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Internet Tax Bills in the 107th Congress: A Brief Comparison

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Nonna A. Noto
Specialist in Public Finance
Government and Finance Division

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Summary

The Internet Tax Freedom Act, enacted in 1998 (in P.L. 105-277), placed a 3-year moratorium on the ability of state and local governments to 1) impose new taxes on Internet access or 2) impose any multiple or discriminatory taxes on electronic commerce. The Act grandfathered the state and local taxes on Internet access that were in place in 10 states as of October 1, 1998. The original Internet tax moratorium expired on October 21, 2001. Several bills to extend the moratorium were introduced in the first session of the 107th Congress. Some bills addressed other issues related to state and local taxation of the Internet and interstate commerce.

H.R. 1552, the Internet Tax Nondiscrimination Act, passed the House on October 16, 2001, and the Senate on November 15, 2001, both by voice vote. The bill was enacted as P.L. 107-75 on November 28, 2001. The Act provided for a simple 2-year extension of the prior moratorium, until November 1, 2003. It continued the grandfathering protection for existing Internet access taxes.

The major differences among the bills introduced to extend the Internet tax moratorium were:

- whether to extend both parts of the moratorium together, either permanently or temporarily; or
- whether to extend the moratorium on Internet access taxes permanently, while extending the moratorium on multiple and discriminatory taxes on electronic commerce temporarily;
- if temporarily, whether the moratorium should be extended for as little as several months, or for a longer period of 2, 4, or 5 years; and
- whether to continue to grandfather existing Internet access taxes.

Additional issues raised in various bills in conjunction with extending the moratorium were:

- if, and under what conditions, Congress would authorize the states to require out-of-state sellers to collect and remit sales and use taxes on interstate sales of goods and services arranged over the Internet;
- whether to give digital transactions special protection from taxation; and
- whether to codify new nexus standards for state and local business activity taxes or sales and use taxes.

To help explain which bills addressed which issues, this report provides a side-by-side comparison of the bills and a brief description of each bill. It also provides a summary of congressional action on the bill that was enacted. Related hearings and congressional reports are listed at the end of the report. The report will no longer be updated.

For further discussion of the underlying issues, see CRS Report RL31177, *Extending the Internet Tax Moratorium and Related Issues*, by Nonna A. Noto.

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Internet Tax Bills in the 107th Congress: A Brief Comparison

Overview

The Internet Tax Freedom Act, enacted in 1998 (in P.L. 105-277), placed a 3-year moratorium on the ability of state and local governments to 1) impose new taxes on Internet access or 2) impose any multiple or discriminatory taxes on electronic commerce. The Act grandfathered the state and local taxes on Internet access that were in place in 10 states as of October 1, 1998. The original Internet tax moratorium expired on October 21, 2001. Several bills to extend the moratorium were introduced in the first session of the 107th Congress. Some bills addressed other issues related to state and local taxation of the Internet and interstate commerce.

H.R. 1552, the Internet Tax Nondiscrimination Act, passed the House on October 16, 2001, and the Senate on November 15, 2001, both by voice vote. The bill was enacted as P.L. 107-75 on November 28, 2001. The Act provided for a simple 2-year extension of the prior moratorium, until November 1, 2003. It continued the grandfathering protection for existing Internet access taxes.

The major differences among the bills to extend the tax moratorium were:

- whether to extend both parts of the moratorium together, either permanently or temporarily; or
- whether to extend the moratorium on Internet access taxes permanently, while extending the moratorium on multiple and discriminatory taxes on electronic commerce temporarily;
- if temporarily, whether the moratorium should be extended for as little as several months, or for a longer period of 2, 4, or 5 years; and
- whether to continue to grandfather existing Internet access taxes.

Additional issues raised in various bills were:

- if, and under what conditions, Congress would authorize the states to require out-of-state sellers to collect and remit sales and use taxes on interstate sales of goods and services arranged over the Internet;
- whether to give digital transactions special protection from taxation; and
- whether to codify new nexus standards for state and local business activity taxes or sales and use taxes.

For further discussion of the underlying issues, see CRS Report RL31177, *Extending the Internet Tax Moratorium and Related Issues*, by Nonna A. Noto.

