

105TH CONGRESS
2^D SESSION

H. R. 3529

To establish a national policy against State and local interference with interstate commerce on the Internet or online services, and to excise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1998

Mr. CHABOT introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Rules, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a national policy against State and local interference with interstate commerce on the Internet or online services, and to excise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

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”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) As a massive global network spanning not
7 only State but international borders, the Internet
8 and the related provision of online services and
9 Internet access are matters involving interstate and
10 foreign commerce within the jurisdiction of the
11 United States Congress under Article I, section 8,
12 clause 3 of the United States Constitution.

13 (2) Even within the United States, the Internet
14 does not respect State lines and operates independ-
15 ently of State boundaries. Addresses on the Internet
16 are designed to be geographically indifferent. Inter-
17 net transmissions are insensitive to physical distance
18 and can have multiple geographical addresses.

19 (3) Because transmissions over the Internet are
20 made using computer protocols, in particular the
21 Transmission Control Protocol/Internet Protocol,
22 that utilize packet switching technology, it is impos-
23 sible to determine in advance the precise geographic
24 route over which individual Internet transmissions
25 will travel; and it is therefore infeasible to separate

1 domestic intrastate Internet transmissions from
2 interstate and foreign Internet transmissions.

3 (4) Consumers, businesses, and others engaging
4 in interstate and foreign commerce through online
5 services and the Internet could become subject to
6 new taxes imposed by thousands of separate taxing
7 jurisdictions in the United States alone.

8 (5) Inconsistent and inadministerable taxes im-
9 posed on the Internet, Internet access, and online
10 services by Federal, State, and local governments
11 would subject consumers, businesses, and other
12 users engaged in interstate and foreign commerce to
13 multiple, confusing, and burdensome taxation, and
14 restrict the growth and continued technological mat-
15 uration of the Internet itself.

16 (6) The Federal Government does not pres-
17 ently, and as a matter of national policy should not
18 in the future, tax the Internet, Internet access, on-
19 line services, or electronic commerce.

20 (7) The twenty-first century marketplace re-
21 quires a twenty-first century sales tax system that is
22 more uniform, consistent, and streamlined. Not only
23 will tax simplification make businesses more com-
24 petitive, but it will make government more efficient,

1 resulting in personal benefits to every consumer and
2 citizen.

3 (8) Because the tax laws and regulations of so
4 many jurisdictions were established long before the
5 advent of the Internet, their application to this new
6 medium in unintended and unpredictable ways could
7 prove to be an unacceptable burden on the interstate
8 and foreign commerce of the Nation.

9 (9) The electronic marketplace of services,
10 products, and ideas available through the Internet
11 can be especially beneficial to senior citizens, the
12 physically challenged, citizens in rural areas, and
13 small businesses. It also offers a variety of uses and
14 benefits for educational institutions and charitable
15 organizations.

16 (10) A consistent and coherent national policy
17 regarding taxation of electronic commerce conducted
18 over the Internet, and the concomitant uniformity,
19 simplicity, and fairness that is needed to avoid bur-
20 dening this evolving form of interstate and foreign
21 commerce, can best be achieved by the United States
22 exercising its authority under Article I, section 8,
23 clause 3 of the United States Constitution to encour-
24 age a cooperative solution among Federal, State,
25 and local levels of government.

1 **SEC. 3. MORATORIUM ON CERTAIN TAXES.**

2 (a) EXTENT AND DURATION OF MORATORIUM.—For
3 a period of three years following the enactment of this Act,
4 neither any State nor any political subdivision thereof
5 shall impose, assess, collect, or attempt to collect any of
6 the following specified taxes:

7 (1) Taxes on Internet access.

8 (2) Taxes on online services.

9 (3) Bit taxes.

10 (4) Bandwidth taxes.

11 (5) Multiple taxes on electronic commerce.

12 (6) Discriminatory taxes on electronic com-
13 merce.

14 (b) EXCEPTION.—The prohibition in subsection (a)
15 shall not apply to taxes expressly imposed on Internet ac-
16 cess or online services by State statute enacted prior to
17 March 1, 1998: *Provided*, That the rate of such tax may
18 not be increased beyond the rate imposed on March 1,
19 1998.

