

Union Calendar No. 230

110TH CONGRESS
1ST SESSION

H. R. 3678

[Report No. 110-372]

To amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2007

Mr. CONYERS (for himself, Ms. LINDA T. SÁNCHEZ of California, Mr. CANNON, Mr. BOUCHER, Mr. WATT, Mr. ISSA, and Mr. SENSENBRENNER) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 12, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on September 27, 2007]

A BILL

To amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Internet Tax Freedom*
3 *Act Amendments Act of 2007”.*

4 **SEC. 2. MORATORIUM.**

5 *The Internet Tax Freedom Act (47 U.S.C. 151 note)*
6 *is amended—*

7 *(1) in section 1101(a) by striking “2007” and*
8 *inserting “2011”, and*

9 *(2) in section 1104(a)(2)(A) by striking “2007”*
10 *and inserting “2011”.*

11 **SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET**
12 **ACCESS.**

13 *Section 1104 of the Internet Tax Freedom Act (47*
14 *U.S.C. 151 note) is amended by adding at the end the fol-*
15 *lowing:*

16 *“(c) APPLICATION OF DEFINITION.—*

17 *“(1) IN GENERAL.—Effective as of November 1,*
18 *2003—*

19 *“(A) for purposes of subsection (a), the term*
20 *‘Internet access’ shall have the meaning given*
21 *such term by section 1104(5) of this Act, as en-*
22 *acted on October 21, 1998; and*

23 *“(B) for purposes of subsection (b), the term*
24 *‘Internet access’ shall have the meaning given*
25 *such term by section 1104(5) of this Act as en-*
26 *acted on October 21, 1998, and amended by sec-*

1 *tion 2(c) of the Internet Tax Nondiscrimination*
2 *Act (Public Law 108–435).*

3 “(2) *EXCEPTIONS.—Paragraph (1) shall not*
4 *apply until November 1, 2007, to a tax on Internet*
5 *access that is—*

6 “(A) *generally imposed and actually en-*
7 *forced on telecommunications service purchased,*
8 *used, or sold by a provider of Internet access, but*
9 *only if the appropriate administrative agency of*
10 *a State or political subdivision thereof issued a*
11 *public ruling prior to July 1, 2007, that applied*
12 *such tax to such service in a manner that is in-*
13 *consistent with paragraph (1); or*

14 “(B) *the subject of litigation instituted in a*
15 *judicial court of competent jurisdiction prior to*
16 *July 1, 2007, in which a State or political sub-*
17 *division is seeking to enforce, in a manner that*
18 *is inconsistent with paragraph (1), such tax on*
19 *telecommunications service purchased, used, or*
20 *sold by a provider of Internet access.*

21 “(3) *NO INFERENCE.—No inference of legislative*
22 *construction shall be drawn from this subsection or*
23 *the amendments to section 1105(5) made by the Inter-*
24 *net Tax Freedom Act Amendments Act of 2007 for*
25 *any period prior to November 1, 2007, with respect*

1 to any tax subject to the exceptions described in sub-
2 paragraphs (A) and (B) of paragraph (2).”.

3 **SEC. 4. DEFINITIONS.**

4 Section 1105 of the Internet Tax Freedom Act (47
5 U.S.C. 151 note) is amended—

6 (1) in paragraph (1) by striking “services”,
7 (2) by amending paragraph (5) to read as fol-
8 lows:

9 “(5) *INTERNET ACCESS.*—The term ‘Internet ac-
10 cess’—

11 “(A) means a service that enables users to
12 connect to the Internet to access content, infor-
13 mation, or other services offered over the Inter-
14 net;

15 “(B) includes the purchase, use or sale of
16 telecommunications by a provider of a service
17 described in subparagraph (A) to the extent such
18 telecommunications are purchased, used or
19 sold—

20 “(i) to provide such service; or

21 “(ii) to otherwise enable users to access
22 content, information or other services offered
23 over the Internet;

24 “(C) includes services that are incidental to
25 the provision of the service described in subpara-

1 *graph (A) when furnished to users as part of*
2 *such service, such as a home page, electronic*
3 *mail and instant messaging (including voice-*
4 *and video-capable electronic mail and instant*
5 *messaging), video clips, and personal electronic*
6 *storage capacity; and*

