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S. 1567

To foster innovation and technological advancement in the development of the Internet and electronic commerce, and to assist the States in simplifying their sales and use taxes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 18, 2001

Mr. ENZI (for himself, Mr. DORGAN, Mrs. HUTCHISON, Mr. KERRY, Mr. THOMAS, Mr. GRAHAM, Mr. VOINOVICH, and Mr. HUTCHINSON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To foster innovation and technological advancement in the development of the Internet and electronic commerce, and to assist the States in simplifying their sales and use taxes.

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 Morato-
5 rium and Equity Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The moratorium of the Internet Tax Free-
2 dom Act on new taxes on Internet access and on
3 multiple and discriminatory taxes on electronic com-
4 merce should be extended.

5 (2) States should be encouraged to simplify
6 their sales and use tax systems.

7 (3) As a matter of economic policy and basic
8 fairness, similar sales transactions should be treated
9 equally, without regard to the manner in which sales
10 are transacted, whether in person, through the
11 mails, over the telephone, on the Internet, or by
12 other means.

13 (4) Congress may facilitate such equal taxation
14 consistent with the United States Supreme Court's
15 decision in *Quill Corp. v. North Dakota*.

16 (5) States that adequately simplify their tax
17 systems should be authorized to correct the present
18 inequities in taxation through requiring sellers to
19 collect taxes on sales of goods or services delivered
20 in-state, without regard to the location of the seller.

21 (6) The States have experience, expertise, and
22 a vital interest in the collection of sales and use
23 taxes, and thus should take the lead in developing
24 and implementing sales and use tax collection sys-
25 tems that are fair, efficient, and non-discriminatory

1 in their application and that will simplify the process
 2 for both sellers and buyers.

3 (7) Online consumer privacy is of paramount
 4 importance to the growth of electronic commerce
 5 and must be protected.

6 **SEC. 3. EXTENSION OF INTERNET TAX FREEDOM ACT MOR-**
 7 **ATORIUM.**

8 Section 1101(a) of the Internet Tax Freedom Act (47
 9 U.S.C. 151 note) is amended to read as follows:

10 “(a) MORATORIUM.—No State or political subdivision
 11 thereof shall impose—

12 “(1) any taxes on Internet access during the
 13 period beginning after September 30, 1998, unless
 14 such a tax was generally imposed and actually en-
 15 forced prior to October 1, 1998; and

16 “(2) multiple or discriminatory taxes on elec-
 17 tronic commerce during the period beginning on Oc-
 18 tober 1, 1998, and ending on December 31, 2005.”.

19 **SEC. 4. INTERNET TAX FREEDOM ACT DEFINITIONS.**

20 (a) INTERNET ACCESS SERVICES.—Section 1104 of
 21 the Internet Tax Freedom Act (47 U.S.C. 151 note) is
 22 amended by adding at the end the following new para-
 23 graph:

24 “(11) INTERNET ACCESS SERVICES.—The term
 25 ‘Internet access services’ means services that com-

1 bine computer processing, information storage, pro-
 2 tocol conversion, and routing with transmission to
 3 enable users to access Internet content and services.
 4 Such term does not include receipt of such content
 5 or services.”.

6 (b) INTERNET ACCESS.—Section 1104(5) of the
 7 Internet Tax Freedom Act (47 U.S.C. 151 note) is amend-
 8 ed by striking “telecommunications services.” and insert-
 9 ing “telecommunications services generally, but does in-
 10 clude wireless web access services used to enable users to
 11 access content, information, electronic mail, or other serv-
 12 ices offered over the Internet, including any comparable
 13 package of services offered to users.”.

14 (c) TELECOMMUNICATIONS SERVICES.—Section
 15 1104(9) of the Internet Tax Freedom Act (47 U.S.C. 151
 16 note) is amended by striking “and includes communica-
 17 tions services (as defined in section 4251 of the Internal
 18 Revenue Code of 1986)”.

