

Union Calendar No. 452

105TH CONGRESS
2^D SESSION

H. R. 3529

[Report No. 105-808, Part I]

A BILL

To establish a national policy against State and local interference with interstate commerce on the Internet or online services, and to exercise 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.

OCTOBER 10, 1998

Reported from the Committee on the Judiciary with an amendment

OCTOBER 10, 1998

Referral to the Committees on Rules and Ways and Means extended for a period ending not later than October 10, 1998

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Committees on Rules and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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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

OCTOBER 10, 1998

Reported from the Committee on the Judiciary with an amendment

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

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A BILL

To establish a national policy against State and local interference with interstate commerce on the Internet or on-line 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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Internet Tax Freedom*
 5 *Act of 1998”.*

6 **SEC. 2. MORATORIUM ON CERTAIN TAXES.**

7 *(a) AMENDMENT.—Title 4 of the United States Code*
 8 *is amended by adding at the end the following:*

9 **“CHAPTER 6—MORATORIUM ON CERTAIN TAXES**

“Sec.

“151. Moratorium.

“152. Advisory commission on electronic commerce.

“153. Legislative recommendations.

“154. Expedited consideration of legislative recommendations

“155. Definitions.

10 **“§ 151. Moratorium**

11 *“(a) MORATORIUM.—For a period of 3 years following*
 12 *the date of the enactment of this chapter, neither any State,*

1 *nor any political subdivision thereof, shall impose, assess,*
 2 *collect, or attempt to collect—*

3 “(1) *taxes on Internet access;*

4 “(2) *bit taxes; or*

5 “(3) *multiple or discriminatory taxes on elec-*
 6 *tronic commerce.*

7 “(b) *EXCEPTION TO MORATORIUM.—(1) Subject to*
 8 *paragraph (2), the moratorium in subsection (a)(1) shall*
 9 *not apply to the following taxes (as applicable), as in effect*
 10 *on the date of the enactment of this chapter, on Internet*
 11 *access:*

12 “(A) *STATE OF CONNECTICUT.—Section 12–*
 13 *407(2)(i)(A) of the General Statutes of Connecticut.*

14 “(B) *STATE OF WISCONSIN.—Section*
 15 *77.52(2)(a)5 of the Wisconsin Statutes (1995–96).*

16 “(C) *STATE OF IOWA.—Section 422.43(1) of the*
 17 *Code of Iowa (1997).*

18 “(D) *STATE OF NORTH DAKOTA.—North Dakota*
 19 *Century Code 57–39.2 and 57–34.*

20 “(E) *STATE OF SOUTH DAKOTA.—South Dakota*
 21 *Codified Law Annotated 10–45–5.*

22 “(F) *STATE OF NEW MEXICO.—New Mexico Stat-*
 23 *utes Annotated 7–9–3.*

1 “(G) *STATE OF TENNESSEE.—Tennessee Code*
2 *Annotated 67–6–221, 67–6–102(23)(iii), and 67–6–*
3 *702(g).*

4 “(H) *STATE OF OHIO.—Chapter 5739 of the*
5 *Ohio Revised Code.*

6 “(2)(A) *Paragraph (1) shall apply with respect to a*
7 *tax referred to in such paragraph only if the referenced*
8 *State enacts, during the 1–year period beginning on the*
9 *date of the enactment of this chapter, a law to expressly*
10 *affirm that such tax is imposed on Internet access.*

11 “(B) *A State that satisfies the requirement specified*
12 *in subparagraph (A) shall be deemed to have satisfied such*
13 *requirement immediately after the enactment of this chap-*
14 *ter, except that such State may not impute penalties or in-*
15 *terest on any tax accrued during the period beginning on*
16 *the date of the enactment of this Act and ending of the date*
17 *such State satisfies such requirement.*

18 “(c) *APPLICATION OF MORATORIUM.—Subsection (a)*
19 *shall not apply with respect to the provision of Internet*
20 *access that is offered for sale as part of a package of services*
21 *that includes services other than Internet access, unless the*
22 *service provider separately states that portion of the billing*
23 *that applies to such services on the user’s bill.*