7 *“(D) does not include voice, audio or video*
8 *programming, or other products and services (ex-*
9 *cept services described in subparagraph (A), (B),*
10 *or (C)) that utilize Internet protocol or any suc-*
11 *cessor protocol and for which there is a charge,*
12 *regardless of whether such charge is separately*
13 *stated or aggregated with the charge for services*
14 *described in subparagraph (A), (B), or (C).”*,

15 *(3) by amending paragraph (9) to read as fol-*
16 *lows:*

17 *“(9) TELECOMMUNICATIONS.—The term ‘tele-*
18 *communications’ means ‘telecommunications’ as such*
19 *term is defined in section 3(43) of the Communica-*
20 *tions Act of 1934 (47 U.S.C. 153(43)) and ‘tele-*
21 *communications service’ as such term is defined in*
22 *section 3(46) of such Act (47 U.S.C. 153(46)), and in-*
23 *cludes communications services (as defined in section*
24 *4251 of the Internal Revenue Code of 1986 (26 U.S.C.*
25 *4251)).”*, and

1 (4) in paragraph (10) by adding at the end the
2 following:

3 “(C) *SPECIFIC EXCEPTION.*—

4 “(i) *SPECIFIED TAXES.*—Effective No-
5 vember 1, 2007, the term ‘tax on Internet
6 access’ also does not include a State tax ex-
7 pressly levied on commercial activity, modi-
8 fied gross receipts, taxable margin, or gross
9 income of the business, by a State law spe-
10 cifically using one of the foregoing terms,
11 that—

12 “(I) was enacted after June 20,
13 2005, and before November 1, 2007 (or,
14 in the case of a State business and oc-
15 cupation tax, was enacted after Janu-
16 ary 1, 1932, and before January 1,
17 1936);

18 “(II) replaced, in whole or in
19 part, a modified value-added tax or a
20 tax levied upon or measured by net in-
21 come, capital stock, or net worth (or, is
22 a State business and occupation tax
23 that was enacted after January 1,
24 1932 and before January 1, 1936);

1 “(III) is imposed on a broad
2 range of business activity; and

3 “(IV) is not discriminatory in its
4 application to providers of commu-
5 nication services, Internet access, or
6 telecommunications.

7 “(ii) *MODIFICATIONS*.—Nothing in this
8 subparagraph shall be construed as a limi-
9 tation on a State’s ability to make modi-
10 fications to a tax covered by clause (i) of
11 this subparagraph after November 1, 2007,
12 as long as the modifications do not substan-
13 tially narrow the range of business activi-
14 ties on which the tax is imposed or other-
15 wise disqualify the tax under clause (i).

16 “(iii) *NO INFERENCE*.—No inference of
17 legislative construction shall be drawn from
18 this subparagraph regarding the applica-
19 tion of subparagraph (A) or (B) to any tax
20 described in clause (i) for periods prior to
21 November 1, 2007.”.

22 **SEC. 5. CONFORMING AMENDMENTS.**

23 (a) *ACCOUNTING RULE*.—Section 1106 of the Internet
24 *Tax Freedom Act* (47 U.S.C. 151 note) is amended—

1 (1) *by striking “telecommunications services”*
2 *each place it appears and inserting “telecommuni-*
3 *cations”, and*

4 (2) *in subsection (b)(2)—*

5 (A) *in the heading by striking “SERVICES”,*

6 (B) *by striking “such services” and insert-*
7 *ing “such telecommunications”, and*

8 (C) *by inserting before the period at the end*
9 *the following: “or to otherwise enable users to ac-*
10 *cess content, information or other services offered*
11 *over the Internet”.*

12 (b) *VOICE SERVICES.—The Internet Tax Freedom Act*
13 *(47 U.S.C. 151 note) is amended by striking section 1108.*

14 **SEC. 6. EFFECTIVE DATE.**

15 *This Act, and the amendments made by this Act, shall*
16 *take effect on November 1, 2007, and shall apply with re-*
17 *spect to taxes in effect as of such date or thereafter enacted,*
18 *except as provided in section 1104 of the Internet Tax Free-*
19 *dom Act (47 U.S.C. 151 note).*

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