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Internet Taxation: Bills in the 106th Congress

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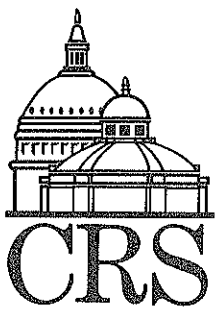

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ABSTRACT

This report reviews the bills introduced in the 106th Congress involving taxation of the Internet. It is organized in three sections, according to whether the bills address (1) state and local taxation; (2) federal taxes, charges, and fees; or (3) foreign taxes and tariffs on the Internet. It describes two measures passed in 1999 opposing international taxation of the Internet. It briefly explains the main issues differentiating the bills on state and local taxation of the Internet. It describes the legislative evolution of H.R. 3709, which passed the House on May 10, 2000, and summarizes several bills introduced in response to the final report of the Advisory Commission on Electronic Commerce, submitted to Congress in April 2000. This report will not be updated.

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Internet Taxation: Bills in the 106th Congress

Summary

The Internet Tax Freedom Act (ITFA), enacted in 1998, placed a 3-year moratorium on the ability of state and local governments to impose new taxes on Internet access, or to impose any multiple or discriminatory taxes on electronic commerce. The moratorium is scheduled to expire on October 21, 2001. The ITFA also created the Advisory Commission on Electronic Commerce (ACEC) to study the taxation of electronic commerce and telecommunications. The Commission submitted its final report to Congress on April 12, 2000, but was unable to reach the two-thirds majority vote required to make formal recommendations on key issues involving the taxation of sales transacted over the Internet.

Internet sales are currently taxed like mail order sales. That is, for interstate sales, sellers are obligated to collect the sales and use tax from the customer and remit it to the buyer's home state only if the seller has a "physical presence" in the buyer's state. The buyer otherwise remains legally obligated to pay the use tax to his home state. In practice, however, individuals seldom voluntarily remit use taxes to their home state on purchases from out-of-state.

Numerous bills to regulate taxation of the Internet were introduced in the 106th Congress. A few were approved in one or both Houses. In 1999, Congress passed two measures opposing international taxation of the Internet: a restriction in the FY2000 appropriation for the Department of State and H.Con.Res. 190. On May 10, 2000, the House approved H.R. 3709 which would have extended the current moratorium on state and local taxes for five years, but removed the grandfathering protection the ITFA provided for state and local taxes on Internet access that were already in place in ten states in 1998. H.R. 3709 also expressed a sense of Congress listing qualities that a state tax relating to electronic commerce should contain to avoid being subject to the moratorium. On May 16, 2000, the House approved H.R. 1291 which would have prohibited the Federal Communications Commission (FCC) from imposing per-minute-of-use access charges on providers of Internet data service.

Many other bills were introduced but not acted upon. Some would extend the current moratorium by five years. Others would make it permanent. Some would both make the moratorium permanent and expand its scope to ban any state and local sales or use taxes on electronic commerce. In conjunction with the final report of the Advisory Commission on Electronic Commerce, several bills were introduced addressing sales and use taxation of the Internet. Bills representing the "majority proposals," drafted by the Business Caucus of the Commission, define what would *not* be considered "physical presence" for purposes of determining nexus for interstate e-commerce. Bills representing the Commission's "minority proposals" present guidelines for the simplification of state sales taxes; some also offer a mechanism to authorize states complying with simplification to require sellers to collect and remit use taxes on interstate sales. In contrast, one bill would create a 5% federal retail sales tax applicable to interstate Internet commerce and mail order sales and would return the revenue to the states to supplement state and local funding for teachers' salaries and benefits. This report will not be updated.

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Internet Taxation: Bills in the 106th Congress

This report describes the bills introduced in the 106th Congress addressing taxation of the Internet. As background, the first section of the report provides a brief description of the main provisions of the Internet Tax Freedom Act. The second section provides an overview of the bills introduced in the 106th Congress. It is organized according to whether the bills primarily involve (1) state and local taxation; (2) federal taxes, charges, and fees; or (3) foreign taxes and tariffs. The third section lists congressional hearings on Internet taxation. The final section provides references, including several Websites that follow the Internet tax issue.

This report does not attempt to discuss the policy arguments for and against these legislative proposals. Rather, it points out major issues differentiating the bills. The report will not be updated.

Background: The Internet Tax Freedom Act

The Internet Tax Freedom Act (ITFA) was enacted on October 21, 1998, as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[1,2] The Act imposed a 3-year moratorium on the ability of state or local governments to impose new taxes on "Internet access services" or to impose any "multiple or discriminatory taxes on electronic commerce." The moratorium is scheduled to expire on October 21, 2001. The Act expressed Congress's opposition to imposing new federal taxes on the Internet and to international taxes, tariffs, and regulation of the Internet and telecommunications.

The Act also created the Advisory Commission on Electronic Commerce (ACEC) to study a variety of issues related to the taxation of electronic commerce and telecommunications. The Commission presented its final report to Congress on April 12, 2000.[3] Only a few of the proposals before the Commission received the two-thirds vote needed to qualify as a formal recommendation of the Commission. However, Virginia Governor James Gilmore, chairman of the Advisory Commission, ruled that any proposal receiving votes from a simple majority of the 19 Commission

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[1]The Internet Tax Freedom Act comprises Titles XI and XII of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (H.R. 4328, P.L. 105-277, 112 Stat. 2681).

[2]For an account of the legislative evolution of the Internet Tax Freedom Act, see CRS Report 98-509 E, *Internet Tax Bills in the 105th Congress*, by Nonna A. Noto, final version, December 31, 1998.

[3]The text of the *Report to Congress* is available on the website of the Advisory Commission on Electronic Commerce [http://www.ecommercecommission.org].

members could be included in the final report, but it would be labeled as a "majority proposal" rather than a "recommendation."

Under the Act's definition of discriminatory taxes, sales transacted through electronic commerce are to be treated the same way as catalog or mail order sales. Under current law, for interstate sales that means a seller in another state can only be required to collect the sales and use tax and remit it to the buyer's home state government if the seller has a substantial nexus, defined as physical presence, in the buyer's state.[4] The legal obligation to pay a "use tax" to one's home state nonetheless remains with the consumer. In practice, few individuals voluntarily remit use taxes to their home state.[5]

Bills in the 106th Congress

This section offers an overview of the bills introduced in the 106th Congress regarding taxation of the Internet. It is organized according to whether the bills primarily address issues of (1) state and local, (2) federal, or (3) international taxation of the Internet. Each part begins with a summary discussion of all the bills in the group. This is followed by a separate entry for each piece of legislation which gives details on the bill's content and congressional action to date.

A few bills were approved in one or both Houses. In May 2000, the House approved two bills which did not receive Senate action. H.R. 3709 would have extended for five years the current moratorium on state and local taxation of the Internet. H.R. 1291 would have prohibited FCC (Federal Communications Commission) access charges on providers of Internet data services. During 1999, Congress approved two provisions opposing international taxation of the Internet: a restriction in the FY2000 appropriation for the Department of State and H.Con.Res. 190. All the other bills listed were introduced, but not voted upon.

State and Local Taxes

Four basic issues differentiate the bills addressing state and local taxation of the Internet. These issues are explained briefly in these introductory paragraphs. Next, H.R. 3709, which passed the House on May 10, 2000, is summarized as a benchmark for the discussion that follows. The issues are then discussed in more detail, with references to specific bill numbers and comparison to H.R. 3709.[6] Finally, individual bills are described, in numerical order.

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[4]For further explanation of current law, see CRS Report RS20577, *State Sales Taxation of Internet Transactions*, by John R. Luckey.

