

**FEDERAL POLICY UPDATE**

- A. **TELECOMMUNICATIONS.** All forms of telecommunications should be treated the same, whether using broadband, wireless, or traditional telephone networks. The proposed **Internet Tax Freedom Forever Act (ITFFA)** would exempt from state and local taxes all broadband telecommunications that are used to access the Internet. This exclusion will eventually devour near all taxable telecommunications, as both wired and wireless telecommunications are rapidly migrating to broadband technology. California cities with voter-approved local taxes on telecommunications (**\$750 million a year**) are seeking a limited exception for “voter approved local taxes pursuant to state law”. This exception would currently only apply to California.
- B. **FEDERAL EXCISE TAX:** In 2006, the IRS, through an interpretation following adverse lawsuits against the IRS, dramatically reduced the application of this old federal tax to local landline telephone service. As a result, the current federal law discriminates against persons who cannot afford new technologies, affecting primarily older and poorer persons. **Recommendation:** This law should either be repealed or be amended to apply to all technologies, without discrimination. Repeal of this law has no impact on local taxes, but would benefit our local low income taxpayers who are discriminated against by this old federal law.
- C. **DIRECT BROADCAST SATELLITE TV:** In 1996, Congress responded to the request of a special interest segment of the video broadcasting industry, direct broadcast satellite (DBS), to prohibit local taxes on video programming delivered by DBS. Rather than adopting a moratorium to allow for a new industry to grow, Congress imposed a permanent ban on local taxation of DBS. In response, a number of state laws were enacted, with resulting litigation, to “level the playing field” caused by the discriminatory federal law. Recently, the US Supreme Court declined to review two of these state laws.

The federal prohibition on local taxation of DBS in 1996 was intended to spur growth of DBS services and increase competition for incumbent cable service providers. Today, the two predominate providers of DBS services serve more than 30 million subscribers and earn \$25 billion in annual revenue. Furthermore, AT&T recently received FCC approval to purchase one of those companies, DirecTV, for \$48.5 billion, making AT&T the largest pay TV provider in the United States and the world. Today (20 years later), it can hardly be argued that the original purpose of the federal ban to encourage competition is still needed. Even more egregious is the fact that AT&T now offers its video programming over both the internet (U-verse TV) and satellite (DirecTV). It’s the same video programming, but only one is subject to the local tax because of the federal ban. **Recommendation:** Repeal the federal ban on local taxation of DBS (Section 602(a) of the Federal Telecommunications Act of 1996) so that existing local voter approved taxes on video programming by California cities can be applied in a uniform manner, without discrimination based on technology.

- D. **OVER THE TOP TV (OTT):** Some forms of over the top TV (OTT) are identical to the video programming provided by CATV providers, IP-TV providers, and Direct Broadcast Satellite providers. To achieve tax equity and competitive fairness, all should be treated the same for taxation purposes. A proposed Digital Goods Tax Fairness bill would create fair “sourcing” rules for digital goods. The proposed bill should be amended to include all forms of “video programming” regardless of technology, so that OTT, CATV, IP-TV and Direct Broadcast Satellite can all be treated the same, assuring tax equity and competitive fairness. The current language has an exception for video programming, primarily benefitting OTT.
- E. **SALES TAXES ON ONLINE SALES:** The Marketplace Fairness Act would allow for equal treatment of the taxation of sales of goods by creating “sourcing” rules for the taxation of online retail sales. Under California law, such online sales are theoretically subject to the state use tax, but as a practical matter go unenforced. The proposed federal law would finally assure equal treatment on sales taxes, and restore millions of lost sales tax dollars due to archaic nexus laws.

Although some will characterize the above recommendations as an effort to impose “new taxes”, the reality is that discriminatory tax laws create “loopholes” and false incentives, with resulting losses of state and local taxes over time, and competitive advantages for certain technologies. We, therefore, urge Congress to repeal or amend past special interest legislation, and enact new laws that will assure tax equity and competitive fairness for the future financial health of state and local government, and the new American economy.