Action in Congress

H.R. 1552, the Internet Tax Nondiscrimination Act, was introduced by Representative Christopher Cox on April 24, 2001. It was approved, as introduced, by the Subcommittee on Commercial and Administrative Law on August 2, 2001. In the full House Judiciary Committee, however, the original bill language was replaced by an amendment in the nature of a substitute. The measure with the committee substitute was ordered to be reported on October 10, 2001. H.R. 1552, as amended, passed the House by voice vote, under suspension of the rules, on October 16, 2001. As passed, the bill provided for a 2-year extension of the prior moratorium, until November 1, 2003. It continued the grandfathering protection for existing Internet access taxes.

In the Senate Commerce Committee, an attempt to mark up an Internet tax bill on May 3, 2001, was cancelled due to lack of consensus on a bill that addressed the sales and use tax collection issue, in addition to extending the moratorium.[1] On the Senate floor, Senator George Allen's request for unanimous consent to pass H.R. 1552 was blocked by an objection on October 23, 2001. Senator Byron Dorgan's requests to have an alternative bill, S. 1504, passed by unanimous consent were blocked by objection on October 18 and again on October 23, 2001.[2]

The Senate considered H.R. 1552 under a unanimous consent agreement on November 15, 2001. The agreement provided for consideration of one amendment in the nature of a substitute, S.Amdt. 2155, known as the Enzi-Dorgan amendment. The amendment addressed the issue of authorizing collection of state and local use taxes on interstate sales arranged over the Internet, in addition to extending the moratorium. The Senate debated issues raised in the amendment for over one hour. Following the debate, the Senate voted to table the amendment by a vote of 57-43.[3] Then, by voice vote, the Senate passed H.R. 1552 as received from the House. Consequently, no conference was needed. President George W. Bush signed the bill on November 28, 2001. H.R. 1552 became P.L. 107-75.

Both during the debate and after the votes in the Senate, several Senators expressed their intention to pursue the sales tax simplification and collection issues raised in the Enzi-Dorgan amendment during the added two years of the moratorium.[4]

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[1]Two other attempts to hold a mark up during 2000 also were cancelled.

[2]S. 1504 provided for an 8-month extension of the moratorium, until June 30, 2002. It also contained a sense of Congress provision supporting simplification of sales and use taxes, to enable their eventual collection by interstate sellers.

[3]If the Enzi-Dorgan amendment had not been tabled, Senator Gramm could have offered S.Amdt. 2156, to increase (from 20) to 25 the number of states that would need to sign the interstate sales tax compact before it could receive expedited ("fast-track") consideration by Congress. For reference to the potential Gramm amendment (text not published), see *Congressional Record*, Daily Edition, vol. 147, Nov. 15, 2001, p. S11902.

[4]*Congressional Record*, Daily Edition, vol. 147, Nov. 15, 2001; floor debate, pp. S11902-15; text of amendment, pp. S11963-64.

Summary Explanation of the Tables

Table 1 presents a side-by-side comparison of the bills introduced in the House and **Table 2**, the Senate. Table 2 includes S.Amdt. 2155 to H.R. 1552. Following the tables is a brief description of each bill. In both tables, Column 1 lists the bill number, sponsor's name, and congressional action (on H.R. 1552 and S.Amdt. 2155).

Column 2 indicates the bill's position on extending the moratorium, which has two components. The first prohibits state or local governments from imposing new taxes on "Internet access." The second prohibits them from imposing any "multiple or discriminatory taxes on electronic commerce." Some bills would extend both parts of the moratorium temporarily, ranging from 8 months (S. 1504) to 2 years (H.R. 1552/P.L. 107-75 and S. 1481), 4 years (H.R. 1410/S. 512), or 5 years (S. 246 and S. 1525). Four bills would make the moratorium on Internet access taxes permanent, but would extend the moratorium on multiple and discriminatory taxes temporarily, by 4 years (S. 1542, S. 1567, and S.Amdt. 2155) or 5 years (S. 288). Other bills would make both parts of the moratorium permanent (H.R. 1675/S. 777, H.R. 2526, and S. 589).