[5]For an introduction to the economics of state and local sales and use taxes and related electronic commerce issues, see CRS Report RL30431, *Internet Transactions and the Sales Tax*, by Steve Maguire.

[6]These issues are the focus of CRS Report RL30667, *Internet Tax Legislation: Distinguishing Issues*, by Nonna A. Noto.

The first issue differentiating the Internet tax bills is the position taken on the *extension of the current 3-year moratorium*. Like H.R. 3709 which passed the House May 10, 2000, several other bills would extend the current moratorium on state and local taxation of the Internet by five years. Others would extend the moratorium by two or four years. Still other bills would convert the temporary moratorium into a permanent ban. Some bills would make the ban on Internet access taxes permanent, but would temporarily extend the moratorium against multiple and discriminatory taxes on electronic commerce.

A second issue is whether or not to continue the *grandfathering protection* provided by the Internet Tax Freedom Act for state and local taxes on Internet access that were already in place at the time of enactment. Some bills would continue the grandfathering. Others would remove this grandfathering protection, thereby banning all state and local taxes on Internet access.

A third issue is whether the *scope of the moratorium* will be extended to explicitly protect electronic commerce from sales and use taxation. A distinction is sometimes made between the tax treatment of digitized goods that are both sold and delivered over the Internet, and more traditional goods and services that are sold over the Internet but delivered otherwise, in tangible physical form.

A fourth issue is whether to move toward or away from *applying sales and use taxes to transactions arranged over the Internet*. Several bills were introduced in response to the final report of the Advisory Commission on Electronic Commerce (ACEC), presented to Congress in April 2000. Some bills represent the so-called "majority proposals" drafted by the Business Caucus of the Advisory Commission and included in the Commission's final report. These bills would help protect many sales over the Internet from taxation by defining what would *not* be considered "physical presence" for purposes of determining nexus for interstate e-commerce.

Other bills represent the so-called ACEC "minority proposals." These proposals were not included in the final report of the Advisory Commission, but have been presented separately as part of the Streamlined Sales Tax Project, represented by Utah Governor Mike Leavitt, a member of the ACEC. All of these bills propose guidelines for the simplification of state and local sales taxes. However, some bills pursue simplification as a means to encourage a system of voluntary compliance by remote sellers. Other bills provide a formal mechanism whereby the Congress would grant states the authority to require out-of-state sellers to collect and remit use taxes if the states complied with certain criteria for sales tax simplification.

These issues will now be discussed in more detail. Specific bill numbers are mentioned under each topic. Some of the bills addressing state and local taxation of the Internet contain multiple provisions and therefore may be mentioned under more than one subheading.

H.R. 3709 passed the House. On May 10, 2000, the House approved an amended version of H.R. 3709[7] which would have extended the current moratorium on state and local taxation of the Internet for five additional years, until October 21, 2006. H.R. 3709 would have eliminated the current law's "grandfather" provision that permits states to continue to levy taxes on Internet access that were already in place at the time the Internet Tax Freedom Act was enacted.

H.R. 3709 expressed the sense of Congress that, to avoid being characterized as multiple or discriminatory (and consequently subject to the moratorium) a state tax relating to electronic commerce should include 14 listed features.[8] These features relate to achieving simplification and interstate standardization of state and local sales taxes. While this sense of Congress provision had no enforcement authority, it acknowledged the issue of state and local sales tax simplification. (The legislative evolution of H.R. 3709 is discussed below in the Legislation section.)

Temporarily extend moratorium. Like H.R. 3709 which passed the House, four other bills also proposed to extend the current moratorium by five years. S. 2255 (McCain) would solely extend the current moratorium by five years. H.R. 4202 (Ehrlich) would extend the current moratorium by five years, in addition to addressing the levying of FCC charges and regulatory fees on the Internet (described in the section below on Federal Taxes, Charges, and Fees). H.R. 4267 (Hyde and Conyers, ACEC majority) would provide a five-year extension to the current moratorium on state and local, multiple and discriminatory taxes on electronic commerce, but would make the ban on Internet access taxes permanent; it would also expand the scope of the moratorium for five years (discussed below). H.R. 4462 (Bachus) would extend the moratorium for five years, and S. 2775 (Dorgan) for four years, both while pursuing sales tax simplification and congressional authorization for states to require collection.

H.R. 4460 (Hyde and Conyers, ACEC minority) would extend the moratorium on taxes on Internet access by five years and the moratorium on multiple and discriminatory taxes by two years. H.R. 4267 (Hyde and Conyers, ACEC majority) would extend the moratorium on multiple or discriminatory taxes for five years and impose a new five-year moratorium on taxation of digitized goods and products and their nondigitized counterparts, but would make the ban on Internet access taxes permanent.

Make moratorium permanent. Three bills would solely make permanent the current three-year federal moratorium on state and local taxes on the Internet enacted in 1998: S. 328 (Smith, B.), S. 2028 (Wyden), and S. 2036(Smith, B.). Two bills would both make the moratorium permanent and expand the scope of the moratorium to ban any sales and use taxes on electronic commerce: S. 1611 (McCain) and H.R. 3252 (Kasich and Boehner). H.R. 4267 (Hyde and Conyers, ACEC majority) would make the ban on Internet access taxes permanent, but would extend the moratorium

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[7]The version of H.R. 3709 passed by the House differed from the version originally introduced by Representative Cox, which solely would have made the moratorium permanent.

[8]The features are listed below in a footnote to the section on "Simplification of state and local use taxes."

on multiple or discriminatory taxes for five years, and impose a new five-year moratorium on taxation of digitized goods and products and their nondigitized counterparts.

Grandfathering protection for access taxes. Like H.R. 3709 which passed the House, H.R. 3252 (Kasich and Boehner) and H.R. 4267 (Hyde) would remove the grandfathering protection provided in the Internet Tax Freedom Act for taxes on Internet access that were in place prior to October 1, 1998.[9] In contrast, any bill that simply extends the current moratorium or makes the moratorium permanent would extend the grandfathering protection. H.R. 4460 (Hyde and Conyers, ACEC minority) and S. 1611 (McCain) would explicitly continue to grandfather existing taxes on Internet access.

Expand scope of moratorium. H.R. 4267 (Hyde and Conyers, ACEC majority) would expand the scope of the moratorium to include taxes on sales of digitized goods and products – and their non-digitized counterparts. This approach would approach the goal of a "level playing field," or nondiscriminatory tax treatment, not by extending the sales tax to e-commerce, but rather by removing from the sales tax base non-digitized counterparts that are currently subject to tax in most states, such as books, videos, and music CDs.

S. 1611 (McCain) and H.R. 3252 (Kasich and Boehner) would expand the moratorium to ban any sales and use taxes on electronic commerce. This would pre-empt existing state authority to have sales taxes collected by e-commerce vendors on within-state sales to individuals and businesses; to have businesses pay use taxes on their e-commerce purchases from out-of-state; and for states to make efforts to collect use taxes from resident individuals on their out-of-state purchases over the Internet.

