

AMENDMENT NO.

CAL. NO.

[STAFF WORKING DRAFT]

November 5, 2003

Purpose: 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, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**—108TH Cong., 1ST Sess.

**S. 150**, 108TH Congress, 1ST Session

NOVEMBER —, 2003

( ) Referred to the Committee on \_\_\_\_\_ and ordered to be printed

( ) Ordered to lie on the table and to be printed

INTENDED to be proposed by Mr. ALLEN (for himself, Mr. WYDEN, Mr. BURNS, Mr. ENSIGN, Mr. SUNUNU, Mr. WARNER, Mr. SMITH, Mr. LEAHY, Mr. GRASSLEY, Mr. HATCH, Mr. MCCAIN, Mr. BAUCUS, Mrs. BOXER, Mr. CHAMBLISS, and Mrs. LINCOLN)

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”.

1 **SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREE-**  
2 **DOM ACT MORATORIUM.**

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

6 “(a) MORATORIUM.—No State or political subdivision  
7 thereof may impose any of the following taxes:

8 “(1) Taxes on Internet access.

9 “(2) Multiple or discriminatory taxes on elec-  
10 tronic commerce.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 1101 of the Internet Tax Freedom  
13 Act (47 U.S.C. 151 note) is amended by striking  
14 subsection (d) and redesignating subsection (e) as  
15 subsection (d).

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

19 “(10) TAX ON INTERNET ACCESS.—

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

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

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

10          (c) INTERNET ACCESS SERVICE.—Section  
11 1101(e)(3)(D) (as redesignated by subsection (b)(1) of  
12 this section) of the Internet Tax Freedom Act (47 U.S.C.  
13 151 note) and section 1104(5) of that Act are each  
14 amended by striking the second sentence and inserting  
15 “The term ‘Internet access’ does not include telecommuni-  
16 cations services, except to the extent such services are pur-  
17 chased, used, or sold by a provider of Internet access to  
18 provide Internet access.”.

19 **SEC. 3. 3-YEAR SUNSET FOR PRE-OCTOBER, 1998, TAX EX-**  
20 **CEPTION.**

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

23           (1) by redesignating section 1104 as section  
24           1105; and

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

3           **“SEC. 1104. PRESERVATION OF PRE-OCTOBER, 1998, STATE**  
4                                   **AND LOCAL TAX AUTHORITY UNTIL 2006.**

5           “(a) IN GENERAL.—Section 1101(a) does not apply  
6 to a tax on Internet access that was generally imposed  
7 and actually enforced prior to October 1, 1998, if, before  
8 that date, the tax was authorized by statute and either—

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

15           “(2) a State or political subdivision thereof gen-  
16           erally collected such tax on charges for Internet ac-  
17           cess.

18           “(b) TERMINATION.—This section shall not apply  
19 after October 1, 2006.

20           “(c) TAX ON INTERNET ACCESS.—Notwithstanding  
21 section 1105(10), in this section the term ‘tax on Internet  
22 access’ includes the enforcement or application of any pre-  
23 existing tax on the sale or use of Internet services if that  
24 tax was generally imposed and actually enforced prior to  
25 October 1, 1998.”.

1 **SEC. 4. ACCOUNTING RULE.**

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

4 **“SEC. 1106. ACCOUNTING RULE.**

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

13 “(b) DEFINITIONS.—In this section:

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

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

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

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

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

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

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

8 “(2) in effect on February 8, 1996.

9 “(b) 911 AND E-911 SERVICES.—Nothing in this Act  
10 shall prevent the imposition or collection of any fees or  
11 charges on a service used for access to 911 or E-911 serv-  
12 ices if the fees or charges are used to support 911 or E-  
13 911 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.”.

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