

[STAFF WORKING DRAFT]

JANUARY 28, 2004

108TH CONGRESS
2D SESSION

S. _____

To revive and extend the Internet Tax Freedom Act for 2 years, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY _____, 2004

Mr. _____ (for himself, Mr. _____, and Mr. _____) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To revive and extend the Internet Tax Freedom Act for 2 years, and for other purposes.

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 Access Tax
5 Ban Extension and Improvement Act”.

1 **SEC. 2. 2-YEAR EXTENSION OF MORATORIUM.**

2 Section 1101(a) of the Internet Tax Freedom Act (47
3 U.S.C. 151 nt) is amended—

4 (1) by striking “2003—” and inserting
5 “2005.”;

6 (2) by striking paragraph (1) and inserting the
7 following:

8 “(1) Taxes on Internet access.”; and

9 (3) by striking “multiple” in paragraph (2) and
10 inserting “Multiple”.

11 **SEC. 3. EXCEPTIONS FOR CERTAIN TAXES.**

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

14 (1) by redesignating section 1104 as section
15 1105; and

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

18 **“SEC. 1104. EXCEPTIONS FOR CERTAIN TAXES.**

19 “(a) PRE-OCTOBER, 1998, TAXES.—Section 1101(a)
20 does not apply to a tax on Internet access (as that term
21 was defined in section 1104(5) of this Act as that section
22 was in effect on the day before the date of enactment of
23 the Internet Access Tax Ban Extension and Improvement
24 Act) that was generally imposed and actually enforced
25 prior to October 1, 1998, if, before that date, the tax was
26 authorized by statute and either—

1 “(1) a provider of Internet access services had a
2 reasonable opportunity to know by virtue of a rule
3 or other public proclamation made by the appro-
4 priate administrative agency of the State or political
5 subdivision thereof, that such agency has interpreted
6 and applied such tax to Internet access services; or

7 “(2) a State or political subdivision thereof gen-
8 erally collected such tax on charges for Internet ac-
9 cess.

10 “(b) TAXES ON TELECOMMUNICATIONS SERVICES.—
11 Section 1101(a) does not apply to a tax on Internet access
12 that was generally imposed and actually enforced as of
13 November 1, 2003, if, as of that date, the tax was author-
14 ized by statute and either—

15 “(1) a provider of Internet access services had a
16 reasonable opportunity to know by virtue of a rule
17 or other public proclamation made by the appro-
18 priate administrative agency of the State or political
19 subdivision thereof, that such agency has interpreted
20 and applied such tax to Internet access services; or

21 “(2) a State or political subdivision thereof gen-
22 erally collected such tax on charges for Internet ac-
23 cess service.”.

1 **SEC. 4. CHANGE IN DEFINITIONS OF INTERNET ACCESS**

2 **SERVICE.**

3 (a) IN GENERAL.—Paragraph (3)(D) of section
4 1101(e) of the Internet Tax Freedom Act (47 U.S.C. 151
5 note) is amended by striking the second sentence and in-
6 serting “The term ‘Internet access service’ does not in-
7 clude telecommunications services, except to the extent
8 such services are purchased, used, or sold by an Internet
9 access provider to connect a purchaser of Internet access
10 to the Internet access provider.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Paragraph (2)(B)(i) of section 1105 of that
13 Act, as redesignated by subsection (a), is amended
14 by striking “except with respect to a tax (on Inter-
15 net access) that was generally imposed and actually
16 enforced prior to October 1, 1998,”.

17 (2) INTERNET ACCESS.—Paragraph (5) of sec-
18 tion 1105 of that Act, as redesignated by subsection
19 (a), is amended by striking the second sentence and
20 inserting “The term ‘Internet access’ does not in-
21 clude telecommunications services, except to the ex-
22 tent such services are purchased, used, or sold by an
23 Internet access provider to connect a purchaser of
24 Internet access to the Internet access provider.”.

1 (3) Paragraph (10) of section 1105 of that Act,
2 as redesignated by subsection (a), is amended to
3 read as follows:

4 “(10) TAX ON INTERNET ACCESS.—

5 “(A) IN GENERAL.—The term ‘tax on
6 Internet access’ means a tax on Internet access,
7 regardless of whether such tax is imposed on a
8 provider of Internet access or a buyer of Inter-
9 net access and regardless of the terminology
10 used to describe the tax.

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

15 **SEC. 5. ACCOUNTING RULE.**

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

18 **“SEC. 1106. ACCOUNTING RULE.**

19 “(a) IN GENERAL.—If charges for Internet access
20 are aggregated with and not separately stated from
21 charges for telecommunications services or other charges
22 that are subject to taxation, then the charges for Internet
23 access may be subject to taxation unless the Internet ac-
24 cess provider can reasonably identify the charges for Inter-

1 net access from its books and records kept in the regular
2 course of business.

3 “(b) DEFINITIONS.—In this section:

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

7 “(2) CHARGES FOR TELECOMMUNICATIONS
8 SERVICES.—The term ‘charges for telecommuni-
9 cations services’ means all charges for telecommuni-
10 cations services except to the extent such services
11 are purchased, used, or sold by an Internet access
12 provider to connect a purchaser of Internet access to
13 the Internet access provider.”.

14 **SEC. 6. EFFECT ON OTHER LAWS.**

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

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

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

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

25 “(2) in effect on February 8, 1996.

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

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

13 **SEC. 7. EFFECTIVE DATE.**

14 The amendments made by this Act take effect No-
15 vember 1, 2003.

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