

HR 3678 RH

**Union Calendar No. 230**

110th CONGRESS

1st Session

**H. R. 3678**

[Report No. 110-372]

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. SANCHEZ 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

**October 12, 2007**

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

**[For text of introduced bill, see copy of bill as introduced on September 27, 2007]**

**A BILL**

To amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

*This Act may be cited as the `Internet Tax Freedom Act Amendments Act of 2007'.*

**SEC. 2. MORATORIUM.**

*The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended--*

(1) in section 1101(a) by striking `2007' and inserting `2011', and

(2) in section 1104(a)(2)(A) by striking `2007' and inserting `2011'.

### **SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.**

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

`(c) Application of Definition-

`(1) IN GENERAL- Effective as of November 1, 2003--

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

`(B) for purposes of subsection (b), the term `Internet access' shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108-435).

`(2) EXCEPTIONS- Paragraph (1) shall not apply until November 1, 2007, to a tax on Internet access that is--

`(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

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

`(3) NO INFERENCE- No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).'

### **SEC. 4. DEFINITIONS.**

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

(1) in paragraph (1) by striking `services',

(2) by amending paragraph (5) to read as follows:

*“(5) INTERNET ACCESS- The term ‘Internet access’--*

*“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;*

*“(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold--*

*“(i) to provide such service; or*

*“(ii) to otherwise enable users to access content, information or other services offered over the Internet;*

*“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and*

*“(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), or (C).’;*

*(3) by amending paragraph (9) to read as follows:*

*“(9) TELECOMMUNICATIONS- The term ‘telecommunications’ means ‘telecommunications’ as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and ‘telecommunications service’ as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).’, and*

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

*“(C) SPECIFIC EXCEPTION-*

*“(i) SPECIFIED TAXES- Effective November 1, 2007, the term ‘tax on Internet access’ also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that--*

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

*“(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net*

worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

` (III) is imposed on a broad range of business activity; and

` (IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

` (ii) MODIFICATIONS- Nothing in this subparagraph shall be construed as a limitation on a State's ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

` (iii) NO INFERENCE- No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007. '

## **SEC. 5. CONFORMING AMENDMENTS.**

(a) Accounting Rule- Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended--

(1) by striking `telecommunications services' each place it appears and inserting `telecommunications', and

(2) in subsection (b)(2)--

(A) in the heading by striking `SERVICES',

(B) by striking `such services' and inserting `such telecommunications', and

(C) by inserting before the period at the end the following: `or to otherwise enable users to access content, information or other services offered over the Internet'.

(b) Voice Services- The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

## **SEC. 6. EFFECTIVE DATE.**

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted, except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

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*END*

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