Column 3 indicates whether the bill would extend the grandfathering provision which exempts from the ban those state and local taxes on Internet access that were in place (in 10 states) as of October 1, 1998, just before the original moratorium was enacted (referred to as existing Internet access taxes). Removing the grandfathering protection would in effect ban all state and local taxes on Internet access. Four of the eight bills that propose a permanent ban on Internet access taxes would eliminate the grandfathering protection for existing taxes on access (H.R. 1675/S. 777, H.R. 2526, and S. 288). Four others would continue to grandfather. S. 589 would implicitly extend the grandfathering by simply extending the prior moratorium permanently. S. 1542, S. 1567, and S.Amdt. 2155 would explicitly continue the grandfathering. In contrast, all seven bills that would temporarily extend both parts of the current moratorium would implicitly extend the grandfathering provision (H.R. 1410/S. 512, H.R. 1552/P.L. 107-75, S. 246, S. 1481, S. 1504, and S. 1525).

Column 4 describes other Internet and interstate tax issues addressed by the bills. Six bills address granting states the authority to require sellers to collect sales and use taxes on interstate sales. Under three, Congress would have to approve the simplified sales tax system before granting states collection authority (a "positive trigger"): S. 288, S. 1567, and S.Amdt. 2155. In contrast, under the other three, authority to require remote sellers to collect use taxes would automatically be granted to states that signed an interstate compact on streamlined taxes, unless Congress disapproved (a "negative trigger"): H.R. 1410/S. 512 and S. 1542.

S. 288 would require one sales and use tax rate per state, on within-state as well as inter-state sales. In contrast, H.R. 1410/S. 512, S. 1542, S. 1567, and S.Amdt. 2155 would permit remote sellers to choose to collect either actual state and local sales and use tax rates or a uniform statewide rate that could include an average local rate. In addition, S. 512, S. 1567, and S.Amdt. 2155 provide a third option: states that adopted the streamlined sales tax system could require remote sellers to collect

the actual state and local sales or use tax rate – if the state provided information on the rates and granted the seller relief from liability for relying on that information.

Two bills contain a sense of Congress provision encouraging state governments and interested business organizations to expedite efforts pursuing a simplified tax system that would not impose an undue burden on interstate commerce. S. 1481 (Wyden) refers to developing "... a streamlined simplified plan for protecting State revenues affected by Internet use ...." S. 1504 (Dorgan) refers more specifically to developing "... a streamlined sales and use tax system that, once approved by Congress, would allow sellers to collect and remit sales and use taxes ...."

S. 1542 (Enzi) and S. 1567 (Enzi) would amend the definition of tax-protected Internet access to include wireless web access services. To address the concern about bundling of taxable services, S. 1542, S. 1567, and S.Amdt. 2155 (Enzi-Dorgan) would define Internet access services to exclude receipt of content or services.

H.R. 2421 (Stearns) would prohibit state or local taxation of commercial transactions conducted entirely in digital form through the Internet. Two bills would codify "substantial physical presence" as the new standard for determining interstate nexus: H.R. 2526 (Goodlatte and Boucher) and S. 664 (Gregg and Kohl). S. 664 lists eight, and H.R. 2526 lists ten, business activities that would not constitute nexus. S. 664 would apply the new nexus standard to imposing both state business activity taxes and the duty to collect and remit sales or use taxes on interstate commerce. In contrast, S. 664 would apply it to business activity taxes only. S. 288 (Wyden) includes business activity tax nexus standards among the criteria for a simplified tax system listed in a sense of Congress provision. S. 1542 (Enzi), S. 1567 (Enzi), and S.Amdt. 2155 (Enzi-Dorgan) contain a sense of Congress provision that legislation be enacted by the end of the 107th Congress to determine the factors establishing business activity tax nexus.

In sum, six bills deal solely with the extension of the Internet tax moratorium: H.R. 1552 (Cox)/P.L. 107-75, identical bills H.R. 1675 (Cox)/S. 777 (Allen), S. 246 (Smith, B.), S. 589 (Smith, B.), and S. 1525 (Allen).