Codify e-commerce nexus guidelines. Two bills offer new physical presence nexus guidelines to help protect interstate e-commerce from state sales and use taxation, as well as from business activity or income taxes. The guidelines also would apply to other interstate commerce, not just activity conducted over the Internet. These guidelines are one of several components of H.R. 4267 (Hyde and Conyers, ACEC majority), which includes other majority proposals from the Commission's

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[9]According to the Federation of Tax Administrators (FTA) as of May 10, 2000, there were 10 states with taxes of various types on Internet access that are protected by the grandfathering provision of the ITFA. Connecticut, Hawaii, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, and Wisconsin levy their regular retail sales tax on Internet access. (The Connecticut tax is scheduled for repeal effective July 1, 2001.) New Hampshire applies a telecommunications services tax to two-way communications provided by certain types of entities, including Internet access provided by cable TV companies. Washington state has a business and occupations tax, which is a gross receipts tax levied on all entities doing business in the state, including firms offering Internet access. The FTA estimates a combined revenue loss of $75 million for these 10 states for the fiscal year beginning July 1, 2000. In addition, Montana is currently prevented by the moratorium from applying to Internet access charges its retail telecommunications excise tax which is levied on two-way voice, video, and data communications, regardless of the medium.

report.[10] Codifying new nexus guidelines is the main purpose of S. 2401 (Gregg and Kohl), which defines a new term, "substantial physical presence."

Voluntary system or authorize states to require collection by sellers. A major issue differentiating the bills is whether the bill would simply endorse sales tax simplification as a means of encouraging voluntary cooperation by sellers, or whether the bill would have Congress grant a state the authority to require out-of-state sellers to collect and remit use taxes to the buyer's home state if that state meets certain criteria for simplifying its sales and use tax system. H.R. 4460 (Hyde and Conyers, ACEC minority), H.R. 4462 (Bachus), and S. 2775 (Dorgan) provide a mechanism in the form of a multistate compact through which Congress would grant a participating state the authority to require collection if the state conformed with certain simplification requirements including a single, uniform state-wide use-tax rate for remote sellers. H.R. 3709 which passed and H.R. 4267 (Hyde and Conyers, ACEC majority) endorse simplification of state and local sales and use taxes, but do not offer the states authority to require collection.

Simplification of state and local use taxes. There is widespread agreement that states need to simplify their systems of state and local sales and use taxes and make them more uniform across the states if they hope to improve collection of use taxes on interstate sales. The need for simplification applies regardless of whether this is to occur through voluntary collection by remote sellers or through authorization from the Congress for states to require collection by sellers. Reflecting the general consensus for simplification, a large number of bills include, with some small variations, the same list of 14 criteria for simplification and uniformity included in H.R. 3709 which passed the House.[11] These are H.R. 4267 (Hyde and Conyers,

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[10]The factors included in H.R. 4267 that are not to be considered as evidence of physical presence are (in the language of the Report of the Advisory Commission on Electronic Commerce):
(1) a seller's use of an Internet service provider (ISP) that has a physical presence in a state;
(2) the placement of a seller's digital data on a server located in that particular state;
(3) a seller's use of telecommunications services provided by a telecommunications provider that has physical presence in that state;
(4) a seller's ownership of intangible property that is used or is present in that state;
(5) the presence of a seller's customers in a state;
(6) a seller's affiliation with another taxpayer that has physical presence in that state;
(7) the performance of repair or warranty services with respect to property sold by a seller that does not otherwise have physical presence in that state;
(8) a contractual relationship between a seller and another party located within that state that permits goods or products purchased through the seller's Web site or catalogue to be returned to the other party's physical location within that state; and
(9) the advertisement of a seller's business location, telephone number, and Web site address.

[11]The 14 sales and use tax simplification criteria listed in H.R. 3709 are:
(1) a centralized, one-stop, multi-state registration system for sellers;
(2) uniform definitions for goods or services that might be included in the tax base;
(3) uniform and simple rules for attributing transactions to particular taxing jurisdictions;
(4) uniform rules for the designation and identification of purchasers exempt from the non-multiple and non-discriminatory tax system, including a database of all exempt entities and

(continued...)

ACEC majority), H.R. 4460 (Hyde and Conyers, ACEC minority), H.R. 4462 (Bachus), and S. 2775 (Dorgan).

Work through NCCUSL or Streamlined Sales Tax System Project. The bills supporting sales tax simplification may differ in terms of which of two organizations they endorse to oversee the simplification effort – the National Conference of Commissioners on Uniform State Laws (NCCUSL) or the Streamlined Sales Tax Project (SSTP).

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is a long-standing non-profit association, founded in 1892. Through NCCUSL, the commissioners of uniform state laws from each state join together to promote uniformity in laws among the states. They study existing laws and then draft and propose specific model statutes or uniform legal codes in areas of the law where uniformity seems desirable. The NCCUSL is perhaps best known for developing the Uniform Commercial Code (UCC). For a uniform code proposed by NCCUSL to take effect, it must be approved by individual state legislatures. It may be adopted either exactly as written or adapted to the particular preferences of a state. Drafting and enacting a uniform act is typically a lengthy process. For example, it took ten years for the NCCUSL to draft the Uniform Commercial Code and another 14 years before it was enacted by states across the country.[12] H.R. 4267 (Hyde and Conyers, ACEC majority), H.R. 4460 (Hyde and Conyers, ACEC minority), and S. 2775 (Dorgan) call upon the involvement of NCCUSL in the simplification of the sales tax system.

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[11](...continued)
a rule ensuring that reliance on such database shall immunize sellers from liability;
(5) uniform procedures for the certification of software that sellers rely on to determine non-multiple and non-discriminatory taxes and taxability;
(6) uniform bad debt rules;
(7) uniform tax returns and remittance forms;
(8) consistent electronic filing and remittance methods;
(9) state administration of all non-multiple and non-discriminatory taxes;
(10) uniform audit procedures;
(11) reasonable compensation for tax collection that reflects the complexity of an individual state's tax structure, including the structure of its local taxes;
(12) exemption from use tax collection requirements for remote sellers falling below a specified de minimis threshold;
(13) appropriate protections for consumer privacy; and
(14) such other features that the member states deem warranted to remote [sic, instead of promote] simplicity, uniformity, neutrality, efficiency, and fairness.

These features reflect considerations raised in the Advisory Commission on Electronic Commerce's *Report to Congress* as well as efforts currently underway under the Streamlined Sales Tax Project sponsored by the National Governors' Association and other state and local umbrella groups.

[12]More information about the National Conference of Commissioners on Uniform State Laws is available on their Web site [http://www.nccusl.org].

The Streamlined Sales Tax Project (SSTP) is an ad hoc effort that began in September 1999 as an outgrowth of the proposals of the "minority" on the Advisory Commission on Electronic Commerce, who primarily represented state and local governments. The SSTP is a voluntary, cooperative effort among state governments. The project has two main components. One is to simplify state and local sales and use taxes and standardize their administration among the states. The other is to identify both the computer software and a financial transmission system that could be used to implement the collection of use taxes on out-of-state sales at a reasonable cost, for which vendors could be compensated by the states. The Streamlined Sales Tax Project's motivating purpose was to reduce the complexity of the sales tax system sufficiently that remote sellers would be willing to voluntarily collect and remit use taxes on out-of-state sales, or that Congress would eventually be willing to authorize states to require use tax collection by remote sellers. The SSTP has been holding meetings with the aim of formulating model legislation in time to present to state legislatures in 2001. The SSTP also planned to conduct a pilot project, beginning October 2000, to test the capabilities of existing tax collection software under current sales tax law.[13] H.R. 4462 (Bachus) encourages the states to work voluntarily through the Streamlined Sales Tax System Project.

Uniform state-wide rate or local-option rate. One of the commonly listed guidelines for sales tax simplification is that each state have a single, uniform, statewide use tax rate applicable to all remote sales (purchases made from out-of-state). An average local sales tax rate could be added to the state rate. But remote (out-of-state) sellers could only be expected to apply one combined tax rate to a purchase by a customer from any locality in a given state. That is, remote sellers could not be expected to administer varying local-option taxes. The findings section of H.R. 4460 (Hyde and Conyers, ACEC minority) would have the state administer all taxes and distribute revenues to subdivisions of the state "according to precedent and applicable State law." None of the other bills addresses how states would distribute the local portion of the use tax collections among their local governments.