20 **SEC. 4. CONSULTATIVE GROUP ON THE INTERNATIONAL**
21 **TAXATION OF ELECTRONIC COMMERCE.**

22 (a) CONSULTATIVE GROUP.—The Secretaries of the
23 Treasury, State, and Commerce, in consultation with ap-
24 propriate committees of the Congress, States and political
25 subdivisions thereof, consumer and business groups, and

1 other appropriate groups, shall undertake an examination
2 of the international taxation of—

3 (1) domestic and international communications
4 and transactions using the Internet;

5 (2) goods and services imported to and exported
6 from the United States using the Internet;

7 (3) goods and services imported to and exported
8 from the United States by means in competition
9 with the Internet, including mail order sales;

10 (4) Internet access; and

11 (5) the telecommunications infrastructure used
12 by the Internet, online services, and Internet access.

13 (b) PRESIDENT.—Not later than 2 years from the
14 date of enactment of this Act, the President shall, to the
15 extent and in the form the President deems appropriate,
16 transmit to the appropriate committees of Congress policy
17 recommendations on the international taxation of commu-
18 nications and transactions using the Internet.

19 **SEC. 5. COMMISSION ON ELECTRONIC COMMERCE.**

20 (a) ESTABLISHMENT OF COMMISSION.—There is es-
21 tablished a temporary commission to be known as the
22 Commission on Electronic Commerce, hereinafter referred
23 to as the “Commission”. The Commission shall—

24 (1) be composed of 29 members, including the
25 Chairman, in accordance with subsection (b); and

1 (2) conduct its business in accordance with the
2 provisions of this Act.

3 (b) MEMBERSHIP.—

4 (1) IN GENERAL.—The Commissioners shall
5 serve for the life of the Commission. The member-
6 ship of the Commission shall be as follows:

7 (A) The Secretary of the Treasury and the
8 Secretary of Commerce.

9 (B) Two representatives each from the Na-
10 tional Governors' Association, the National
11 Conference of State Legislatures, the Council of
12 State Governments, the National Association of
13 Counties, the National League of Cities, the
14 United States Conference of Mayors, and the
15 International City/County Managers Associa-
16 tion.

17 (C) Twelve representatives of consumers
18 and business, of which two each shall be ap-
19 pointed by the President, the Senate majority
20 leader, the Senate minority leader, the Speaker
21 of the House, the House majority leader, and
22 the House minority leader.

23 (2) CHAIRPERSON.—The Chairperson of the
24 Commission shall be appointed upon the joint rec-
25 ommendation of the Senate majority leader, the Sen-

1 ate minority leader, the Speaker of the House, the
2 House majority leader, and the House minority lead-
3 er, based on nominations from the National Gov-
4 ernors' Association.

5 (3) APPOINTMENTS.—Appointments to the
6 Commission shall be made within 45 days of enact-
7 ment of this Act.

8 (c) SUNSET.—The existence of the Commission shall
9 terminate upon transmittal of its recommendations to
10 Congress.

11 (d) QUORUM.—Fifteen members of the Commission
12 shall constitute a quorum for conducting the business of
13 the Commission.

14 (e) DUTIES OF THE COMMISSION.—The Commission
15 shall, in consultation with the National Tax Association
16 Communications and Electronic Commerce Tax Project
17 and other appropriate groups, undertake an examination
18 of—

19 (1) a uniform system of definitions of remote
20 commerce subject to sales and use tax within each
21 State;

22 (2) a simplified system for sales and use taxes
23 that provides for a single statewide sales or use tax
24 rate on all remote commerce, which rate may be
25 zero, and establishes a method of distributing to po-

1 litical subdivisions within each State their propor-
2 tionate share of such taxes;

3 (3) significant simplifications in the interstate
4 administration of the sales and use tax, including
5 uniform tax registration, tax returns, remittance re-
6 quirements, and filing procedures;

7 (4) an independent third party collection system
8 that would utilize the technology of the Internet to
9 further simplify sales and use tax administration
10 and collection; and

11 (5) the level of contacts between a State impos-
12 ing sales or use tax on remote commerce that should
13 be considered sufficient to subject the remote seller
14 to collection obligations imposed by the State, in-
15 cluding the definition of a level of contacts below
16 which a State may not impose on a remote seller the
17 obligation to collect sales or use tax.