19 (d) WIRELESS WEB ACCESS SERVICES.—Section
 20 1104 of the Internet Tax Freedom Act (47 U.S.C. 151
 21 note), as amended by subsection (a), is amended by adding
 22 at the end the following new paragraph:

23 “(12) WIRELESS WEB ACCESS SERVICES.—The
 24 term ‘wireless web access services’ means commer-
 25 cial mobile services (as defined in section 332(d)(1)

1 of Communications Act of 1934 (47 U.S.C.
 2 332(d)(1)), multi-channel, multi-point distribution
 3 services, or any wireless telecommunications services
 4 used to access the Internet.”.

5 **SEC. 5. STREAMLINED SALES AND USE TAX SYSTEM.**

6 (a) DEVELOPMENT OF STREAMLINED SYSTEM.—It is
 7 the sense of Congress that States and localities should
 8 work together to develop a streamlined sales and use tax
 9 system that addresses the following in the context of re-
 10 mote sales:

11 (1) A centralized, one-stop, multi-state report-
 12 ing, submission, and payment system for sellers.

13 (2) Uniform definitions for goods or services,
 14 the sale of which may, by State action, be included
 15 in the tax base.

16 (3) Uniform rules for attributing transactions
 17 to particular taxing jurisdictions.

18 (4) Uniform procedures for—

19 (A) the treatment of purchasers exempt
 20 from sales and use taxes; and

21 (B) relief from liability for sellers that rely
 22 on such State procedures.

23 (5) Uniform procedures for the certification of
 24 software that sellers rely on to determine sales and
 25 use tax rates and taxability.

1 (6) A uniform format for tax returns and re-
2 mittance forms.

3 (7) Consistent electronic filing and remittance
4 methods.

5 (8) State administration of all State and local
6 sales and use taxes.

7 (9) Uniform audit procedures, including a pro-
8 vision giving a seller the option to be subject to no
9 more than a single audit per year using those proce-
10 dures; except that if the seller does not comply with
11 the procedures to elect a single audit, any State can
12 conduct an audit using those procedures.

13 (10) Reasonable compensation for tax collection
14 by sellers.

15 (11) Exemption from use tax collection require-
16 ments for remote sellers falling below a de minimis
17 threshold of \$5,000,000 in gross annual sales.

18 (12) Appropriate protections for consumer pri-
19 vacy.

20 (13) Such other features that the States deem
21 warranted to promote simplicity, uniformity, neu-
22 trality, efficiency, and fairness.

23 (b) STUDY.—It is the sense of Congress that a joint,
24 comprehensive study should be commissioned by State and
25 local governments and the business community to deter-

1 mine the cost to all sellers of collecting and remitting
 2 State and local sales and use taxes on sales made by sell-
 3 ers under the law as in effect on the date of enactment
 4 of this Act and under the system described in subsection
 5 (a) to assist in determining what constitutes reasonable
 6 compensation.

7 **SEC. 6. INTERSTATE SALES AND USE TAX COMPACT.**

8 (a) AUTHORIZATION.—In general, the States are au-
 9 thorized to enter into an Interstate Sales and Use Tax
 10 Compact. The Compact shall describe a uniform, stream-
 11 lined sales and use tax system consistent with section 5(a),
 12 and shall provide that States joining the Compact must
 13 adopt that system.

14 (b) EXPIRATION.—The authorization in subsection
 15 (a) shall expire if the Compact has not been formed before
 16 January 1, 2005.

17 (c) CONGRESSIONAL APPROVAL OF COMPACT.—

18 (1) ADOPTING STATES TO TRANSMIT.—Upon
 19 the 20th State becoming a signatory to the Com-
 20 pact, the adopting States shall transmit a copy of
 21 the Compact to Congress.