1 **“§ 152. Advisory Commission on Electronic Commerce**

2 “(a) *ESTABLISHMENT OF COMMISSION.*—*There is es-*
3 *tablished a temporary commission to be known as the Advi-*
4 *sory Commission on Electronic Commerce (in this chapter*
5 *referred to as the ‘Commission’). The Commission shall—*

6 “(1) *be composed of 31 members appointed in*
7 *accordance with subsection (b), including the chair-*
8 *person who shall be selected by the members of the*
9 *Commission from among individuals specified in sub-*
10 *section (b); and*

11 “(2) *conduct its business in accordance with the*
12 *provisions of this chapter.*

13 “(b) *MEMBERSHIP.*—

14 “(1) *IN GENERAL.*—*The Commissioners shall*
15 *serve for the life of the Commission. The membership*
16 *of the Commission shall be as follows:*

17 “(A) *Three representatives from the Federal*
18 *Government comprised of the Attorney General,*
19 *the Secretary of Commerce, and the Secretary of*
20 *the Treasury, or their respective representatives.*

21 “(B) *Fourteen representatives from State,*
22 *local, and county governments comprised of 2*
23 *representatives each from the National Gov-*
24 *ernors’ Association, the National Conference of*
25 *State Legislatures, the Council of State Govern-*
26 *ments, the National Association of Counties, the*

1 *National League of Cities, and the United States*
2 *Conferences of Mayors; and 1 representative each*
3 *from the International City/County Managers*
4 *Association and the American Legislative Ex-*
5 *change Council.*

6 “(C) *Fourteen representatives of taxpayers*
7 *and business—*

8 “(i) *7 of whom shall be appointed*
9 *jointly by the Speaker of the House of Rep-*
10 *resentatives and the majority leader of the*
11 *Senate, of whom 3 shall be individuals em-*
12 *ployed by or affiliated with persons engaged*
13 *in providing Internet access or communica-*
14 *tions or transactions that use the Internet,*
15 *3 shall be individuals employed by or affili-*
16 *ated with persons engaged in electronic*
17 *commerce (including at least 1 who is em-*
18 *ployed by or affiliated with a person also*
19 *engaged in mail order commerce), and 1*
20 *shall be an individual employed by or af-*
21 *filiated with a person engaged in software*
22 *publishing; and*

23 “(ii) *7 of whom shall be appointed*
24 *jointly by the minority leader of the House*
25 *of Representatives and the minority leader*

1 of the Senate, of whom 3 shall be individ-
2 uals employed by or affiliated with persons
3 engaged in providing Internet access or
4 communications or transactions that use the
5 Internet, 3 shall be individuals employed by
6 or affiliated with persons engaged in elec-
7 tronic commerce (including at least 1 who
8 is employed by or affiliated with a person
9 also engaged in mail order commerce), and
10 1 shall be an individual employed by or af-
11 filiated with a person engaged in software
12 publishing.

13 “(2) *APPOINTMENTS.*—Appointments to the
14 Commission shall be made not later than 45 days
15 after the date of enactment of this chapter. The chair-
16 person shall be selected not later than 60 days after
17 the date of the enactment of this chapter.

18 “(c) *ACCEPTANCE OF GIFTS AND GRANTS.*—The Com-
19 mission may accept, use, and dispose of gifts or grants of
20 services or property, both real and personal, for purposes
21 of aiding or facilitating the work of the Commission. Gifts
22 or grants not used at the expiration of the Commission shall
23 be returned to the donor or grantor.