Some local government representatives want to leave open the possibility of having remote sellers collect the actual local tax levy. They argue that computer software is, or will soon be, available to make that feasible at a reasonable administrative cost. S. 2775 (Dorgan) provides that a remote seller has the annual option of collecting the actual applicable state and local use taxes throughout a state, as an alternative to collecting a single, uniform, state-wide use-tax rate.

Legislation

H.R. 3252 (Kasich and Boehner). The *Internet Tax Elimination Act* was introduced November 8, 1999, and referred to the Committee on the Judiciary and the Committee on Ways and Means. It would expand the scope of the moratorium and make it permanent.

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[13]More information about the Streamlined Sales Tax Project is available on their Web site [http://www.streamlinedsalestax.org] or [http:www.geocities.com/streamlined2000/].

Like S. 1611, H.R. 3252 would broaden the scope of the moratorium to explicitly ban "any sales or use tax on domestic or foreign goods or services acquired through electronic commerce." H.R. 3252 would remove the grandfathering protection provided under the Internet Tax Freedom Act for state and local taxes on Internet access that were imposed and enforced prior to October 1, 1998.

H.R. 3252 contains a sense-of-Congress section which includes the detailed international tax recommendations made in H.Con.Res. 190 (approved, see below under Foreign Taxes and Tariffs), as well as the broader international statement found in S. 1611(McCain).[14] It expresses opposition to "bit" taxes in addition to the multiple and discriminatory taxation and tariffs enumerated in the original Internet Tax Freedom Act. H.R. 3252 makes specific separate reference to electronic commerce, the Internet, and electronic transmissions.

H.R. 3709 (Cox). The *Internet Nondiscrimination Act of 2000* was introduced February 29, 2000, and referred to the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law. The original bill was a companion to S. 2028 (Wyden). The original version of the bill would have made the current moratorium permanent and made no other changes to the Internet Tax Freedom Act. However, on May 4, 2000, the House Judiciary Committee approved, by a vote of 29-8, an amendment proposed by Representative Goodlatte. H.R. 3709, as amended and approved by the Judiciary Committee, would extend the current moratorium by an additional five years, until October 21, 2006. It would eliminate the "grandfathering" provision under current law which protects the state and local taxes on Internet access that were already in place when the Internet Tax Freedom Act was enacted in October 1998.

On May 10, 2000, the House approved H.R. 3709 by a vote of 352 to 75. The full House added to the Judiciary Committee substitute amendment an amendment by Rep. Istook which became section 4 of the bill. Section 4 expresses the sense of Congress that, to avoid being characterized as multiple or discriminatory, a state tax relating to electronic commerce should include 14 listed features which relate to

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[14] Specifically, H.R. 3252, like H.Con.Res. 190 (approved), would have the President:

> 1) seek a global consensus supporting a permanent international ban on tariffs on electronic commerce and an international ban on bit, multiple, and discriminatory taxation of electronic commerce and the Internet;
> 2) seek to make permanent and binding the moratorium on tariffs on electronic transmissions adopted by the World Trade Organization (WTO) in May 1998;
> 3) seek adoption by the Organization for Economic Cooperation and Development (OECD), and implementation by its 29 member countries, of an international ban on bit, multiple, and discriminatory taxation of electronic commerce and the Internet; and
> 4) oppose any proposal to establish a "bit tax" on electronic transmissions--by any country, the United Nations, or any multilateral organization.

H.R. 3252 also includes the provision found in S. 1611 instructing U.S. trade representatives to advocate the firm position of the United States that "...electronic commerce conducted via the Internet should not be burdened by national or local regulation, taxation, or the imposition of tariffs...."

achieving simplification of the sales and use tax and uniformity across state and local governments.[15]

Also on May 10, 2000, the House rejected an amendment (by Rep. Delahunt) which would have extended the moratorium for two years and one (by Rep. Chabot) that would have extended the moratorium for 99 years. It also rejected a motion (by Rep. Conyers) to recommit the bill to the Judiciary Committee with instructions to report it back with a two-year extension of the moratorium.

No hearings were held on the bill. H.R. 3709 was considered under a rule that waived clause 4(a) of rule XIII that requires a three-day layover of the committee report, which was introduced the night of May 8, 2000. A point of order was raised, but ignored, that the bill is an unfunded intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), according to the judgment of the Congressional Budget Office. That is, the bill would cost state and local governments lost revenues in excess of the statutory threshold of $55 million per year, at some point over the next five years. CBO points out that the removal of the grandfathering protection for Internet access taxes currently in place, in itself, is estimated to cause revenue losses above the threshold, based on estimates of actual revenue collections. Added to this would be revenue losses attributable to the other part of the moratorium, against multiple and discriminatory taxes on Internet commerce. These prospective revenue losses – for taxes which do not currently exist – cannot be observed, but only estimated.

U.S. Congress. House. Committee on the Judiciary. *Internet Nondiscrimination Act of 2000*. Report together with Minority Views to accompany H.R. 3709. 106th Cong., 2d Sess., H. Rept. No. 106-609, May 8, 2000.

U.S. Congressional Budget Office. H.R. 3709: Internet Nondiscrimination Act of 2000. Mandates Statement, as ordered reported by the House Committee on the Judiciary on May 4, 2000. Washington, May 8, 2000. Available through the CBO Home Page at [http://www.cbo.gov].

H.R. 4202 (Ehrlich). The *Internet Services Promotion Act of 2000* was introduced April 6, 2000, and referred to the Committee on Commerce, Subcommittee on Telecommunications, Trade, and Consumer Protection, and to the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law. It would extend the current moratorium imposed by the Internet Tax Freedom Act by an additional five years, until October 21, 2006.

In addition, H.R. 4202 would prohibit the Federal Communications Commission from imposing on the provision of Internet access services any interstate access charges (for the support of universal service or other access charges) that are based on a measure of the time the telecommunications services are used. It would also prohibit imposing other FCC regulatory fees on providers of Internet access services. A hearing was held by the Commerce Committee's Telecommunications

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[15]The 14 features are listed above in footnote 11 to the section on "Simplification of state and local use taxes."

Subcommittee on May 3, 2000. See the discussion of H.R. 4202 and H.R. 1291 (which passed the House) in the section below on Federal Taxes, Charges, and Fees.

H.R. 4267 (Hyde and Conyers, ACEC majority).[16] The *Internet Tax Reform and Reduction Act of 2000* was introduced April 13, 2000, and referred to the Committee on the Judiciary. It puts into legislative language many of the "majority proposals" included in the final report of the Advisory Commission on Electronic Commerce, submitted to Congress on April 12, 2000.

H.R. 4267 would make permanent the current moratorium on state and local taxes on Internet access. It would extend for five years the current moratorium on multiple and discriminatory taxes on electronic commerce. It would impose a new five-year moratorium on the taxation of sales of digitized goods and products, and their nondigitized counterparts. It would encourage states to adopt both a uniform sales and use tax act and a uniform telecommunications state and local excise tax act.

