

107TH CONGRESS
1ST SESSION

S. 288

To extend the moratorium enacted by the Internet Tax Freedom Act through 2006, and encourage States to simplify their sales and use taxes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 2001

Mr. WYDEN (for himself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To extend the moratorium enacted by the Internet Tax Freedom Act through 2006, and encourage States to simplify 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 Non-
5 discrimination Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) The moratorium of the Internet Tax Free-
9 dom Act on taxes on multiple and discriminatory

1 taxes on electronic commerce should be extended
2 and taxes on Internet access should be permanently
3 banned.

4 (2) States maintain the authority to determine
5 what items are included in the State's sales tax base
6 and should be encouraged to simplify and unify their
7 sales and use tax systems, including systems impos-
8 ing transaction taxes on telecommunications.

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

15 (4) Congress may facilitate such simplification
16 and uniformity by virtue of its constitutional power
17 to regulate interstate commerce.

18 (5) If a sufficient number of States simplify
19 and unify their sales and use tax systems, the Con-
20 gress should consider authorizing those States to re-
21 quire sellers to collect taxes on sales of goods or
22 services delivered in-state.

23 (6) Authorizing the States to require out-of-
24 State sellers to collect transaction taxes should have
25 no impact on business activity tax or income tax

1 claims against sellers who lack nexus with the State.
 2 The rules regarding taxable presence, therefore,
 3 should be made clearer to reduce costly litigation be-
 4 tween out-of-State sellers and States.

5 (7) Online consumer privacy is of paramount
 6 importance to the growth of electronic commerce
 7 and must be protected in any simplified and unified
 8 State sales and use tax system.

9 **SEC. 3. EXTENSION OF INTERNET TAX FREEDOM ACT MOR-**
 10 **ATORIUM THROUGH 2006.**

11 (a) EXTENSION; INTERNET ACCESS TAXES.—Section
 12 1101 of the Internet Tax Freedom Act (47 U.S.C. 151
 13 nt.) is amended—

14 (1) by striking “taxes during the period begin-
 15 ning on October 1, 1998, and ending 3 years after
 16 the date of enactment of this Act—” in subsection
 17 (a) and inserting “taxes—”;

18 (2) by striking paragraph (1) of subsection (a)
 19 and inserting the following:

20 “(1) Taxes on Internet access.”;

21 (3) by inserting before “multiple” in paragraph
 22 (2) of subsection (a) the following: “During the pe-
 23 riod beginning on October 1, 1998, and ending on
 24 December 31, 2006,”;

25 (4) by striking subsection (d); and

1 (5) by redesignating subsections (e) and (f) as
2 subsections (d) and (e), respectively.

3 (b) CONFORMING AMENDMENT.—Section 1104(10)
4 of that Act (47 U.S.C. 151 nt) is amended by striking
5 “services unless such tax was generally imposed and actu-
6 ally enforced prior to October 1, 1998.” and inserting
7 “services.”.

8 **SEC. 4. SENSE OF THE CONGRESS.**

9 (a) IN GENERAL.—It is the sense of the Congress
10 that the following criteria are necessary elements of a
11 State law providing for a simplified sales and use tax sys-
12 tem for remote sales:

13 (1) The law provides a centralized, one-stop,
14 multi-state registration system for sellers.

15 (2) The law provides uniform definitions for
16 goods or services that are included in the tax base.

17 (3) The law provides uniform and simple rules
18 for attributing transactions to particular taxing ju-
19 risdictions.

20 (4) The law provides uniform rules for the des-
21 ignation and identification of purchasers and trans-
22 actions exempt from sales and use taxes, including
23 a database of all exempt entities and a rule ensuring
24 that reliance on that database immunizes sellers
25 from liability.

1 (5) The law provides uniform procedures for
2 the certification of software that sellers rely on to
3 determine State and local use tax rates and tax-
4 ability.

5 (6) The law provides uniform bad debt rules.

6 (7) The law provides uniform tax returns and
7 remittance forms.

8 (8) The law provides uniform electronic filing
9 and remittance methods.

10 (9) The law provides for State administration
11 of all State and local sales taxes and a single rate
12 and a single filing for all sales.

13 (10) The law—

14 (A) provides for uniform audit procedures
15 for out-of-State sellers; and

16 (B) includes an option under which a seller
17 that agrees to be subject to audit by any State
18 that uses those procedures is subject to no more
19 than 1 audit per year under those procedures.

20 (11) The law provides reasonable compensation
21 for tax collection by sellers.

22 (12) The law provides an exemption from use
23 tax collection requirements for out-of-State sellers
24 whose gross annual sales are less than a specified
25 threshold of not less than \$5,000,000.

1 (13) The law, or another State law, provides
2 protection for consumer privacy.