24 “(d) *OTHER RESOURCES.*—The Commission shall
25 have reasonable access to materials, resources, data, and

1 *other information from the Department of Justice, the De-*
2 *partment of Commerce, and the Department of the Treas-*
3 *ury. The Commission shall also have reasonable access to*
4 *use the facilities of the Department of Justice, the Depart-*
5 *ment of Commerce, and the Department of the Treasury for*
6 *purposes of conducting meetings.*

7 “(e) *SUNSET.—The existence of the Commission shall*
8 *terminate—*

9 “(1) *when the last of the committees of jurisdic-*
10 *tion referred to in section 154 concludes consideration*
11 *of the legislation proposed under section 153; or*

12 “(2) *3 years after the date of the enactment of*
13 *this chapter;*
14 *whichever occurs first.*

15 “(f) *RULES OF THE COMMISSION.—*

16 “(1) *Sixteen members of the Commission shall*
17 *constitute a quorum for conducting the business of the*
18 *Commission.*

19 “(2) *Any meetings held by the Commission shall*
20 *be duly noticed at least 14 days in advance and shall*
21 *be open to the public.*

22 “(3) *The Commission may adopt other rules as*
23 *needed.*

24 “(g) *DUTIES OF THE COMMISSION.—The duties of the*
25 *Commission, to be carried out in consultation with the Na-*

1 *tional Tax Association Communications and Electronic*
2 *Commerce Tax Project, and other interested persons, may*
3 *include—*

4 “(1) *conducting a thorough study of State and*
5 *local taxation of transactions using the Internet and*
6 *Internet access;*

7 “(2) *examining the collection and administra-*
8 *tion of consumption taxes on remote commerce in*
9 *other countries and the United States, and the impact*
10 *of such collection on the global economy;*

11 “(3) *examining the advantages and disadvan-*
12 *tages of authorizing States and local governments to*
13 *require remote sellers to collect and remit sales and*
14 *use taxes;*

15 “(4) *proposing a uniform system of definitions of*
16 *remote and electronic commerce that may be subject*
17 *to sales and use tax within each State;*

18 “(5) *examining model State legislation relating*
19 *to taxation of transactions using the Internet and*
20 *Internet access, including uniform terminology, defi-*
21 *nitions of the transactions, services, and other activi-*
22 *ties that may be subject to State and local taxation,*
23 *procedural structures and mechanisms applicable to*
24 *such taxation, and a mechanism for the resolution of*

1 *disputes between States regarding matters involving*
2 *multiple taxation;*

3 *“(6) examining a simplified system for adminis-*
4 *tration and collection of sales and use tax for remote*
5 *commerce, that incorporates all manner of making*
6 *consumer payments, that would provide for a single*
7 *statewide sales or use tax rate (which rate may be*
8 *zero), and would establish a method of distributing to*
9 *political subdivisions within each State their propor-*
10 *tionate share of such taxes, including an examination*
11 *of collection of sales or use tax by small volume re-*
12 *mote sellers only in the State of origin;*

13 *“(7) examining ways to simplify the interstate*
14 *administration of sales and use tax on remote com-*
15 *merce, including a review of the need for a single or*
16 *uniform tax registration, single or uniform tax re-*
17 *turns, simplified remittance requirements, and sim-*
18 *plified administrative procedures;*

19 *“(8) examining the need for an independent*
20 *third party collection system that would utilize the*
21 *Internet to further simplify sales and use tax admin-*
22 *istration and collection;*

23 *“(9) reviewing the efforts of States to collect sales*
24 *and use taxes owed on purchases from remote sellers,*
25 *as well as review the appropriateness of increased ac-*

1 *tivities by States to collect sales and use taxes directly*
2 *from customers of remote sellers;*

3 “(10) *examining the level of contacts sufficient to*
4 *permit a State to impose a sales or use tax on remote*
5 *commerce that would subject a remote seller to collec-*
6 *tion obligations imposed by the State, including—*

7 “(A) *the definition of a level of contacts*
8 *below which a State may not impose collection*
9 *obligations on a remote seller;*

10 “(B) *whether or not such obligations are*
11 *applied in a nondiscriminatory manner with re-*
12 *spect to nonremote transactions; and*

13 “(C) *the impact of such obligation on small*
14 *business remote sellers;*

15 “(11) *examining making permanent the tem-*
16 *porary moratorium described in section 151 with re-*
17 *spect to Internet access as well as such other taxes*
18 *that the Commission deems appropriate;*