State and local governments would be encouraged (through a sense of the Congress resolution) to work with the National Conference of Commissioners on Uniform State Laws (NCCUSL) to develop and draft a Uniform Sales and Use Tax Act by October 21, 2004. This would be a major simplification and standardization of the existing state and local sales and use tax system. The bill lists 10 simplification criteria, comparable to those found in other bills.[17] One of the important goals of H.R. 4267 is parity of tax collection costs (net of vendor discounts) between in-state sellers and remote sellers not physically present in the state. A new advisory commission would be created to monitor the work of the NCCUSL and present a report to Congress with a recommendation as to whether any state that enacted the uniform act should be permitted by Congress to collect sales and use taxes from out of state sellers selling goods to purchasers in the state. The bill repeats legislative language used in the Internet Tax Freedom Act to create the Advisory Commission on Electronic Commerce.

State and local governments would also be encouraged to work with the NCCUSL to develop and draft a Uniform Telecommunications State and Local Excise Tax Act. Different criteria for the simplified telecommunications tax are listed,

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[16]H.R. 4460 and H.R. 4267 were both introduced in the Judiciary Committee by Representatives Hyde and Conyers, Gekas and Nadler, the Chairmen and Ranking Members, respectively of, first, the full Judiciary Committee and, second, the Subcommittee on Commercial and Administrative Law. H.R. 4267 reflects the position of the so-called majority on the Advisory Commission on Electronic Commerce, including the "Business Caucus" and represented by Commission chairman and Virginia Governor James Gilmore. (Only a few of the proposals before the Commission received the two-thirds vote needed to qualify as a formal recommendation of the Commission. Chairman Gilmore ruled that any proposal receiving votes from a simple majority of the 19 Commission members could be included in the final report, but it would be labeled as a "majority proposal" rather than a "recommendation.") H.R. 4460 reflects the position of the so-called minority on the Advisory Commission on Electronic Commerce, including most of the representatives of state and local governments and represented by Utah Governor Mike Leavitt.

[17]See the list of 14 criteria in footnote 11 to the section above on "Simplification of state and local use taxes."

depending upon whether a local tax is permitted. Furthermore, the sense of Congress is expressed that state and local governments should eliminate excessive and discriminatory taxes on the telecommunications industry, that the states should establish a deadline for enacting the uniform telecommunications act and removing excess and multiple taxation, and that federal penalties should apply to any state that fails to adopt the uniform telecommunications act before October 21, 2004.

In addition, H.R. 4267 would codify new nexus guidelines enumerating factors that would *not* be considered as evidence of physical presence for businesses involved in electronic commerce, and hence not incur tax obligations to a state.[18] These guidelines would apply for purposes of determining a business's nexus not only for state use tax collection responsibilities, but also for paying state business activity and income taxes. Furthermore, a business's registration with a state relating to sales or use taxes, or the collection or remittance of use taxes for a state, would not be sufficient evidence to require a business to report and pay business activity and income taxes to that state.

H.R. 4460 (Hyde and Conyers, ACEC minority).[19] The *Internet Tax Simplification Act of 2000* was introduced May 16, 2000, and referred to the Committee on the Judiciary. H.R. 4460 would extend the moratorium on taxes on Internet access by nearly five years, until October 1, 2006, and the moratorium on multiple and discriminatory taxes by two and a quarter years, until December 31, 2003. It would preserve the grandfathering protection for Internet access taxes already in place as of October 1, 1998.

H.R. 4460 expresses the sense of Congress that the states and local governments should work cooperatively with the National Conference of Commissioners on Uniform State Laws (NCCUSL) to develop and draft a Streamlined Uniform Sales and Use Tax Act by January 1, 2004. The bill lists 13 criteria to be included in such an act. This is similar to the list included in H.R. 3709 (which passed the House), H.R. 4462 (Bachus), and S. 2775 (Dorgan).[20] H.R. 4460 provides for the Secretary of the Treasury to report to Congress in a timely fashion about whether the streamlined sales and use tax system prescribed by the compact meets the simplification criteria set forth in the bill.

The bill would give Congress's consent for the states to enter into an Interstate Sales and Use Tax Compact that requires the member states to adopt the streamlined tax system. In exchange, a state that has adopted the streamlined system prescribed by the compact would be authorized to begin collecting use taxes on remote sales. A state that did not join the compact initially could still qualify for authority in a later year by adopting the streamlined uniform system.

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[18]These are enumerated in footnote 10 to the section above on "Codify e-commerce nexus guidelines."

[19]See footnote 16 to the subheading for H.R. 4267 above.

[20]See the list of 14 criteria in footnote 11 to the section above on "Simplification of state and local use taxes."

A state would be authorized to administer a single uniform statewide use tax rate on all remote sales. H.R. 4460 provides that a state may use a blended tax rate that reflects the weighted average of state and local taxes across the state. The level of the statewide rate in a current year is restricted by a revenue-neutral limit such that if that rate had been assessed two calendar years before on all sales on which a sales tax was assessed by the state or its local jurisdictions, the total taxes that would be assessed on sales would not have exceeded the total taxes actually assessed on such sales. In its findings section, H.R. 4460 refers to the state administering all state and local use taxes on remote sellers, with distribution of revenues to political subdivisions of the state "according to precedent and applicable State law." The bill would have no effect on a seller's nexus with any state for purposes of the sales tax, franchise taxes, income taxes, or licensing requirements.

H.R. 4460 also expresses the sense of Congress that state and local governments should continue to work with the telecommunications industry and other relevant groups to make the taxation of the telecommunications industry simpler, more uniform, and less discriminatory.

H.R. 4462 (Bachus). The *Fair and Equitable Interstate Tax Compact Simplification Act of 2000* was introduced May 16, 2000, and referred to the Committee on the Judiciary and the Committee on Rules. The measure was originally offered on the House floor on May 10, 2000, as an amendment to H.R. 3709, but was withdrawn because of concerns of germaneness.

H.R. 4462 would extend the current moratorium (on Internet access taxes and on new, multiple, and discriminatory taxes on electronic commerce) for five years, until October 21, 2006. During that time states and localities would be encouraged to work together voluntarily to develop a streamlined sales and use tax system through the Streamlined Sales Tax System Project. The bill provides a framework, in the form of a multi-state compact, under which the Congress would grant states the authority to require remote sellers to collect use taxes on interstate sales from the customer and remit them to the buyer's home state – if the states in the compact met certain simplifying conditions for their use tax. The 14 criteria listed in H.R. 4462 for a streamlined sales and use tax system are similar to those contained in H.R. 3709 which passed the House and other bills.[21]

The streamlined tax system prescribed by the compact must be submitted to the President by January 31, 2004, with the approval of at least 20 member states, or the authorization will expire. The President must submit a report to Congress certifying that the compact satisfies the 14 simplification criteria. (No time limit is specified for the President to act.) Congress then has 90 days to enact a joint resolution disapproving the system, under a procedure set forth in the bill. If Congress does not act to disapprove, the states participating in the compact will automatically be authorized to require all remote sellers not qualifying for the de minimis exception to collect and remit use taxes on sales into their state. (The de minimis amount is not specified in dollar terms.)

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[21]See the list of 14 criteria in footnote 11 to the section above on "Simplification of state and local use taxes."

H.R. 4462 authorizes any state levying a sales tax to administer a single uniform statewide use tax rate on all remote sales on which it assesses a use tax. It does not explicitly mention the local component of the sales and use tax. However, it limits the level of the statewide rate in a current year in a revenue-neutral way such that if that rate had been assessed two calendar years before on all sales on which a sales tax was assessed *by the state or its local jurisdictions* [emphasis added], the total taxes that would be assessed on sales would not have exceeded the total taxes actually assessed on such sales. (The bill makes no provision for distributing the local component of the revenues back to local governments in a state.) In its findings section, the bill explicitly notes that reasonable compensation for sellers for tax collection obligations should reflect the complexity of an individual state's tax structure, including the structure of its local taxes.

