

110TH CONGRESS
1ST SESSION

H. R. 3678

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

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Internet Tax Freedom
5 Act Amendments Act of 2007”.

6 **SEC. 2. MORATORIUM.**

7 The Internet Tax Freedom Act (47 U.S.C. 151 note)
8 is amended—

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

3 (2) in section 1104(a)(2)(A) by striking “2007”
4 and inserting “2011”.

5 **SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET**
6 **ACCESS.**

7 Section 1104 of the Internet Tax Freedom Act (47
8 U.S.C. 151 note) is amended by adding at the end the
9 following:

10 “(c) APPLICATION OF DEFINITION.—

11 “(1) IN GENERAL.—Effective as of November
12 1, 2003—

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

17 “(B) for purposes of subsection (b), the
18 term ‘Internet access’ shall have the meaning
19 given such term by section 1104(5) of this Act
20 as amended by section 2(c) of the Internet Tax
21 Nondiscrimination Act (Public Law 108–435).

22 “(2) EXCEPTIONS.—Paragraph (1) shall not
23 apply until November 1, 2007, to a tax on Internet
24 access that is—

1 “(A) generally imposed and actually en-
2 forced on telecommunications service purchased,
3 used, or sold by a provider of Internet access,
4 but only if the appropriate administrative agen-
5 cy of a State or political subdivision thereof
6 issued a public ruling prior to July 1, 2007,
7 that applied such tax to such service in a man-
8 ner that is inconsistent with paragraph (1); or

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

16 “(3) NO INFERENCE.—No inference of legisla-
17 tive construction shall be drawn from this subsection
18 or the amendments to section 1105(5) made by the
19 Internet Tax Freedom Act Amendments Act of 2007
20 for any period prior to November 1, 2007, with re-
21 spect to any tax subject to the exceptions described
22 in subparagraphs (A) and (B) of paragraph (2).”.

23 **SEC. 4. DEFINITION.**

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

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

4 “(5) INTERNET ACCESS.—The term ‘Internet
5 access’—

6 “(A) means a service that enables users to
7 connect to the Internet to access content, infor-
8 mation, or other services offered over the Inter-
9 net;

10 “(B) includes the purchase, use or sale of
11 telecommunications by a provider of a service
12 described in subparagraph (A) to the extent
13 such telecommunications are purchased, used or
14 sold—

15 “(i) to provide such service; or

16 “(ii) to otherwise enable users to ac-
17 cess content, information or other services
18 offered over the Internet;

19 “(C) includes services that are incidental
20 to the provision of the service described in sub-
21 paragraph (A) when furnished to users as part
22 of such service, such as a home page, electronic
23 mail and instant messaging (including voice-
24 and video-capable electronic mail and instant

1 messaging), video clips, and personal electronic
2 storage capacity; and

3 “(D) does not include voice, audio or video
4 programming, or other products and services
5 (except services described in subparagraph (A),
6 (B), or (C)) that utilize Internet protocol or any
7 successor protocol and for which there is a
8 charge, regardless of whether such charge is
9 separately stated or aggregated with the charge
10 for services described in subparagraph (A), (B),
11 or (C).”,

12 (3) by amending paragraph (9) to read as fol-
13 lows:

14 “(9) TELECOMMUNICATIONS.—The term ‘tele-
15 communications’ means ‘telecommunications’ as
16 such term is defined in section 3(43) of the Commu-
17 nications Act of 1934 (47 U.S.C. 153(43)) and ‘tele-
18 communications service’ as such term is defined in
19 section 3(46) of such Act (47 U.S.C. 153(46)), and
20 includes communications services (as defined in sec-
21 tion 4251 of the Internal Revenue Code of 1986 (26
22 U.S.C. 4251)).”, and

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

1 “(C) SPECIFIC EXCEPTION.—Effective No-
 2 vember 1, 2007, the term ‘tax on Internet ac-
 3 cess’ also does not include a State tax that—

4 “(i) is imposed on at least 80 percent
 5 of business enterprises engaged in business
 6 in the State without regard to—

7 “(I) the form of organization;

8 “(II) business activity in which
 9 such enterprise is engaged;

10 “(III) minimum filing thresholds;

11 “(IV) whether such business ac-
 12 tually incurs a filing and payment ob-
 13 ligation; and

14 “(ii) was enacted between June 30,
 15 2005, and November 1, 2007, to replace,
 16 in whole or in part, a tax that, pursuant
 17 to section 1105(10)(B) or a modified
 18 value-added tax, is not a tax on Internet
 19 access.”.

20 **SEC. 5. CONFORMING AMENDMENTS.**

21 Section 1106 of the Internet Tax Freedom Act (47
 22 U.S.C. 151 note) is amended—

23 (1) in subsection (b)(2)—

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

25 and

1 (B) by striking “such services” and insert-
2 ing “such telecommunications”, and
3 (2) by striking “services” each place it appears.

4 **SEC. 6. EFFECT ON OTHER LAWS.**

5 Section 1107 of the Internet Tax Freedom Act (47
6 U.S.C. 151 note) is amended by adding at the end the
7 following:

8 “(d) CERTAIN TAXES ON INTERNET ACCESS.—No
9 State shall prohibit a provider of Internet access from—
10 “(1) collecting from customers, directly or indi-
11 rectly, the amount of any tax described in section
12 1105(10)(C) that is imposed on Internet access reve-
13 nues; or
14 “(2) separately stating the amount of such tax
15 on customer bills.”.

16 **SEC. 7. RULE OF CONSTRUCTION.**

17 Section 1108 of the Internet Tax Freedom Act (47
18 U.S.C. 151 note) is amended by striking section 1108.

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