

110TH CONGRESS
1ST SESSION

H. R. 3678

AN ACT

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
15 following:

16 “(c) APPLICATION OF DEFINITION.—

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

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

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

1 by section 2(c) of the Internet Tax Non-
2 discrimination 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,
9 but only if the appropriate administrative agen-
10 cy of a State or political subdivision thereof
11 issued a public ruling prior to July 1, 2007,
12 that applied such tax to such service in a man-
13 ner that is inconsistent with paragraph (1); or

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

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

1 spect to any tax subject to the exceptions described
2 in subparagraphs (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
10 access’—

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
18 such telecommunications are purchased, used or
19 sold—

20 “(i) to provide such service; or

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

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

1 paragraph (A) when furnished to users as part
2 of 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
9 (except services described in subparagraph (A),
10 (B), or (C)) that utilize Internet protocol or any
11 successor protocol and for which there is a
12 charge, regardless of whether such charge is
13 separately stated or aggregated with the charge
14 for services described in subparagraph (A), (B),
15 or (C).”,

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

18 “(9) TELECOMMUNICATIONS.—The term ‘tele-
19 communications’ means ‘telecommunications’ as
20 such term is defined in section 3(43) of the Commu-
21 nications Act of 1934 (47 U.S.C. 153(43)) and ‘tele-
22 communications service’ as such term is defined in
23 section 3(46) of such Act (47 U.S.C. 153(46)), and
24 includes communications services (as defined in sec-

1 tion 4251 of the Internal Revenue Code of 1986 (26
2 U.S.C. 4251)).”, and

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

5 “(C) SPECIFIC EXCEPTION.—

6 “(i) SPECIFIED TAXES.—Effective
7 November 1, 2007, the term ‘tax on Inter-
8 net access’ also does not include a State
9 tax expressly levied on commercial activity,
10 modified gross receipts, taxable margin, or
11 gross income of the business, by a State
12 law specifically using one of the foregoing
13 terms, that—

14 “(I) was enacted after June 20,
15 2005, and before November 1, 2007
16 (or, in the case of a State business
17 and occupation tax, was enacted after
18 January 1, 1932, and before January
19 1, 1936);

20 “(II) replaced, in whole or in
21 part, a modified value-added tax or a
22 tax levied upon or measured by net in-
23 come, capital stock, or net worth (or,
24 is a State business and occupation tax

1 that was enacted after January 1,
2 1932 and before January 1, 1936);

3 “(III) is imposed on a broad
4 range of business activity; and

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

9 “(ii) MODIFICATIONS.—Nothing in
10 this subparagraph shall be construed as a
11 limitation on a State’s ability to make
12 modifications to a tax covered by clause (i)
13 of this subparagraph after November 1,
14 2007, as long as the modifications do not
15 substantially narrow the range of business
16 activities on which the tax is imposed or
17 otherwise disqualify the tax under clause
18 (i).

19 “(iii) NO INFERENCE.—No inference
20 of legislative construction shall be drawn
21 from this subparagraph regarding the ap-
22 plication of subparagraph (A) or (B) to
23 any tax described in clause (i) for periods
24 prior to November 1, 2007.”.

1 **SEC. 5. CONFORMING AMENDMENTS.**

2 (a) ACCOUNTING RULE.—Section 1106 of the Inter-
3 net Tax Freedom Act (47 U.S.C. 151 note) is amended—

4 (1) by striking “telecommunications services”
5 each place it appears and inserting “telecommuni-
6 cations”, and

7 (2) in subsection (b)(2)—

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

9 (B) by striking “such services” and insert-
10 ing “such telecommunications”, and

11 (C) by inserting before the period at the
12 end the following: “or to otherwise enable users
13 to access content, information or other services
14 offered over the Internet”.

15 (b) VOICE SERVICES.—The Internet Tax Freedom
16 Act (47 U.S.C. 151 note) is amended by striking section
17 1108.

18 **SEC. 6. EFFECTIVE DATE.**

19 This Act, and the amendments made by this Act,
20 shall take effect on November 1, 2007, and shall apply
21 with respect to taxes in effect as of such date or thereafter

- 1 enacted, except as provided in section 1104 of the Internet
- 2 Tax Freedom Act (47 U.S.C. 151 note).

Passed the House of Representatives October 16,
2007.

Attest:

Clerk.

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