

PENDING

AMENDMENT NO.

CAL. NO.

[STAFF WORKING DRAFT]

April 27, 2003

Purpose: To extend the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act for 4 years, and for other purposes.

IN THE SENATE OF THE

AMENDMENT No. 3048

S. 150, 10

By McCain

To: S. 150

A

() Referred to the
order

8

Page(s)

() Ordered to

GPO: 2002 83-247(Mac)

INTENDED to be proposed by Mr. McCain

Viz: Strike out all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Internet Tax Non-
3 discrimination Act".

4 SEC. 2. FOUR-YEAR EXTENSION OF INTERNET TAX MORA-
5 TORIUM.

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

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

5 “(1) Taxes on Internet access.

6 “(2) Multiple or discriminatory taxes on elec-
7 tronic commerce.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 1101 of the Internet Tax Freedom
10 Act (47 U.S.C. 151 note) is amended by striking
11 subsection (d) and redesignating subsections (e) and
12 (f) as subsections (d) and (e), respectively.

13 (2) Section 1104(10) of the Internet Tax Free-
14 dom Act (47 U.S.C. 151 note) is amended to read
15 as follows:

16 “(10) TAX ON INTERNET ACCESS.—

17 “(A) IN GENERAL.—The term ‘tax on
18 Internet access’ means a tax on Internet access,
19 regardless of whether such tax is imposed on a
20 provider of Internet access or a buyer of Inter-
21 net access and regardless of the terminology
22 used to describe the tax.

23 “(B) GENERAL EXCEPTION.—The term
24 ‘tax on Internet access’ does not include a tax

1 levied upon or measured by net income, capital
2 stock, net worth, or property value.”.

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

8 (c) INTERNET ACCESS SERVICE; INTERNET AC-
9 CESS.—

10 (1) INTERNET ACCESS SERVICE.—Paragraph
11 (3)(D) of section 1101(d) (as redesignated by sub-
12 section (b)(1) of this section) of the Internet Tax
13 Freedom Act (47 U.S.C. 151 note) is amended by
14 striking the second sentence and inserting “The
15 term ‘Internet access service’ does not include tele-
16 communications services, except to the extent such
17 services are purchased, used, or sold by a provider
18 of Internet access to provide Internet access.”.

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

1 SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET
2 ACCESS.

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

5 (1) by redesignating section 1104 as section
6 1105; and

7 (2) by inserting after section 1103 the fol-
8 lowing:

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

11 **“(a) PRE-OCTOBER 1998 TAXES.—**

12 **“(1) IN GENERAL.—**Section 1101(a) does not
13 apply to a tax on Internet access that was generally
14 imposed and actually enforced prior to October 1,
15 1998, if, before that date, the tax was authorized by
16 statute and either—

17 **“(A)** a provider of Internet access services
18 had a reasonable opportunity to know, by virtue
19 of a rule or other public proclamation made by
20 the appropriate administrative agency of the
21 State or political subdivision thereof, that such
22 agency has interpreted and applied such tax to
23 Internet access services; or

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

1 “(2) TERMINATION.—This subsection shall not
2 apply after November 1, 2006.

3 “(b) PRE-NOVEMBER 2003 TAXES.—

4 “(1) IN GENERAL.—Section 1101(a) does not
5 apply to a tax on Internet access that was generally
6 imposed and actually enforced as of November 1,
7 2003, if, as of that date, the tax was authorized by
8 statute and—

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

16 “(B) a State or political subdivision there-
17 of generally collected such tax on charges for
18 Internet access.

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

21 **SEC. 4. ACCOUNTING RULE.**

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

1 **“SEC. 1106. ACCOUNTING RULE.**

2 “(a) IN GENERAL.—If charges for Internet access
3 are aggregated with and not separately stated from
4 charges for telecommunications services or other charges
5 that are subject to taxation, then the charges for Internet
6 access may be subject to taxation unless the Internet ac-
7 cess provider can reasonably identify the charges for Inter-
8 net access from its books and records kept in the regular
9 course of business.

10 “(b) DEFINITIONS.—In this section:

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

14 “(2) CHARGES FOR TELECOMMUNICATIONS
15 SERVICES.—The term ‘charges for telecommuni-
16 cations services’ means all charges for telecommuni-
17 cations services, except to the extent such services
18 are purchased, used, or sold by a provider of Inter-
19 net access to provide Internet access.”.

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

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

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

25 “(a) UNIVERSAL SERVICE.—Nothing in this Act shall
26 prevent the imposition or collection of any fees or charges

1 used to preserve and advance Federal universal service or
2 similar State programs—

3 “(1) authorized by section 254 of the Commu-
4 nications Act of 1934 (47 U.S.C. 254); or

5 “(2) in effect on February 8, 1996.

6 “(b) 911 AND E-911 SERVICES.—Nothing in this Act
7 shall prevent the imposition or collection, on a service used
8 for access to 911 or E-911 services, of any fee or charge
9 specifically designated or presented as dedicated by a
10 State or political subdivision thereof for the support of
11 911 or E-911 services if no portion of the revenue derived
12 from such fee or charge is obligated or expended for any
13 purpose other than support of 911 or E-911 services.

14 “(c) NON-TAX REGULATORY PROCEEDINGS.—Noth-
15 ing in this Act shall be construed to affect any Federal
16 or State regulatory proceeding that is not related to tax-
17 ation.”.

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

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

1 **“SEC. 1108. EXCEPTION FOR VOICE AND OTHER SERVICES**
2 **OVER THE INTERNET.**

3 “Nothing in this Act shall be construed to affect the
4 imposition of tax on a charge for voice or any other service
5 utilizing Internet Protocol or any successor protocol. This
6 section shall not apply to Internet access or to any services
7 that are incidental to Internet access, such as e-mail, text
8 instant messaging, and instant messaging with voice capa-
9 bility.”.

10 **SEC. 7. EFFECTIVE DATE.**

11 The amendments made by this Act take effect on No-
12 vember 1, 2003.

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