In its findings section, H.R. 4462 expresses the objective that similar sales transactions be treated equally–without regard to the manner in which the sales are transacted, whether in person, through the mails, over the telephone, on the Internet, or by other means. The authority granted in this bill does not affect a seller's nexus with a state for any tax purpose, or permit a state to license or regulate any person, to require them to qualify to transact intrastate business, or to tax them other than on sales of tangible personal property.

S. 328 (Smith, B.). S. 328 was introduced January 28,1999, and referred to the Committee on Commerce, Science, and Transportation. It would make the current moratorium permanent but make no other changes to the Internet Tax Freedom Act.

S. 1611 (McCain). S. 1611 was introduced September 22, 1999, and referred to the Committee on Commerce, Science, and Transportation. It would broaden the scope of the Internet Tax Freedom Act to ban sales and use taxes on electronic commerce and would make the moratorium permanent. It would encourage establishment of the Internet as a worldwide tax-free zone.

Unlike H.R. 3252, S. 1611 would continue to grandfather taxes on Internet access that existed before October 1, 1998. Like H.R. 3252, S. 1611 would broaden the scope of the moratorium to explicitly ban "...sales or use taxes for domestic or foreign goods or services acquired through electronic commerce." S. 1611 includes a brief sense of the Senate resolution encouraging U.S. trade representatives to multilateral organizations to advocate that the Internet not be burdened by national or local regulation, taxation, or tariffs.

S. 2028 (Wyden). The *Internet Non-discrimination Act* was introduced on February 3, 2000, and referred to the Committee on Commerce, Science, and Transportation. It was the companion bill to the original H.R. 3709 (Cox). It would make the current moratorium permanent but make no other changes to the Internet Tax Freedom Act.

S. 2036 (Smith, B.). S. 2036 was introduced February 7, 2000. It was read the second time and placed on the calendar February 8, 2000. It is identical in language to S. 328. By being placed on the calendar, S. 2036 would be available for floor consideration if S. 328 was not reported from committee. Both S. 2036 and S. 328

would make the current moratorium permanent but make no other changes to the Internet Tax Freedom Act.

S. 2255 (McCain). S. 2255 was introduced March 21, 2000, and referred to the Committee on Commerce, Science, and Transportation. It would extend the current moratorium by five years, until December 31, 2006. A hearing was held on April 12. The markup scheduled for April 13, 2000, was postponed, reportedly in response to objections by retailers.

S. 2401 (Gregg and Kohl). The *New Economy Tax Simplification Act (NETSA)* was introduced April 11, 2000, and referred to the Committee on Finance. It would amend the provisions of P.L. 86-272[22] enacted in 1959 (establishing federal standards for the power of states to impose net income taxes on income derived from interstate commerce) to apply to business activity taxes as well as sales and use taxes. It introduces a new term, "substantial physical presence," and enumerates conditions that would not establish substantial physical presence. None of the conditions listed in the bill would obligate a business to pay a business activity tax or to collect and remit a sales or use tax to a state.[23]

Some examples of conditions that would not establish substantial physical presence are: the presence or use of intangible personal property in the state (including money, deposits, loans, electronic or digital signals, and web pages); the use of the Internet to create or maintain a World Wide Web site accessible by persons in the state; the use of an Internet service provider to take and process orders via a web page or site on a computer located in the state; the use of any service provider for transmission of communications; and the use of an unaffiliated representative or independent contractor to perform warranty or repair services with respect to property sold by a person outside the state. There is emphasis, not found in other bills, on conditions surrounding the solicitation of orders or contracts and whether a business's affiliated person in another state is considered an agent. In addition, the bill would exempt a business from nexus in another state if its sales in that state were made by independent contractors whose only relationship to the business is making those sales.

S. 2775 (Dorgan). The *Internet Tax Moratorium and Equity Act* was introduced on June 22, 2000, and referred to the Committee on Finance. The bill would extend the current moratorium for just over four years, until December 31, 2005. It encourages states and localities to work together to develop a streamlined sales and use tax system, with advice from the National Conference of Commissioners on Uniform State Laws. The bill provides a mechanism under which Congress would grant a state authority to require remote sellers to collect and remit sales and use taxes to the buyer's home state. This takes the form of a multi-state sales and use tax compact. Once 20 states signed the compact, they could submit it to Congress for approval. Unless the Congress disapproved the compact within 120 days, states

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[22]15 U.S.C. 381 et seq.

[23]For a lengthy critical discussion of S. 2401 and related nexus issues, see Sheppard, Lee A. Business Taxpayers Resist State Tax Nexus, in Courts and Congress. *Tax Notes*, v. 87, no. 6, May 8, 2000. p. 740-47.

belonging to the compact would have the authority to require remote sellers to collect their use tax. States not adopting the uniform, streamlined sales and use tax system could not require collection. A seller's obligation to collect use tax under this compact would not affect the seller's nexus for any other tax purpose. The compact must be formed by January 1, 2006, or the authorization will expire.

A state may impose only a single, uniform statewide use tax rate on remote sellers. This uniform rate would apply to all out-of-state sellers, whether Internet, mail order, telephone, or other. A local component may be included in the statewide rate. A state's tax rate for the current year may not be greater than the combined state-local weighted-average sales tax rate actually imposed by the state and its local jurisdictions two calendar years before. The revenue-neutrality test is that if the current year combined rate had been applied to taxable sales two calendar years prior, it would not have yielded a greater total assessment of state and local taxes than the taxes actually assessed on sales in that year.

The bill makes no provision for distributing the local component of the revenues from a uniform statewide rate back to local governments in a state. S. 2775 does, however, offer sellers the option to collect the actual state and local sales tax rate that applies in the buyer's home jurisdiction. (Potentially, the local component could then be forwarded to the correct local jurisdiction.) In the criteria for the streamlined system, the bill includes a specific de minimis threshold of $5 million in gross annual sales, under which remote sellers would be exempt from use tax collection requirements. It also provides sellers the option to be subject to no more than a single audit per year using the uniform audit procedures. The authority granted in this bill does not affect a seller's nexus with a state for any other tax purpose, or permit a state to license or regulate any person, to require any person to qualify to transact intrastate business, or to tax them other than on sales of goods and services.

Federal Taxes, Charges, and Fees

Impose a federal tax on interstate sales. S. 1433 (Hollings) is in contrast to the other bills listed which would restrict taxation of the Internet in some way. The *Sales Tax Safety Net and Teacher Funding Act* would impose a new 5% federal retail sales tax on the interstate sales of goods arranged over the Internet or by mail order, for which state and local taxes are not otherwise collected. The revenues collected would be placed in a federal trust fund and then distributed back to the states, on a formula basis, to help supplement teacher salaries.[24]

Prohibit FCC access fees. In another area, bills have been introduced to prohibit the Federal Communications Commission (FCC) from levying charges and

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[24]Not discussed in this report are bills like H.R. 2525 (Linder and Peterson) which would impose a broad-based national retail sales tax. Such a national sales tax could apply to electronic commerce and mail order sales as well as traditional brick-and-mortar sales, and to interstate as well as intrastate sales.

regulatory fees on Internet service providers (ISPs).[25] H.R. 1291 (Upton), which passed the House on May 16, 2000, prohibits the FCC from imposing per-minute-of-use access charges on providers of Internet data services.[26] However, the bill clarifies that it does not preclude the FCC from imposing access charges on providers of Internet telephone services. H.R. 4202 (Ehrlich) contains a similar provision prohibiting minute-of-use-charges on ISPs but would also prohibit the FCC from imposing regulatory fees on ISPs. In addition, H.R. 4202 would extend the current tax moratorium imposed by the Internet Tax Freedom Act by another five years.