Six bills would both extend the moratorium and address the issue of providing states with collection authority for sales and use taxes on interstate sales: H.R. 1410 (Istook)/S. 512 (Dorgan), S. 288 (Wyden), S. 1542 (Enzi), S. 1567 (Enzi), and S.Amdt. 2155 (Enzi and Dorgan). Two bills would extend the moratorium and include a sense of Congress provision encouraging states and interested business organizations to pursue tax simplification: S. 1481 (Wyden) and S. 1504 (Dorgan).

Four bills would extend the moratorium and address business activity tax nexus. H.R. 2526 (Goodlatte and Boucher) would make the moratorium permanent and codify new nexus standards for state and local business activity taxes. Three bills would extend the moratorium and include a sense of Congress provision calling for legislation to define business activity tax nexus by the end of the 107th Congress: S. 1542 (Enzi), S. 1567 (Enzi), and S.Amdt. 2155 (Enzi and Dorgan).

Two bills do not address the extension of the moratorium: H.R. 2421 (Stearns) and S. 664 (Gregg and Kohl).

Table 1. Comparison of Internet Tax Bills in the House

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
H.R. 1410 (Istook)/ S. 512 (Dorgan)	Extends by 4+ years, until December 31, 2005	Implicitly extends	Once 20 states sign an interstate sales and use tax compact and submit it to Congress, unless Congress disapproves the compact within 120 days, Congress would automatically grant any state joining the compact the authority to require out-of-state sellers (without nexus) to collect use taxes from the customer. The state would be required to adopt a streamlined sales tax system. Lists tax simplification criteria. Provides states the option to require remote sellers to collect actual state and local sales and use tax rates or a uniform statewide average rate.
H.R. 1552 (Cox) as introduced	Makes permanent the moratorium on Internet access taxes. Extends ban on multiple or discriminatory taxes for 5 years, until 12/31/06.	Eliminates	–
H.R. 1552 (as reported in House) Passed House by voice vote on 10/16/01. Passed Senate by voice vote on 11/15/01. Enacted as **P.L. 107-75** on 11/28/01.	Extends by 2 years, until November 1, 2003	Implicitly extends	–
H.R. 1675 (Cox)/ S. 777 (Allen)	Makes permanent	Eliminates	–

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
H.R. 2421 (Stearns)	–	–	Would prohibit state or local taxation of commercial transactions conducted entirely in digital form through the Internet. Includes digital goods and services.
H.R. 2526 (Goodlatte and Boucher)	Makes permanent	Eliminates	Would establish "substantial physical presence" as the nexus standard for imposing state and local business activity taxes. Enumerates 10 business activities that would not constitute nexus, including 2 not listed in S. 664.

Note: There are two sets of identical bills: H.R. 1410 (Istook))/S. 512 (Dorgan) and H.R. 1675 (Cox)/S. 777 (Allen).

Table 2. Comparison of Internet Tax Bills in the Senate

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
S. 246 (Smith, B.)	Extends by 5 years, until October 21, 2006	Implicitly extends	–
S. 288 (Wyden)	Makes permanent the ban on Internet access taxes. Extends by 5+ years, until December 31, 2006, the ban on multiple and discriminatory taxes.	Eliminates	Provides fast-track authority for Congress to consider a joint resolution to give states the authority to require collection of use taxes if the states adequately simplify their sales and use tax systems ("positive trigger"). Lists simplification criteria including one tax rate per state for all sales (both within- and inter-state) and clear standards limiting business activity tax nexus to sellers with "continuous and systematic contacts" with the state.

