

111TH CONGRESS
1ST SESSION

S. 1192

To restrict any State or local jurisdiction from imposing a new discriminatory tax on mobile wireless communications services, providers, or property.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2009

Mr. WYDEN (for himself, Ms. SNOWE, Mrs. MURRAY, Mr. MENENDEZ, Mrs. GILLIBRAND, Mr. ENSIGN, and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To restrict any State or local jurisdiction from imposing a new discriminatory tax on mobile wireless communications services, providers, or property.

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 “Mobile Wireless Tax
5 Fairness Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) It is appropriate to exercise congressional
9 enforcement authority under section 5 of the 14th

1 amendment to the Constitution of the United States
2 and Congress' plenary power under article I, section
3 8, clause 3 of the Constitution of the United States
4 (commonly known as the "commerce clause") in
5 order to ensure that States and political subdivisions
6 thereof do not discriminate against providers and
7 consumers of mobile services by imposing new selec-
8 tive and excessive taxes and other burdens on such
9 providers and consumers.

10 (2) In light of the history and pattern of dis-
11 criminatory taxation faced by providers and con-
12 sumers of mobile services, the prohibitions against
13 and remedies to correct discriminatory State and
14 local taxation in section 306 of the Railroad Revital-
15 ization and Regulatory Reform Act of 1976 (49
16 U.S.C. 11501) provide an appropriate analogy for
17 congressional action, and similar Federal legislative
18 measures are warranted that will prohibit imposing
19 new discriminatory taxes on providers and con-
20 sumers of mobile services and that will assure an ef-
21 fective, uniform remedy.

22 **SEC. 3. MORATORIUM.**

23 (a) IN GENERAL.—No State or local jurisdiction shall
24 impose a new discriminatory tax on or with respect to mo-
25 bile services, mobile service providers, or mobile service

1 property, during the 5-year period beginning on the date
2 of the enactment of this Act.

3 (b) DEFINITIONS.—In this Act:

4 (1) MOBILE SERVICE.—The term “mobile serv-
5 ice” means commercial mobile radio service, as such
6 term is defined in section 20.3 of title 47, Code of
7 Federal Regulations, as in effect on the date of the
8 enactment of this Act, or any other service that is
9 primarily intended for receipt on, transmission from,
10 or use with a mobile telecommunications device, in-
11 cluding the receipt of a digital good.

12 (2) MOBILE SERVICE PROPERTY.—The term
13 “mobile service property” means all property used
14 by a mobile service provider in connection with its
15 business of providing mobile services, whether real,
16 personal, tangible, or intangible and includes good-
17 will, licenses, customer lists, and other similar intan-
18 gible property associated with such business.

19 (3) MOBILE SERVICE PROVIDER.—The term
20 “mobile service provider” means any entity that sells
21 or provides mobile services, but only with respect to
22 the portion of such entity’s trade or business that
23 sells or provides such services.

1 (4) NEW DISCRIMINATORY TAX.—The term
2 “new discriminatory tax” means any tax imposed by
3 a State or local jurisdiction that—

4 (A) is imposed on or with respect to, or is
5 measured by the charges, receipts, or revenues
6 from or value of—

7 (i) any mobile service and is not gen-
8 erally imposed, or is generally imposed at
9 a lower rate, on or with respect to, or
10 measured by the charges, receipts, or reve-
11 nues from, other services or transactions
12 involving tangible personal property;

13 (ii) any mobile service provider and is
14 not generally imposed, or is generally im-
15 posed at a lower rate, on other persons
16 that are engaged in businesses other than
17 the provision of mobile services; or

18 (iii) any mobile service property and is
19 not generally imposed, or is generally im-
20 posed at a lower rate, on or with respect
21 to, or measured by the value of, other
22 property that is devoted to a commercial or
23 industrial use and subject to a property
24 tax levy, except public utility property
25 owned by a public utility subject to rate of

1 return regulation by a State or Federal
2 regulatory authority; and

3 (B) was not generally imposed and actually
4 enforced on mobile services, mobile service pro-
5 viders, or mobile service property prior to the
6 date of the enactment of this Act.