Legislation

H.R. 1291 (Upton). The *Internet Access Charge Prohibition Act of 1999* was introduced March 25, 1999, and referred to the Committee on Commerce, Subcommittee on Telecommunications, Trade, and Consumer Protection. It prohibits the FCC from imposing on any provider of Internet access service any universal service support contribution based on minutes-of-use. The measure also clarifies that it does not preclude the FCC from imposing access charges on Internet telephony providers.

A hearing was held by the Telecommunications Subcommittee on May 3, 2000. The bill was approved by the House Commerce Committee by voice vote on May 10. The bill was approved by the House by voice vote, under a suspension of the rules, on May 16, 2000.

H.R. 4202 (Ehrlich). The *Internet Services Promotion Act of 2000* was introduced April 6, 2000, and referred to the Committee on Commerce, Subcommittee on Telecommunications, Trade, and Consumer Protection, and the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law. It would prohibit the FCC from imposing on ISPs any contribution for the support of universal service or any access charge or successor regulation that is based on a measure of time the telecommunications service is used. It would also prohibit the FCC from imposing regulatory fees on ISPs. In addition, H.R. 4202 would extend the current moratorium imposed by the Internet Tax Freedom Act by an additional five years, until October 2006. A hearing was held by the Telecommunications Subcommittee on May 3, 2000.

S. 1433 (Hollings). The *Sales Tax Safety Net and Teacher Funding Act* was introduced July 26, 1999, and referred to the Committee on Finance. It would impose a 5% federal retail excise tax on merchandise sold over the Internet, through catalogs, or other than through local merchants. It would earmark the revenues to supplement [state and local] funding for salaries and benefits for elementary and secondary school teachers. The tax revenues would be deposited in a newly created federal trust fund and distributed to the states by formula.

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[25]For a more detailed discussion, see CRS Report RS20579, *Internet Service and Access Charges*, by Angele A. Gilroy.

[26]No such fee currently exists or has been proposed by the FCC.

The proposed federal tax is intended to apply to sales transactions that escape the sales taxes otherwise collected by local merchants. This is likely to include all interstate transactions and possibly also intrastate transactions conducted by Internet or mail order. The tax would be collected by sellers. A credit would be allowed against the federal tax for state and local sales taxes actually paid by the buyer, so that the buyer would not be double-taxed. Taxpayers traditionally exempt from the state sales tax (like non-profit organizations) would continue to receive an exemption under the federal tax. The tax would be levied on merchandise, that is, tangible goods and not on services or digitized information.

Foreign Taxes and Tariffs

In 1999, during the first session of the 106th Congress, Congress passed two measures opposing international taxation of the Internet: a restriction in the FY2000 appropriation for the Department of State (S. Amdt. 1317 to S. 1217, included in P.L. 106-113, Title IV, Section 406) and H.Con.Res. 190.

Congressional opposition to the U.N. proposal for a global bit tax.[27] The United Nations Development Program (UNDP) issued its 1999 report on human development on July 12, 1999.[28] The report suggested a global "bit tax" as one possible way to raise funds to help bridge the "digital divide" between the world's economic "haves and have-nots," by working to ensure that the Internet communications revolution is truly global.[29]

The report described the "bit tax" as "a very small tax on the amount of data transmitted over the Internet."[30] The UNDP proposal has been described in popular

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[27]For a fuller explanation, see CRS Report RS20288, *United Nations and Global Taxation: An Update of Proposals in 1999*, by Marjorie Ann Browne.

[28]*Human Development Report 1999*. Published for the United Nations Development Programme by Oxford University Press, New York, 1999. p. 66. Available on the Internet at [http://www.undp.org/hdro]. The *Human Development Report* is written and published for the UNDP in conjunction with a group of outside experts. The report is issued annually. Immediately following the foreword to the 1999 report is a disclaimer stating that "The analysis and policy recommendations of the Report do not necessarily reflect the views of the United Nations Development Programme, its Executive Board or its Member States."

[29]For a brief summary of the report, see: "Reducing the Gap between the Knows and the Know-nots." Press release on *Human Development Report 1999*. United Nations Development Programme, New York, July 12, 1999. [http://www.undp.org/hdro/E3.html].

[30]A "bit" tax refers to a tax on "binary digits." The Internet Tax Freedom Act (Sec. 1104(1)) defined a bit tax as "...any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services."

parlance as a tax levied at a rate of 1 cent per 100 emails.[31] The report estimated that globally, such a tax would have raised about $70 billion in 1996.

In reaction, concurrent resolutions were introduced in both Houses of Congress in early August 1999 urging the Administration to aggressively oppose the global "bit tax" proposed in the U.N. Development Programme's report (H.Con.Res. 172, S.Con.Res. 52). In his remarks to the Congress when introducing S.Con.Res. 52 on August 5, 1999, Senator Ashcroft characterized a tax imposed by the U.N. (or any other international organization) as a violation of American sovereignty.[32]

Prior to the introduction of these resolutions, on July 14, 1999, soon after the Human Development Report was issued, the UNDP Administrator issued a statement clarifying that the "...UNDP, as a matter of policy, neither advocates nor supports any so-called global tax, nor any other form of international levy, as a means of funding development aid. UNDP is not engaged now, nor does it plan to engage in the future, in any activity to implement or impose such taxation schemes on any person or group. Neither the United Nations nor UNDP has the mandate or power to create or administer any system of global taxation." On July 21, 1999, the State Department described U.S. policy as being "...opposed to any form of global taxation imposed by the UN or any other international organization."[33]

No votes were taken on either H.Con.Res. 172 or S.Con.Res. 52. However, a provision was included in the FY2000 appropriation for the Department of State stating that "None of the funds appropriated or otherwise made available in this Act for the United Nations may be used by the United Nations for the promulgation or enforcement of any treaty, resolution, or regulation authorizing the United Nations, or any of its specialized agencies or affiliated organizations, to tax any aspect of the Internet." (P.L. 106-113, Title IV, Sec. 406; originally S.Amdt. 1317 to S. 1217.)

In addition, the U.N. bit tax proposal was opposed in H.Con.Res. 190 (approved, discussed below) as a threat to the U.S. policy position against special, multiple, and discriminatory taxation of the Internet. Opposition to the U.N. bit tax proposal is also mentioned among the international provisions included in H.R. 3252(Kasich).

Congressional opposition to foreign taxes and tariffs. In anticipation of multilateral trade talks scheduled for the World Trade Organization (WTO) in Seattle in November 1999 and the Organization for Economic Cooperation and Development

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[31]Specifically, the UNDP report estimated that a user "...sending 100 emails [electronic messages] a day, each containing a 10-kilobyte document (a very long one) would raise a tax of just 1 [US] cent." *Human Development Report 1999*, p. 66.

[32]Mr. Ashcroft. S.Con.Res. 52. *Congressional Record* (Daily ed.), v. 145, no. 114-Part II, August 5, 1999. p. S10497.

[33]For the State Department release, the July 16, 1999, letter from C. David Welch, the Assistant Secretary of International Organization Affairs to the UNDP Administrator Mark Malloch Brown, and the Administrator's July 16 response, see "UN's 1999 Human Development Report Raises International Tax Proposal" on the State Department Website [http://www.state.gov/www/issues/un_internettax_9907.html].