18 **SEC. 6. LEGISLATIVE RECOMMENDATIONS.**

19 (a) TRANSMISSION OF PROPOSED LEGISLATION TO
20 THE PRESIDENT.—Within 2 years from the date of enact-
21 ment of this Act, the Commission described in section 5
22 shall transmit to the President proposed legislation reflect-
23 ing its recommendations concerning the matters described
24 in section 7.

1 (b) CONTENTS OF PROPOSED LEGISLATION.—The
2 proposed legislation submitted by the Commission shall—

3 (1) define with particularity the level of con-
4 tacts between a State imposing sales or use tax on
5 remote commerce that will be considered sufficient
6 to subject the remote seller to collection obligations
7 imposed by the State;

8 (2) provide that if, and only if, a State has
9 adopted a single sales and use tax rate for remote
10 commerce, and adopted simplified procedures for the
11 administration of its sales and use taxes, including
12 uniform registration, tax returns, remittance re-
13 quirements, and filing procedures, then such State
14 shall be authorized to impose on remote sellers a
15 duty to collect sales or use tax on remote commerce;

16 (3) provide that, effective upon the expiration
17 of 4 years from the date of enactment of the legisla-
18 tion described in this section a State which elects
19 not to adopt a single sales and use tax rate and sim-
20 plified administrative procedures shall be deemed to
21 have adopted a sales and use tax rate on remote
22 commerce equal to zero;

23 (4) include uniform definitions of remote com-
24 merce subject to sales and use taxes;

1 (5) make permanent the temporary moratorium
2 described in section 3 on Internet access taxes, bit
3 taxes, and bandwidth taxes, and permanently ban
4 such other taxes on electronic commerce as the Com-
5 mission deems appropriate; and

6 (6) be consistent with the statement of policy
7 set forth in paragraphs (1) and (2) of section 230(b)
8 of the Communications Act of 1934, as amended.

9 (c) **TRANSMISSION OF PROPOSED LEGISLATION TO**
10 **THE CONGRESS.**—Within 45 days after the transmission
11 to the President of the legislation proposed by the Com-
12 mission, the President shall transmit to the Congress a
13 report containing the President’s approval or disapproval
14 of the legislative recommendations, and his reasons there-
15 for. Upon the expiration of 45 days after the transmission
16 to the President of the proposed legislation submitted by
17 the Commission, the Commission shall transmit such pro-
18 posed legislation to the Congress.

19 **SEC. 7. EXPEDITED CONSIDERATION OF LEGISLATIVE REC-**
20 **COMMENDATIONS.**

21 Within 90 legislative days after the transmission to
22 the Congress of the proposed legislation described in sec-
23 tion 6(c), such legislation shall be discharged from the re-
24 spective committees of jurisdiction within the House of
25 Representatives and the Senate, and shall be referred to

1 the proper calendar on the floor of each House for final
2 action.

3 **SEC. 8. DECLARATION THAT THE INTERNET SHOULD BE**
4 **FREE OF FOREIGN TARIFFS, TRADE BAR-**
5 **RIERS, AND OTHER RESTRICTIONS.**

6 It is the sense of the Congress that the President
7 should seek bilateral and multilateral agreements through
8 the World Trade Organization, the Organization for Eco-
9 nomic Cooperation and Development, the Asia Pacific
10 Economic Cooperation Council, and other appropriate
11 international fora to establish that commercial trans-
12 actions using the Internet are free from tariff and tax-
13 ation.

14 **SEC. 9. DEFINITIONS.**

15 For the purposes of this Act:

16 (1) INTERNET.—The term “Internet” shall
17 have the meaning set forth in section 230(e)(1) of
18 the Communications Act of 1934, as amended.

19 (2) INTERNET ACCESS.—The term “Internet
20 access” means the offering or provision of the stor-
21 age, computer processing, and delivery of informa-
22 tion that enables the user to make use of resources
23 found via the Internet.

24 (3) ONLINE SERVICE.—The term “online serv-
25 ice” means the offering or provision of information,

1 information processing, and products or services to
2 a user as part of a package of services that are com-
3 bined with Internet access and offered to the user
4 for a single price.