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
S. 512 (Dorgan)/ H.R. 1410 (Istook)	Extends by 4+ years, until December 31, 2005	Implicitly extends	Congress would grant a state joining an interstate compact the authority to require out-of-state sellers to collect use taxes from the customer if the state adopted a streamlined sales tax system, unless Congress disapproves the compact ("negative trigger"). Lists tax simplification criteria. Provides states the option to require remote sellers to collect actual state and local sales and use tax rates or a uniform statewide average rate.
S. 589 (Smith, B.)	Makes permanent	Implicitly extends	–
S. 664 (Gregg and Kohl)	–	–	Establishes "substantial physical presence" as the nexus standard for imposing both state business activity taxes and the duty to collect and remit sales or use taxes on interstate commerce. Enumerates 8 business activities that do not constitute nexus, all also listed in H.R. 2526.
S. 777(Allen)/ H.R. 1675 (Cox)	Makes permanent	Eliminates	–
S. 1481 (Wyden)	Extends by 2 years, until October 21, 2003	Implicitly extends	Sense of Congress provision encouraging states and business to expedite efforts to develop a streamlined simplified plan for protecting state revenues affected by Internet use without unnecessarily burdening interstate commerce.
S. 1504 (Dorgan)	Extends by 8 months, until June 30, 2002	Implicitly extends	Sense of Congress provision encouraging states and business to expedite efforts to develop a streamlined sales and use tax system that, once approved by Congress, would allow sellers to collect and remit sales and use taxes without imposing an undue burden on interstate commerce.
S. 1525 (Allen)	Extends by 5 years, until October 21, 2006	Implicitly extends	–

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
S. 1542 (Enzi)	Makes permanent the ban on new Internet access taxes. Extends by 4+ years, until December 31, 2005, the ban on multiple and discriminatory taxes.	Extends	As in S. 512, Congress would grant a state joining an interstate compact the authority to require out-of-state sellers to collect use taxes from the customer if the state adopted a streamlined sales tax system, unless Congress disapproves the compact ("negative trigger"). Lists tax simplification criteria. Offers remote sellers the option to choose to collect either actual state and local use tax rates or a uniform statewide average rate. New provisions: Defines Internet access to include wireless web access services and Internet access services to exclude receipt of content or services (to address bundling concerns). Sense of Congress provision that legislation be enacted by the end of the 107th Congress to determine the factors establishing business activity tax nexus, and that vendor costs of sales tax collection be studied.

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
S. 1567 (Enzi)	Makes permanent the ban on new Internet access taxes. Extends by 4+ years, until December 31, 2005, the ban on multiple and discriminatory taxes.	Extends	Includes more detailed provisions than S. 288 providing expedited procedure for Congress to consider a joint resolution to give states the authority to require collection of use taxes if the states adequately simplify their sales and use tax systems and adopt an interstate compact ("positive trigger"). As in S. 512 and S. 1542, provides states the option to require remote sellers collect actual state and local sales and use tax rates or a uniform statewide average rate. Lists same tax simplification criteria as S. 512 and S. 1542, many similar to S. 288. Like S. 1542: Defines Internet access to include wireless web access services and Internet access services to exclude receipt of content or services (to address bundling concerns). Sense of Congress provision that legislation be enacted by the end of the 107th Congress to determine the factors establishing business activity tax nexus, and that vendor costs of sales tax collection be studied.

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
S.Amdt. 2155 (Enzi-Dorgan) to H.R. 1552 Tabled by vote of 57-43 on 11/15/01.	Makes permanent the ban on new Internet access taxes. Extends by 4+ years, until December 31, 2005, the ban on multiple and discriminatory taxes.	Extends	Like S. 1567, with a few changes: Drops definition of Internet access and references to wireless web access services. Adds two criteria for a streamlined sales tax system. Defines "Internet access services" to not include receipt of content or services. Lists 14 criteria for a streamlined sales and use tax system. Provides an expedited ("fast-track") procedure for Congress to consider a joint resolution to give states the authority to require collection of use taxes if the states adequately simplify their sales and use tax systems and adopt an interstate compact ("positive trigger"). Provides states joining the compact the alternative of requiring remote sellers to collect actual state and local sales and use tax rates under certain conditions, and sellers the option to voluntarily elect to collect actual state and local tax rates – or to collect a uniform statewide tax rate, not to exceed the weighted average of actual tax rates across the state. Sense of Congress provision that legislation be enacted by the end of the 107th Congress to determine the factors establishing business activity tax nexus, and that vendor costs of sales tax collection be studied.
H.R. 1552 (as passed by House on 10/16/01) Passed Senate by voice vote on 11/15/01. Enacted as **P.L. 107-75** on 11/28/01.	Extends by 2 years, until November 1, 2003.	Implicitly extends	–