19 “(12) *examining ways to simplify State and*
20 *local taxes imposed on the provision of telecommuni-*
21 *cations services;*

22 “(13) *requiring the Commission to hold a public*
23 *hearing to provide an opportunity for representatives*
24 *of the general public, taxpayer groups, consumer*

1 *groups, State and local government officials, and tax-*
2 *supported institutions to testify; and*

3 *“(14) examining other issues that the Commis-*
4 *sion determines to be relevant.*

5 *“(h) FEDERAL ADVISORY COMMITTEE ACT.—The Fed-*
6 *eral Advisory Committee Act shall not apply with respect*
7 *to the Commission.*

8 **“§ 153. Legislative recommendations**

9 *“(a) TRANSMISSION OF PROPOSED LEGISLATION.—*
10 *Not later than 2 years after the date of the enactment of*
11 *this chapter, the Commission shall transmit to the President*
12 *and the Congress proposed legislation reflecting any find-*
13 *ings concerning the matters described in such section.*

14 *“(b) CONTENTS OF PROPOSED LEGISLATION.—The*
15 *proposed legislation submitted under subsection (a) by the*
16 *Commission shall have been agreed to by at least 19 mem-*
17 *bers of the Commission and may—*

18 *“(1) define with particularity the level of con-*
19 *tacts between a State and remote seller that the Com-*
20 *mission considers sufficient to permit a State to im-*
21 *pose collection obligations on the remote seller and the*
22 *level of contacts which is not sufficient to impose col-*
23 *lection obligations on remote sellers;*

24 *“(2) provide that if, and only if, a State has*
25 *adopted a single sales and use tax rate for remote*

1 *commerce and established a method of distributing to*
2 *its political subdivisions their proportionate share of*
3 *such taxes, and adopted simplified procedures for the*
4 *administration of its sales and use taxes, including*
5 *uniform registration, tax returns, remittance require-*
6 *ments, and filing procedures, then such State should*
7 *be authorized to impose on remote sellers a duty to*
8 *collect sales or use tax on remote commerce;*

9 *“(3) provide that, effective upon the expiration of*
10 *a 4-year period beginning on the date of the enact-*
11 *ment of such legislation, a State that does not have*
12 *in effect a single sales and use tax rate and simplified*
13 *administrative procedures shall be deemed to have in*
14 *effect a sales and use tax rate on remote commerce*
15 *equal to zero, until such time as such State does*
16 *adopt a single sales and use tax rate and simplified*
17 *administrative procedures;*

18 *“(4) include uniform definitions of categories of*
19 *property, goods, services, or information subject to, or*
20 *exempt from, sales and use taxes;*

21 *“(5) make permanent the temporary moratorium*
22 *described in section 151 with respect to Internet ac-*
23 *cess, as well as such other taxes (including those de-*
24 *scribed in section 151) that the Commission deems*
25 *appropriate;*

1 “(6) provide a mechanism for the resolution of
2 disputes between States regarding matters involving
3 multiple taxation; and

4 “(7) include other provisions that the Commis-
5 sion deems necessary.

6 “(c) *RECOMMENDATIONS OF THE PRESIDENT.*—Not
7 later than 45 days after the receipt of the Commission’s leg-
8 islative proposals, the President shall review such proposals
9 and submit to the Congress such policy recommendations
10 as the President deems necessary or expedient.

11 **“§ 154. Expedited consideration of legislative rec-**
12 **ommendations**

13 “(a) Not later than 90 legislative days after the trans-
14 mission to the Congress by the Commission of the proposed
15 legislation described in section 153, such legislation shall
16 be considered by the respective committees of jurisdiction
17 within the House of Representatives and the Senate, and,
18 if reported, shall be referred to the proper calendar on the
19 floor of each House for final action.