(OECD) in Israel in October 1999, H.Con.Res. 190, a non-binding sense-of-Congress resolution, was introduced and approved in both Houses of Congress during the first session of the 106th Congress.[34] The resolution specifically urged the President to ask the U.S. delegate to the WTO ministerial meeting to seek to make permanent and binding the one-year moratorium on tariffs on electronic transmissions that had been adopted by the WTO in May 1998. The resolution also urged the President to have the OECD adopt, and its 29 member countries implement, an international ban on bit, multiple, and discriminatory taxation of electronic commerce and the Internet.[35]

More generally, H.Con.Res. 190 encouraged the President to seek a global consensus supporting a permanent international ban on tariffs on electronic commerce and an international ban on bit, multiple, and discriminatory taxation of electronic commerce and the Internet. It also urged opposition to the U.N. bit tax proposal.

H.Con.Res. 190 restates the international policy position expressed in the Internet Tax Freedom Act.[36] The sponsors viewed this resolution as the international extension of the policy that the Internet Tax Freedom Act imposed on state and local governments in the United States.[37]

H.R. 3252(Kasich) contains a sense-of-Congress section which includes the specific international tax recommendations made in H.Con.Res. 190 as well as the broader statement found in S. 1611(McCain) of the U.S. policy position that electronic commerce conducted via the Internet should not be burdened by national or local regulation, taxation, or tariffs.

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[34]H.Con.Res. 190(Cox) was approved by both Houses. S.Con.Res. 58(Wyden) was the companion bill introduced in the Senate.

[35]See the first part of footnote 14 for the items contained in the resolution.

[36]The Internet Tax Freedom Act (P.L. 105-277) stated: "Sec. 1203. Declaration that the Internet should be free of foreign tariffs, trade barriers, and other restrictions. (a) In General.–It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the America [sic], the North American Free Trade Agreement, and other appropriate venues.
(B) Negotiating Objectives.–The negotiating objectives of the United States shall be--
(1) to assure that electronic commerce is free from--
(A) tariff and nontariff barriers;
(B) burdensome and discriminatory regulation and standards; and
(C) discriminatory taxation;...."

[37]Whiskeyman, Dolores. Permanent Tariff Ban Sought by Cox, Wyden on International Electronic Commerce. *Daily Tax Report*. Washington, Bureau of National Affairs. No. 190, October 1, 1999. p. G-2 to G-3.

Legislation

Congressional opposition to the U. N. proposal for a global bit tax

H.Con.Res. 172 (Sessions). Companion to S.Con.Res. 52. Introduced August 4, 1999. Referred to the House Committee on International Relations. A concurrent resolution expressing the sense of Congress in opposition to a "bit tax" on data transmitted over the Internet proposed in the Human Development Report 1999 published by the United Nations Development Programme.

S.Con.Res. 52 (Ashcroft). Companion to H.Con.Res. 172. Introduced August 5, 1999. Referred to the Committee on Foreign Relations. A concurrent resolution expressing the sense of Congress in opposition to a "bit tax" on data transmitted over the Internet proposed in the Human Development Report 1999 published by the United Nations Development Programme.

S.Amdt.1317 to S. 1217 (Gregg). Approved by the Senate, July 22, 1999. Included in the Consolidated Appropriations Act, 2000 (P.L. 106-113, Title IV, Section 406).[38] To provide that none of the funds appropriated or otherwise made available in this [appropriations] Act may be used by the United Nations for the promulgation or enforcement of any treaty, resolution, or regulation authorizing the United Nations, or any of its specialized agencies or affiliated organizations, to tax any aspect of the Internet.

Congressional opposition to foreign taxes and tariffs on the Internet

H.Con.Res. 190 (Cox). Companion to S.Con.Res. 58 (Wyden). Introduced September 30, 1999. Referred to the Committee on Ways and Means. Passed House October 26, 1999, 423 to 1; passed Senate November 19, 1999, by unanimous consent. Urges the United States to seek a global consensus supporting a moratorium on tariffs and on special, multiple, and discriminatory taxation of electronic commerce.

S.Con.Res. 58 (Wyden). Companion to H. Con. Res. 190, which passed (see above). Introduced September 30, 1999. Referred to the Committee on Finance. A concurrent resolution urging the United States to seek a global consensus supporting

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[38] S. 1217 was the original Senate FY2000 appropriations bill for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies. The text of S.Amdt. 1317 was included in the Consolidated Appropriations Act, 2000 (H.R. 3194, P.L. 106-113), Division B, Section 1000(a)(1), under the cross-reference to H.R. 3421, Appropriations for the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies for the fiscal year ending September 30, 2000. Title IV (General Provisions, Department of State and Related Agency), Section 406.

U.S. Congress. House of Representatives. *Conference Report on the Consolidated Appropriations Act for FY2000*. 106th Cong., 1st Sess., H.Rpt. 106-479, Nov. 17, 1999. Reprinted in: *Congressional Record* (Daily ed.), v. 145, no. 163–Part II, November 17, 1999. Text of bill, p. H12273. Explanatory statement, p. H12307.

a moratorium on tariffs and on special, multiple, and discriminatory taxation of electronic commerce.

Hearings

U.S. House. Committee on Commerce. Subcommittee on Telecommunications, Trade, and Consumer Protection. Hearing on H.R. 4202 and H.R. 1291, bills to prohibit the imposition of (federal FCC) access charges on the provision of Internet services. (H.R. 4202 would also extend for five additional years the current moratorium on taxation of the Internet.) May 3, 2000.

U.S. House. Committee on the Judiciary. Subcommittee on Commercial and Administrative Law. H.R. 4267 (Hyde), *Internet Tax Reform and Reduction Act of 2000*; H.R. 4460 (Hyde and Conyers), *Internet Tax Simplification Act of 2000*. (These bills are based, respectively, on the majority and minority reports of the Advisory Commission on Electronic Commerce.) May 17, 2000.

___. Hearing on legislation dealing with taxation of the Internet: H.R. 4267 (Hyde and Conyers, ACEC majority); H.R. 4460 (Hyde and Conyers, ACEC minority); and H.R. 4462 (Bachus). June 29, 2000.

U.S. House. Committee on Ways and Means. Subcommittee on Oversight. Matters within the jurisdiction of the Committee on Ways and Mean included in the Report to Congress of the Advisory Commission on Electronic Commerce. Internet taxation and federal telephone excise tax. May 16, 2000.

U.S. Senate. Committee on the Budget. *Internet Taxation in the New Millennium.* February 2, 2000.

U.S. Senate. Committee on Commerce, Science, and Transportation. Hearing on S. 2255, A bill to amend the Internet Tax Freedom Act to extend the moratorium through calendar year 2006. April 12, 2000.

For Additional Information

Advisory Commission on Electronic Commerce. Internet Home Page. [http://www.ecommercecommission.org]

CRS Report RL30667. *Internet Tax Legislation: Distinguishing Issues*, by Nonna A. Noto.

CRS Report RL30431. *Internet Transactions and the Sales Tax*, by Steve Maguire.

CRS Report RS20577. *State Sales Taxation of Internet Transactions*, by John R. Luckey.

For coverage of arguments generally against applying current sales and use taxes to sales made over the Internet, see:

e-Freedom Coalition. Internet Home Page.
[http://www.e-freedom.org]

Representative Christopher Cox's Office. Internet Tax Freedom Act Home Page.
[http://www.house.gov/cox/nettax]

For coverage of arguments generally in support of applying current sales and use taxes to sales made over the Internet, see:

National Conference of State Legislatures (NCSL). Internet address.
[http://www.ncsl.org/programs/fiscal/tctelcom.htm].

National Governors' Association (NGA). Internet address.
[http://www.nga.org/Internet/equality.asp].

Streamlined Sales Tax Project (SSTP). Internet Home Page.
[http://www.streamlinedsalestax.org] or
[http://www.geocities.com/streamlined2000/]