Internet Tax Bills Introduced in the 107th Congress

House of Representatives

H.R. 1410 (Istook). Internet Tax Moratorium and Equity Act. Identical to S. 512 (Dorgan). Would extend the moratorium by 4 years and some months, until December 31, 2005. Enumerates the conditions under which Congress would automatically grant a state the authority to require out-of-state sellers (without nexus) to collect the use tax from the customer and remit it to the state, unless Congress took action within 120 days to disapprove the Interstate Sales and Use Tax Compact, which is to be drafted and adopted by the states. Would preserve the option for remote sellers to choose to collect either actual state and local use tax rates or a uniform statewide average rate. Under an alternate system, a state that adopted the streamlined sales tax system could require remote sellers to collect the actual state and local sales or use tax rate – if the state provided information on the rates and granted the seller relief from liability for relying on that information. Introduced April 4, 2001. Referred to the Committee on the Judiciary.

H.R. 1552 (Cox), P.L. 107-75. Internet Tax Nondiscrimination Act. As amended in the full Judiciary Committee and passed by the House, H.R. 1552 simply extended the prior moratorium by 2 years, until November 1, 2003. (As originally introduced and reported by the subcommittee, H.R. 1552 would have made the moratorium on Internet access taxes permanent and removed the grandfathering protection for existing Internet access taxes. Would have extended the moratorium on multiple or discriminatory taxes on electronic commerce by 5 years and some months, until December 31, 2006.) Introduced April 24, 2001. Referred to the Committee on the Judiciary. Reported by the Subcommittee on Commercial and Administrative Law on August 2, 2001. Amended and ordered reported by the Judiciary Committee on October 10, 2001 (H.Rept. 107-240). Considered by the House under suspension of the rules and passed by voice vote on October 16, 2001.

Senator George Allen's request that the Senate pass H.R. 1552 by unanimous consent was blocked by an objection on October 23, 2001. The bill was considered under a unanimous consent agreement and passed the Senate, without further amendment, by voice vote on November 15, 2001. It was enacted as P.L. 107-75 on November 28, 2001.

H.R. 1675 (Cox). Internet Tax Nondiscrimination Act. Identical to S. 777 (Allen). Would make the moratorium permanent on both Internet access taxes and multiple or discriminatory taxes on electronic commerce. Would remove the grandfathering protection for existing Internet access taxes. Introduced May 2, 2001. Referred to the Committee on the Judiciary.

H.R. 2421 (Stearns). Jurisdictional Certainty Over Digital Commerce Act. Would reserve to the federal government the authority to regulate digital commercial transactions and prohibit any state or local government regulation. In effect, this would prohibit state or local taxation of commercial transactions conducted entirely in digital form through the Internet. Digital commerce is defined to include both digital goods and digital services, and to exclude telecommunications services and the business of insurance. Introduced June 28, 2001. Referred to the Committee on Energy and Commerce and the Committee on the Judiciary.

H.R. 2526 (Goodlatte and Boucher). Internet Tax Fairness Act of 2001. Would make permanent the moratorium on both Internet access taxes and multiple and discriminatory taxes on electronic commerce. Would remove the grandfathering protection for existing Internet access taxes. In addition, H.R. 2526 would set jurisdictional standards for the imposition of state and local business activity taxes on interstate commerce. The bill enumerates 10 business activities that would not establish "substantial physical presence" (a new term) for determining nexus, including two not listed in S. 664 (Gregg and Kohl). A few of these business practices involve use of the Internet, but most involve other more traditional types of business relationships. Under H.R. 2526 the new nexus standards would apply only to business activity taxes, unlike under S. 664, which would apply the new nexus standards to sales and uses taxes as well as business activity taxes. Introduced July 17, 2001. Referred to the Committee on the Judiciary.

Senate

S. 246 (Smith, B.). Would extend the moratorium by 5 years, until October 21, 2006. Introduced February 6, 2001. Referred to the Committee on Commerce, Science, and Transportation.