22 (2) CONGRESSIONAL ACTION.—

23 (A) IN GENERAL.—If a joint resolution de-
 24 scribed in subparagraph (B) is enacted into law
 25 within 120 calendar days, excluding congres-

sional recess period days, of Congress receiving the Compact under paragraph (1), then sections 7 and 8 shall apply to the adopting States, and any other State that subsequently adopts the Compact.

(B) JOINT RESOLUTION.—A joint resolution described in this subparagraph is a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: “That Congress—

“(1) agrees that the uniform, streamlined sales and use tax system described in the Compact transmitted to Congress by the States pursuant to section 6(c)(1) of the Internet Tax Moratorium and Equity Act does not create an undue burden on interstate commerce; and

“(2) authorizes any State that adopts such Compact to require remote sellers to collect and remit sales and use taxes in accordance with such system .”

(C) EXPEDITED PROCEDURE FOR APPROVAL.—

(i) RULES OF HOUSE AND SENATE.—

This paragraph is enacted—

1 (I) as an exercise of the rule-
2 making power of the House of Rep-
3 resentatives and the Senate, respec-
4 tively, and as such is deemed a part
5 of the rules of each House, respec-
6 tively, but applicable only with respect
7 to the procedure to be followed in that
8 House in the case of the joint resolu-
9 tion described in subparagraph (B),
10 and they supersede other rules only to
11 the extent that they are inconsistent
12 therewith, and

13 (II) with full recognition of the
14 constitutional right of either House to
15 change the rules (so far as they relate
16 to the procedure of that House) at
17 any time, in the same manner and to
18 the same extent as in the case of any
19 other rule of that House.

20 (ii) APPLICABLE PROCEDURAL PROVI-
21 SIONS.—Except as otherwise provided in
22 this paragraph, the procedures set forth in
23 section 152 (other than subsection (a)
24 thereof) of the Trade Act of 1974 (19
25 U.S.C. 2192) shall apply to the joint reso-

1 lution described in subparagraph (B) by
2 substituting the “Committee on the Judici-
3 ary” for the “Committee on Ways and
4 Means” and the “Committee on Com-
5 merce, Science, and Transportation” for
6 the “Committee on Finance” in subsection
7 (b) thereof.

8 (iii) INTRODUCTION OF JOINT RESO-
9 LUTION AFTER COMPACT RECEIVED.—
10 Until Congress receives the Compact de-
11 scribed in paragraph (1), it shall not be in
12 order in either House to introduce the
13 joint resolution described in subparagraph
14 (B).

15 (iv) CONSIDERATION OF JOINT RESO-
16 LUTION.—No amendment to the joint reso-
17 lution described in subparagraph (B) shall
18 be in order in either the House of Rep-
19 resentatives or the Senate, and no motion
20 to suspend the application of this clause
21 shall be in order in either House. Within
22 120 calendar days, excluding congressional
23 recess period days, after the date on which
24 a joint resolution described in subpara-
25 graph (B) is introduced in either House,

1 that House shall proceed to a final vote on
2 the joint resolution without intervening ac-
3 tion. If either House approves the resolu-
4 tion, it shall be placed on the calendar in
5 the other House, which shall proceed im-
6 mediately to a final vote on the joint reso-
7 lution without intervening action.

8 **SEC. 7. AUTHORIZATION TO SIMPLIFY STATE USE-TAX**
9 **RATES THROUGH AVERAGING.**

10 (a) IN GENERAL.—Subject to the exception in sub-
11 section (c), a State that adopts the Compact authorized
12 and approved under section 6 and that levies a use tax
13 shall impose a single, uniform State-wide use-tax rate on
14 all remote sales on which it assesses a use tax for any
15 calendar year for which the State meets the requirements
16 of subsection (b).

17 (b) AVERAGING REQUIREMENT.—A State meets the
18 requirements of this subsection for any calendar year in
19 which the single, uniform State-wide use-tax rate is in ef-
20 fect if such rate is no greater than the weighted average
21 of the sales tax rates actually imposed by the State and
22 its local jurisdictions during the 12-month period ending
23 on June 30 prior to such calendar year.