20 “(b) For purposes of this section, the 90-day period
21 shall be computed by excluding—

22 “(1) the days on which either House is not in
23 session because of an adjournment of more than 3
24 days to a day certain or an adjournment of the Con-
25 gress sine die; and

1 “(2) any Saturday and Sunday, not excluded
2 under paragraph (1), when either House is not in ses-
3 sion.

4 **“§ 155. Definitions**

5 “For the purposes of this chapter:

6 “(1) *BIT TAX*.—The term ‘bit tax’ means any tax
7 on electronic commerce expressly imposed on or meas-
8 ured by the volume of digital information transmitted
9 electronically, or the volume of digital information
10 per unit of time transmitted electronically, but does
11 not include taxes imposed on the provision of tele-
12 communications services.

13 “(2) *COMPUTER SERVER*.—The term ‘computer
14 server’ means a computer that functions as a central-
15 ized provider of information and services to multiple
16 recipients.

17 “(3) *DISCRIMINATORY TAX*.—The term ‘discrimi-
18 natory tax’ means—

19 “(A) any tax imposed by a State or politi-
20 cal subdivision thereof on electronic commerce
21 that—

22 “(i) is not generally imposed and le-
23 gally collectible by such State or such politi-
24 cal subdivision on transactions involving

1 *similar property, goods, services, or infor-*
2 *mation accomplished through other means;*

3 “(ii) *is not generally imposed and le-*
4 *gally collectible at the same rate by such*
5 *State or such political subdivision on trans-*
6 *actions involving similar property, goods,*
7 *services, or information accomplished*
8 *through other means, unless the rate is*
9 *lower as part of a phase-out of the tax over*
10 *not more than a 5-year period;*

11 “(iii) *imposes an obligation to collect*
12 *or pay the tax on a different person or en-*
13 *tity than in the case of transactions involv-*
14 *ing similar property, goods, services, or in-*
15 *formation accomplished through other*
16 *means; or*

17 “(iv) *establishes a classification of*
18 *Internet access provider for purposes of es-*
19 *tablishing a higher tax rate to be imposed*
20 *on such providers than the tax rate gen-*
21 *erally applied to providers of similar infor-*
22 *mation services delivered through other*
23 *means; or*

24 “(B) *any tax imposed by a State or politi-*
25 *cal subdivision thereof, if—*

1 “(i) *the mere use of a computer server*
2 *by a remote seller to create or maintain a*
3 *site on the Internet is considered a factor in*
4 *determining a remote seller’s tax collection*
5 *obligation; or*

6 “(ii) *the display of a remote seller’s in-*
7 *formation or content on the computer server*
8 *of a provider of Internet access, or the proc-*
9 *essing of orders through the computer server*
10 *of a provider of Internet access, is consid-*
11 *ered a factor in determining whether the*
12 *provider of Internet access is deemed to be*
13 *the agent of the remote seller for tax collec-*
14 *tion purposes.*

15 “(4) *ELECTRONIC COMMERCE.—The term ‘elec-*
16 *tronic commerce’ means any transaction conducted*
17 *over the Internet or through Internet access, compris-*
18 *ing the sale, lease, license, offer, or delivery of prop-*
19 *erty, goods, services, or information, whether or not*
20 *for consideration, and includes the provision of Inter-*
21 *net access.*

22 “(5) *INFORMATION SERVICES.—The term ‘infor-*
23 *mation services’ has the meaning given such term in*
24 *section 3(20) of the Communications Act of 1934 as*
25 *amended from time to time.*

1 “(6) *INTERNET*.—The term ‘Internet’ means the
2 combination of computer facilities and electro-
3 magnetic transmission media, and related equipment
4 and software, comprising the interconnected world-
5 wide network of computer networks that employ the
6 Transmission Control Protocol/Internet Protocol, or
7 any predecessor or successor protocol, to transmit in-
8 formation.

9 “(7) *INTERNET ACCESS*.—The term ‘Internet ac-
10 cess’ means a service that enables users to access con-
11 tent, information, electronic mail, or other services of-
12 fered over the Internet, and may also include access
13 to proprietary content, information, and other serv-
14 ices as part of a package of services offered to consum-
15 ers. Such term does not include telecommunications
16 services.