3 (14) The law provides for a single uniform
4 Statewide sales and use tax rate on all transactions
5 on which a sales or use tax is assessed.

6 (15) In any State that imposes a sales or use
7 tax on goods or services delivered via the Internet,
8 the law—

9 (A) provides an origin State default rule
10 for transactions where the location of the cus-
11 tomer is not disclosed during the transaction;
12 and

13 (B) permits the seller to rely upon infor-
14 mation given by the customer during the trans-
15 action.

16 (16) The law provides clear standards for deter-
17 mining the nexus of business activity, for tax pur-
18 poses, that limit business activity tax nexus to sell-
19 ers that have continuous and systematic contacts
20 with the State.

21 (17) Other features that will achieve a sim-
22 plified and uniform sales and use tax system.

23 (b) DEFINITIONS.—In this section:

24 (1) UNIFORM.—The term “uniform” when used
25 in reference to a tax, a procedure, a standard, or a

1 system of classification means that the tax, proce-
 2 dure, standard, or system—

3 (A) does not discriminate unreasonably be-
 4 tween sellers that have a business location or
 5 presence in a State and sellers that do not have
 6 a business location or presence in the State;
 7 and

8 (B) is not inconsistent with a similar tax,
 9 procedure, standard, or system employed by an-
 10 other State in which a seller is located or does
 11 business.

12 (2) ORIGIN STATE DEFAULT SYSTEM.—The
 13 term “origin State default system” means a system
 14 for determining the sales or use tax liability associ-
 15 ated with a purchase under which, if the seller can-
 16 not determine the State or residence of the pur-
 17 chaser from the purchase order, the seller may de-
 18 termine and compute the sales or use tax liability,
 19 if any, for the purchase according to the credit card
 20 information, payment address, delivery address, or
 21 other data in accordance with the law of the State
 22 in which the seller is located.

23 (3) LEASES AND LICENSES.—The term “sales”
 24 and the term “seller” include “leases” and “lessor”,
 25 respectively, and “licenses” and “licensor”, respec-

1 tively in any State in which the leasing or licensing
 2 of property, whether tangible or intangible, is treat-
 3 ed for purposes of a sales or use tax imposed by that
 4 State as the first retail sale of that property.

5 **SEC. 5. AUTHORIZATION TO REQUIRE COLLECTION OF USE**
 6 **TAXES.**

7 (a) FEDERAL AUTHORIZATION REQUIRED.—No
 8 State may require a seller, who lacks nexus with, or a tax
 9 obligation to, the State, to collect or remit sales or use
 10 tax on any sales in that State until Congress provides such
 11 authority to the States, by joint resolution under sub-
 12 section (b).

13 (b) JOINT RESOLUTION.—The Congress may author-
 14 ize the States to require sellers to collect a sales or use
 15 tax on sales of goods or services delivered in the taxing
 16 State under any law that meets the criteria set forth in
 17 section 4 only by the adoption of a joint resolution—

18 (1) the resolving clause of which is as follows:
 19 “That the Congress approves the State collection of
 20 sales or use taxes on goods or services delivered in
 21 a State without regard to the State in which the
 22 seller is physically present under the State laws de-
 23 scribed in section 4. This resolution does not apply
 24 to the collection of any State tax if the law under

1 which the tax is collected imposes multiple or dis-
 2 criminatory taxation.”; and

3 (2) the second section of which lists or de-
 4 scribes the State laws to which the resolution ini-
 5 tially applies.

6 (c) FAST-TRACK PROCEDURE FOR APPROVAL.—The
 7 procedures set forth in section 152 of the Trade Act of
 8 1974 (19 U.S.C. 2192) apply to the joint resolution de-
 9 scribed in subsection (b) of this section, except that—

10 (1) section 152(a) does not apply; and

11 (2) the references to the House of Representa-
 12 tives Committee on Ways and Means and the Senate
 13 Committee on Finance are deemed, for purposes of
 14 this section, to refer to the House of Representatives
 15 Committee on Commerce and the Senate Committee
 16 on Commerce, Science, and Transportation.

17 (d) APPLICATION WITH OTHER LAW.—This sub-
 18 section does not supersede section 1101 of the Internet
 19 Tax Freedom Act (47 U.S.C. 151 nt.)

20 (e) NO EFFECT ON NEXUS.—No obligation imposed
 21 by virtue of authority granted in the joint resolution de-
 22 scribed in subsection (b), or any provision of this Act, shall
 23 be considered in determining whether a seller has a nexus
 24 with, or other tax obligation to, any State for any tax

1 other than a sales or use tax. Nothing in this Act permits
2 a State—

3 (1) to license or regulate any person;

4 (2) to require any person to qualify to transact
5 intrastate business; or

6 (3) to subject any person to State taxes not ex-
7 pressly related to the authority granted by the joint
8 resolution described in subsection (b).

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