24 (c) ANNUAL OPTION TO COLLECT ACTUAL TAX.—
25 Notwithstanding subsection (a), a remote seller may elect

1 annually to collect the actual applicable State and local
2 use taxes on each sale made in the State.

3 (d) ALTERNATIVE SYSTEM.—A State that adopts the
4 uniform, streamlined sales and use tax system described
5 in the Compact authorized and approved under section 6
6 so that remote sellers can use information provided by the
7 State to identify the single applicable rate for each sale,
8 may require a remote seller to collect the actual applicable
9 State and local sales or use tax due on each sale made
10 in the State if the State provides such seller relief from
11 liability to the State for relying on such information pro-
12 vided by the State.

13 **SEC. 8. AUTHORIZATION TO REQUIRE COLLECTION OF USE**
14 **TAXES.**

15 (a) GRANT OF AUTHORITY.—

16 (1) STATES THAT ADOPT THE SYSTEM MAY RE-
17 QUIRE COLLECTION.—Any State that has adopted
18 the system described in the Compact authorized and
19 approved under section 6 is authorized, notwith-
20 standing any other provision of law, to require all
21 sellers not qualifying for the de minimis exception to
22 collect and remit sales and use taxes on remote sales
23 to purchasers located in such State.

24 (2) STATES THAT DO NOT ADOPT THE SYSTEM
25 MAY NOT REQUIRE COLLECTION.—Paragraph (1)

1 does not extend to any State that does not adopt the
 2 system described in the Compact.

3 (b) NO EFFECT ON NEXUS, ETC.—No obligation im-
 4 posed by virtue of authority granted by subsection (a)(1)
 5 or denied by subsection (a)(2) shall be considered in deter-
 6 mining whether a seller has a nexus with any State for
 7 any other tax purpose. Except as provided in subsection
 8 (a), nothing in this Act permits or prohibits a State—

9 (1) to license or regulate any person;

10 (2) to require any person to qualify to transact
 11 intrastate business; or

12 (3) to subject any person to State taxes not re-
 13 lated to the sale of goods or services.

14 **SEC. 9. NEXUS FOR STATE BUSINESS ACTIVITY TAXES.**

15 It is the sense of Congress that before the conclusion
 16 of the 107th Congress, legislation should be enacted to
 17 determine the appropriate factors to be considered in es-
 18 tablishing whether nexus exists for State business activity
 19 tax purposes.

20 **SEC. 10. LIMITATION.**

21 In general, nothing in this Act shall be construed as
 22 subjecting sellers to franchise taxes, income taxes, or li-
 23 censing requirements of a State or political subdivision
 24 thereof, nor shall anything in this Act be construed as af-
 25 fecting the application of such taxes or requirements or

1 enlarging or reducing the authority of any State or polit-
2 ical subdivision to impose such taxes or requirements.

3 **SEC. 11. DEFINITIONS.**

4 In this Act:

5 (1) STATE.—The term “State” means any
6 State of the United States of America and includes
7 the District of Columbia.

8 (2) GOODS OR SERVICES.—The term “goods or
9 services” includes tangible and intangible personal
10 property and services.

11 (3) REMOTE SALE.—The term “remote sale”
12 means a sale in interstate commerce of goods or
13 services attributed, under the rules established pur-
14 suant to section 5(a)(3), to a particular taxing juris-
15 diction that could not, except for the authority
16 granted by this Act, require that the seller of such
17 goods or services collect and remit sales or use taxes
18 on such sale.

19 (4) LOCUS OF REMOTE SALE.—The term “par-
20 ticular taxing jurisdiction”, when used with respect
21 to the location of a remote sale, means a remote sale
22 of goods or services attributed, under the rules es-
23 tablished pursuant to section 5(a)(3), to a particular
24 taxing jurisdiction.

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