue that provide~~  
34    ~~funding for local government services. This act is intended to~~  
35    ~~impose a moratorium on new taxes imposed on Internet access~~  
36    ~~and online services, as well as the discriminatory application of~~  
37    ~~existing or new taxes, as defined herein, to Internet access or online~~  
38    ~~services. Nothing in this act shall be interpreted as precluding the~~  
39    ~~imposition or collection of new or existing taxes of general~~  
40    ~~application that are imposed or assessed in a uniform and~~

1 nondiscriminatory manner without regard to whether the activities  
2 or transactions taxed are conducted through the use of the Internet,  
3 Internet access, or online services.

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

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

22 (i) ~~The Legislature finds and declares that no local government~~  
23 ~~is currently imposing or collecting any tax on Internet access or~~  
24 ~~online services, and further that no local government should impose~~  
25 ~~or collect any tax on Internet access or online services that is~~  
26 ~~discriminatory within the meaning of this act.~~

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

31 35102. (a) ~~The state and any political subdivision of the state~~  
32 ~~shall not impose, assess, or collect a tax on Internet access or use~~  
33 ~~of Internet access.~~

34 (b) ~~For purposes of this part, all of the following definitions~~  
35 ~~shall apply:~~

36 (1) ~~“Direct costs” means costs incurred by a governmental~~  
37 ~~authority solely because of an Internet access provider’s use of the~~  
38 ~~public right-of-way, that is determined in a manner consistent with~~  
39 ~~generally accepted accounting principles, but does not include~~  
40 ~~costs that the governmental authority would have incurred if the~~

1 ~~Internet access provider did not make such use of the public~~  
2 ~~right-of-way.~~

3 (2) ~~“Internet” means collectively the myriad of computer and~~  
4 ~~telecommunications facilities, including equipment and operating~~  
5 ~~software, which comprise the interconnected worldwide network~~  
6 ~~of networks that employ the Transmission Control Protocol/Internet~~  
7 ~~Protocol (TCP/IP), or any predecessor or successor protocols to~~  
8 ~~that protocol, to communicate information of all kinds by wire or~~  
9 ~~radio.~~

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

19 (i) ~~The purchase, use, or sale of communications services,~~  
20 ~~including telecommunications services by a provider of a service~~  
21 ~~described in this subparagraph, to the extent the communications~~  
22 ~~services are purchased, used, or sold to do either of the following:~~

23 (I) ~~Provide that service.~~

24 (II) ~~Otherwise enable users to access content, information, or~~  
25 ~~other services offered over the Internet.~~

26 (ii) ~~Services that are incidental to the provision of Internet access~~  
27 ~~when furnished to users as part of that access, such as a home page,~~  
28 ~~electronic mail and instant messaging, including voice- and~~  
29 ~~video-capable electronic mail and instant messaging, video clips,~~  
30 ~~and personal electronic storage capacity.~~

31 (iii) ~~A homepage, electronic mail and instant messaging,~~  
32 ~~including voice- and video-capable electronic mail and instant~~  
33 ~~messaging, video clips, and personal electronic storage capacity,~~  
34 ~~that are provided independently or not packaged with Internet~~  
35 ~~access.~~

36 (B) ~~“Internet access” does not include voice, audio or video~~  
37 ~~programming, or other products and services, except services~~  
38 ~~described in clause (i), (ii), or (iii) of subparagraph (A), that utilize~~  
39 ~~Internet protocol or any successor protocol and for which there is~~  
40 ~~a charge, regardless of whether that charge is separately stated or~~

1 aggregated with the charge for services described in clause (i), (ii),  
2 or (iii) of subparagraph (A):

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

6 (5) (A) “Tax” means a tax as that term is defined in subdivision  
7 (b) of Section 3 of Article XIII A of, or subdivision (e) of Section  
8 1 of Article XIII C of, the California Constitution:

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

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

21 (ii) The fee is imposed for the use of a public right-of-way based  
22 on a percentage of the service revenue and the fee exceeds the  
23 incremental direct costs incurred by the governmental authority  
24 associated with the provision of that right-of-way to the provider  
25 of Internet access:

26 (6) (A) “Tax on Internet access or use of Internet access” means  
27 a tax on Internet access or the use of Internet access, regardless of  
28 whether the tax is imposed on a provider of Internet access or a  
29 purchaser of Internet access and regardless of terminology used  
30 to describe the tax.

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

34 (7) “Use of Internet access” includes the exercise of any right  
35 to Internet access: