

Public Law 108–435  
108th Congress

An Act

To make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Dec. 3, 2004  
[S. 150]

*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 Nondiscrimination Act”.

Internet Tax  
Nondiscrimi-  
nation Act.  
47 USC 609 note.

**SEC. 2. FOUR-YEAR EXTENSION OF INTERNET TAX MORATORIUM.**

(a) **IN GENERAL.**—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

“(a) **MORATORIUM.**—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2007:

“(1) Taxes on Internet access.

“(2) Multiple or discriminatory taxes on electronic commerce.”

(b) **CONFORMING AMENDMENTS.**—(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

“(10) **TAX ON INTERNET ACCESS.**—

“(A) **IN GENERAL.**—The term ‘tax on Internet access’ means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

“(B) **GENERAL EXCEPTION.**—The term ‘tax on Internet access’ does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.”

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking “except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,”.

(c) **INTERNET ACCESS SERVICE; INTERNET ACCESS.**—

(1) **INTERNET ACCESS SERVICE.**—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting “The

term ‘Internet access service’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

47 USC 151 note.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting “The term ‘Internet access’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

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

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

47 USC 151 note.

- (1) by redesignating section 1104 as section 1105; and  
(2) by inserting after section 1103 the following:

**“SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.**

“(a) PRE-OCTOBER 1998 TAXES.—

“(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date—

“(A) the tax was authorized by statute; and

“(B) either—

“(i) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

“(ii) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) TERMINATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection shall not apply after November 1, 2007.

“(B) STATE TELECOMMUNICATIONS SERVICE TAX.—

“(i) DATE FOR TERMINATION.—This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in clause (ii).

“(ii) DESCRIPTION OF TAX.—A State telecommunications service tax referred to in subclause (i) is a State tax—

“(I) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

“(II) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.”.

“(b) PRE-NOVEMBER 2003 TAXES.—

“(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

“(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate

administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) TERMINATION.—This subsection shall not apply after November 1, 2005.”.

#### **SEC. 4. ACCOUNTING RULE.**

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

##### **“SEC. 1106. ACCOUNTING RULE.**

“(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

“(b) DEFINITIONS.—In this section:

“(1) CHARGES FOR INTERNET ACCESS.—The term ‘charges for Internet access’ means all charges for Internet access as defined in section 1105(5).

“(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term ‘charges for telecommunications services’ means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

#### **SEC. 5. EFFECT ON OTHER LAWS.**

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

##### **“SEC. 1107. EFFECT ON OTHER LAWS.**

“(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

“(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

“(2) in effect on February 8, 1996.

“(b) 911 AND E-911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E-911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E-911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E-911 services.

“(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.”.

#### **SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.**

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 5, is amended by adding at the end the following:

**“SEC. 1108. EXCEPTION FOR VOICE SERVICES OVER THE INTERNET.**

“Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.”.

**SEC. 6A. EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.**

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 6, is amended by adding at the end the following:

**“SEC. 1109. EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.**

“Nothing in this Act shall prohibit Texas or a political subdivision thereof from imposing or collecting the Texas municipal access line fee pursuant to Texas Local Govt. Code Ann. ch. 283 (Vernon 2005) and the definition of access line as determined by the Public Utility Commission of Texas in its ‘Order Adopting Amendments to Section 26.465 As Approved At The February 13, 2003 Public Hearing’, issued March 5, 2003, in Project No. 26412.”.

**SEC. 7. GAO STUDY OF EFFECTS OF INTERNET TAX MORATORIUM ON STATE AND LOCAL GOVERNMENTS AND ON BROADBAND DEPLOYMENT.**

The Comptroller General shall conduct a study of the impact of the Internet tax moratorium, including its effects on the revenues of State and local governments and on the deployment and adoption of broadband technologies for Internet access throughout the United States, including the impact of the Internet Tax Freedom Act (47 U.S.C. 151 note) on build-out of broadband technology resources in rural underserved areas of the country. The study shall compare deployment and adoption rates in States that tax broadband Internet access service with States that do not tax such service, and take into account other factors to determine whether the Internet Tax Freedom Act has had an impact on the deployment or adoption of broadband Internet access services. The Comptroller General shall report the findings, conclusions, and any recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce no later than November 1, 2005.

Reports.  
Deadline.

**SEC. 8. EFFECTIVE DATE.**

47 USC 151 note.

The amendments made by this Act take effect on November 1, 2003.

Approved December 3, 2004.

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**LEGISLATIVE HISTORY—S. 150 (H.R. 49):**

HOUSE REPORTS: No. 108-234 accompanying H.R. 49 (Comm. on the Judiciary).

SENATE REPORTS: No. 108-155 (Comm. on Commerce, Science, and Transportation).

**CONGRESSIONAL RECORD:**

Vol. 149 (2003): Nov. 6, 7, considered in Senate.

Vol. 150 (2004): Apr. 27-29, considered and passed Senate.

Nov. 19, considered and passed House.