5 (4) ELECTRONIC COMMERCE.—The term “elec-
6 tronic commerce” means any transaction comprising
7 the sale, offer, or delivery of goods or services (in-
8 cluding Internet access and online services) via the
9 Internet.

10 (5) REMOTE COMMERCE.—The term “remote
11 commerce” means the sale and delivery of goods or
12 services by a person in one State to a purchaser in
13 another State.

14 (6) REMOTE SELLER.—The term “remote sell-
15 er” means a person who sells goods or services from
16 one State to a purchaser in another State.

17 (7) TAX.—The term “tax” means—

18 (A) any levy, fee, or charge imposed under
19 governmental authority by any governmental
20 entity; and

21 (B) the imposition on the seller of an obli-
22 gation to collect and remit to a governmental
23 entity any such levy, fee, or charge imposed on
24 the buyer by a governmental entity.

1 (8) BIT TAX.—The term “bit tax” means any
2 transactional tax imposed on or measured by the
3 amount of digital information transmitted electroni-
4 cally, or any transactional tax imposed on or meas-
5 ured according to any of the technological or operat-
6 ing characteristics of the Internet.

7 (9) BANDWIDTH TAX.—The term “bandwidth
8 tax” means any transactional tax imposed on or
9 measured by the physical capacity of an available
10 signal to transmit digital information electronically.

11 (10) MULTIPLE TAX.—The term “multiple tax”
12 means any tax that is imposed by one State or polit-
13 ical subdivision thereof on the same or essentially
14 the same electronic commerce that is also taxed by
15 any other State or political subdivision thereof
16 whether or not at the same rate or on the same
17 basis, and includes any tax that does not ensure that
18 the cost incurred in using telecommunications serv-
19 ices to offer, sell, or provide electronic commerce is
20 not subject to taxation under the same tax at a dif-
21 ferent stage of the process of offering, selling, or
22 providing such electronic commerce.

23 (11) DISCRIMINATORY TAX.—The term “dis-
24 criminatory tax” means any tax imposed by a State
25 or political subdivision thereof on electronic com-

1 merce that is not generally imposed and legally col-
2 lectible at the same rate by that State or political
3 subdivision thereof on similar goods or services not
4 using the Internet, online services, or Internet ac-
5 cess, and includes—

6 (A) any tax on electronic commerce that
7 imposes an obligation to collect or pay the tax
8 on a different person or entity than in the case
9 of similar goods or services not using the Inter-
10 net, online services, or Internet access;

11 (B) any tax imposed or levied by a State
12 or political subdivision thereof, where—

13 (i) the use of a computer server on
14 the Internet to create or maintain a World
15 Wide Web page or site by a remote seller
16 is considered as a factor in determining
17 whether the remote seller has a substantial
18 nexus; or

19 (ii) an Internet access provider, online
20 service provider, or World Wide Web
21 hosting service provider is deemed to be
22 the agent or representative of a remote
23 seller as a result of the provider maintain-
24 ing or taking orders via a web page or site

1 on a computer that is physically located
2 within a taxing jurisdiction;

3 *Provided*, That this definition does not include
4 a tax imposed or levied by a State where a re-
5 mote seller's interest in physical property such
6 as computer hardware (but not including data)
7 is considered as a factor in determining whether
8 a remote seller has a substantial nexus;

9 (C) any tax purportedly levied by any
10 State or political subdivision thereof on elec-
11 tronic mail services, Internet site selection, elec-
12 tronic newsgroups and bulletin boards, Internet
13 relay chat, Internet search services, and other
14 online services that are either not taxed by such
15 jurisdiction when provided via means other than
16 the Internet or online services, or that by their
17 nature are so related to the Internet or online
18 services that substantially the same service is
19 not offered via means other than the Internet
20 or online services within such State or political
21 subdivision; and

22 (D) any tax that establishes a classification
23 for providers or sellers of electronic commerce
24 or online services for purposes of applying a tax
25 rate higher than the tax rate generally applied

1 to providers of similar goods or information
2 services not using the Internet.

3 **SEC. 10. NO EXPANSION OF TAX AUTHORITY.**

4 Nothing in this Act shall be construed to expand the
5 duty of any person to collect or pay taxes beyond that
6 which existed on March 1, 1998.

○