17 “(8) *MULTIPLE TAX*.—The term ‘multiple tax’
18 means—

19 “(A) any tax that is imposed by one State
20 or political subdivision thereof on the same or es-
21 sentially the same electronic commerce that is
22 also subject to another tax imposed by another
23 State or political subdivision thereof (whether or
24 not at the same rate or on the same basis), with-
25 out a credit (for example, a resale exemption cer-

1 *tificate) for taxes paid in other jurisdictions*
2 *(The term ‘multiple tax’ shall not include a sales*
3 *or use tax imposed by a State and 1 or more po-*
4 *litical subdivisions thereof pursuant to a law re-*
5 *ferred to in section 151(b)(1) on the same elec-*
6 *tronic commerce or a tax on persons engaged in*
7 *electronic commerce which also may have been*
8 *subject to a sales or use tax thereon. For pur-*
9 *poses of this subparagraph, the term ‘sales or use*
10 *tax’ means a tax that is imposed on or incident*
11 *to the sale, purchase, storage, consumption, dis-*
12 *tribution, or other use of tangible personal prop-*
13 *erty or services as may be defined by laws im-*
14 *posing such tax and which is measured by the*
15 *amount of the sales price or other charge for such*
16 *property or service); or*

17 *“(B) any tax on Internet access if the State*
18 *or political subdivision thereof classifies such*
19 *Internet access as telecommunications or commu-*
20 *nications services under State law and such*
21 *State or political subdivision thereof has also im-*
22 *posed a tax on the purchase or use of the under-*
23 *lying telecommunications services that are used*
24 *to provide such Internet access without allowing*
25 *a credit for other taxes paid, a sale for resale ex-*

1 *emption, or other mechanism for eliminating du-*
2 *plicate taxation.*

3 “(9) *REMOTE COMMERCE.*—*The term ‘remote*
4 *commerce’ means the sale, lease, license, offer, or de-*
5 *livery of property, goods, services, or information by*
6 *a seller in 1 State to a purchaser in another State.*

7 “(10) *REMOTE SELLER.*—*The term ‘remote sell-*
8 *er’ means a person who sells, leases, licenses, offers, or*
9 *delivers property, goods, services, or information from*
10 *one State to a purchaser in another State.*

11 “(11) *STATE.*—*The term ‘State’ means any of*
12 *the several States, the District of Columbia, or any*
13 *territory or possession of the United States.*

14 “(12) *TAX.*—*The term ‘tax’ means any obliga-*
15 *tion to pay or to collect and remit any levy, fee, or*
16 *charge imposed by any governmental entity solely for*
17 *the purpose of generating revenues for governmental*
18 *purposes and not—*

19 “(A) *in return for a specific privilege, serv-*
20 *ice, or benefit conferred on a person or entity;*

21 “(B) *to support public regulatory commis-*
22 *sions; or*

23 “(C) *to support special purpose tele-*
24 *communications service programs.*

1 *Such term does not include any franchise fees or*
 2 *similar fees imposed by a State or local franchising*
 3 *authority, referred to in section 622 or 653 of the*
 4 *Communications Act of 1934, as amended from time*
 5 *to time.*

6 “(13) *TELECOMMUNICATIONS SERVICES.—The*
 7 *term ‘telecommunications services’ has the meaning*
 8 *given such term in section 3(46) of the Communica-*
 9 *tions Act of 1934, as amended from time to time.”.*

10 *(b) CONFORMING AMENDMENT.—Title 4 of the United*
 11 *States Code is amended in the table of chapters by adding*
 12 *at the end the following:*

 “**6. Moratorium on Certain Taxes** **151”.**

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

14 *Nothing in this Act shall be construed to expand the*
 15 *duty of any person to collect or pay taxes beyond that which*
 16 *existed immediately before the date of the enactment of this*
 17 *Act.*