7 (5) STATE OR LOCAL JURISDICTION.—The term
8 “State or local jurisdiction” means any of the sev-
9 eral States, the District of Columbia, any territory
10 or possession of the United States, a political sub-
11 division of any State, territory, or possession, or any
12 governmental entity or person acting on behalf of
13 such State, territory, possession, or subdivision and
14 with the authority to assess, impose, levy, or collect
15 taxes or fees.

16 (6) TAX.—

17 (A) IN GENERAL.—The term “tax” means
18 any charge imposed by any governmental entity
19 for the purpose of generating revenues for gov-
20 ernmental purposes, and is not a fee imposed
21 on an individual entity or class of entities for
22 a specific privilege, service, or benefit conferred
23 exclusively on such entity or class of entities.

24 (B) EXCLUSION.—The term “tax” does
25 not include any fee or charge—

1 (i) used to preserve and advance Fed-
2 eral universal service or similar State pro-
3 grams authorized by section 254 of the
4 Communications Act of 1934 (47 U.S.C.
5 254); or

6 (ii) specifically dedicated by a State or
7 local jurisdiction for the support of E-911
8 communications systems.

9 (c) RULES OF CONSTRUCTION.—

10 (1) DETERMINATION.—For purposes of sub-
11 section (b)(4), all taxes, tax rates, exemptions, de-
12 ductions, credits, incentives, exclusions, and other
13 similar factors shall be taken into account in deter-
14 mining whether a tax is a new discriminatory tax.

15 (2) APPLICATION OF PRINCIPLES.—Except as
16 otherwise provided in this Act, in determining
17 whether a tax on mobile service property is a new
18 discriminatory tax for purposes of subsection
19 (b)(4)(A)(iii), principles similar to those set forth in
20 section 306 of the Railroad Revitalization and Regu-
21 latory Reform Act of 1976 (49 U.S.C. 11501) shall
22 apply.

23 (3) EXCLUSIONS.—Notwithstanding any other
24 provision of this Act—

1 (A) the term “generally imposed” as used
2 in subsection (b)(4) shall not apply to any tax
3 imposed only on—

4 (i) specific services;

5 (ii) specific industries or business seg-
6 ments; or

7 (iii) specific types of property; and

8 (B) the term “new discriminatory tax”
9 shall not include a new tax or the modification
10 of an existing tax that—

11 (i) replaces one or more taxes that
12 had been imposed on mobile services, mo-
13 bile service providers, or mobile service
14 property; and

15 (ii) is designed so that, based on in-
16 formation available at the time of the en-
17 actment of such new tax or such modifica-
18 tion, the amount of tax revenues generated
19 thereby with respect to such mobile serv-
20 ices, mobile service providers, or mobile
21 service property is reasonably expected not
22 to exceed the amount of tax revenues that
23 would have been generated by the respec-
24 tive replaced tax or taxes with respect to

1 such mobile services, mobile service pro-
2 viders, or mobile service property.

3 **SEC. 4. ENFORCEMENT.**

4 (a) IN GENERAL.—Notwithstanding any provision of
5 section 1341 of title 28, United States Code, or the con-
6 stitution or laws of any State, the district courts of the
7 United States shall have jurisdiction, without regard to
8 amount in controversy or citizenship of the parties, to
9 grant such mandatory or prohibitive injunctive relief, in-
10 terim equitable relief, and declaratory judgments as may
11 be necessary to prevent, restrain, or terminate any acts
12 in violation of this Act, provided that:

13 (1) JURISDICTION.—Such jurisdiction shall not
14 be exclusive of the jurisdiction which any Federal or
15 State court may have in the absence of this section.

16 (2) BURDEN OF PROOF.—The burden of proof
17 in any proceeding brought under this Act shall be
18 upon the party seeking relief and shall be by a pre-
19 ponderance of the evidence on all issues of fact.

20 (3) RELIEF.—In granting relief against a tax
21 which is discriminatory or excessive under this Act
22 with respect to tax rate or amount only, the court
23 shall prevent, restrain, or terminate the imposition,
24 levy, or collection of not more than the discrimina-

- 1 tory or excessive portion of the tax as determined by
- 2 the court.