S. 288 (Wyden). Internet Tax Nondiscrimination Act. Would make permanent the moratorium on Internet access taxes and remove the grandfathering protection for existing Internet access taxes. Would extend the moratorium against multiple and discriminatory taxes on electronic commerce by 5 years and some months, until December 31, 2006. Would encourage states to simplify their sales and use taxes. Would provide fast-track procedure for Congress to consider passing a joint resolution permitting states to require vendors to collect use taxes, if the states met tax-simplification criteria enumerated in the bill (called a "positive trigger"). Calls for one tax rate per state, for all sales, both within-state and interstate. Calls for clear standards limiting business activity tax nexus to sellers that have "continuous and systematic contacts" with the state. Introduced February 8, 2001. Referred to the Committee on Commerce, Science, and Transportation.

S. 512 (Dorgan). Internet Tax Moratorium and Equity Act. Identical to H.R. 1410 (Istook). Would extend the moratorium by 4 years and some months, until December 31, 2005. Enumerates the conditions under which Congress would automatically grant a state the authority to require out-of-state sellers (without nexus) to collect the use tax from the customer and remit it to the state, unless Congress took action within 120 days to disapprove the Interstate Sales and Use Tax Compact (called a "negative trigger"). The compact is to be drafted and adopted by the states. Would preserve the option for remote sellers to choose to collect either actual state and local use tax rates or a uniform statewide average rate. Under an alternate system, a state that adopted the streamlined sales tax system could require remote sellers to collect the actual state and local sales or use tax rate – if the state provided information on the rates and granted the seller relief from liability for relying on that information. Introduced March 9, 2001. Referred to the Committee on Finance.

S. 589 (Smith, B.). Would make the moratorium permanent, including the grandfathering protection for existing Internet access taxes. Introduced March 21, 2001. Referred to the Committee on Commerce, Science, and Transportation.

S. 664 (Gregg and Kohl). New Economy Tax Fairness (NET FAIR) Act. Would establish "substantial physical presence" as the nexus standard for imposing both state business activity taxes and the duty to collect and remit sales or use taxes on interstate commerce. Enumerates eight business activities that would not constitute substantial physical presence. (These eight activities are included among the 10 listed in H.R.2526, which applies to business activity taxes only.) Introduced March 29, 2001. Referred to the Committee on Finance.

S. 777 (Allen). Internet Tax Nondiscrimination Act. Identical to H.R. 1675 (Cox). Would make permanent the moratorium on both Internet access taxes and multiple or discriminatory taxes on electronic commerce. Would remove the grandfathering protection for existing Internet access taxes. Introduced April 25, 2001. Referred to the Committee on Commerce, Science, and Transportation.

S. 1481 (Wyden). Internet Tax Moratorium Extension Act. Would extend the moratorium for 2 years, until October 21, 2003. Expresses the sense of Congress that "... State governments and interested business organizations should expedite efforts to develop a streamlined simplified plan for protecting State revenues affected by Internet use without unnecessarily burdening interstate commerce." Introduced October 2, 2001. Referred to the Committee on Commerce, Science, and Transportation.

S. 1504 (Dorgan). Internet Tax Moratorium Extension Act. Would extend the moratorium for 8 months, until June 30, 2002. Expresses the sense of Congress that "... State governments and interested business organizations should expedite efforts to develop a streamlined sales and use tax system that, once approved by Congress, would allow sellers to collect and remit sales and use taxes without imposing an undue burden on interstate commerce." Introduced October 4, 2001. Referred to the Committee on Commerce, Science, and Transportation. Senator Dorgan's requests to have the bill passed by unanimous consent were blocked by an objection on October 18 and again on October 23, 2001.

S. 1525 (Allen). Defense of Internet Tax Freedom Act. Would extend the moratorium for 5 years, until October 21, 2006. Introduced October 10, 2001. Referred to the Committee on Commerce, Science, and Transportation.

S. 1542 (Enzi). Internet Tax Moratorium and Equity Act. Built upon S. 512 (Dorgan), with some elements of S. 288 (Wyden). Would make permanent the ban on new Internet access taxes, but would continue to grandfather existing access taxes. Would extend the moratorium on multiple and discriminatory taxes by 4 years and some months, until December 31, 2005. Enumerates the conditions under which Congress would automatically grant a state the authority to require out-of-state sellers (without nexus) to collect the use tax from the customer and remit it to the state, unless the Congress took action within 120 days to disapprove the Interstate Sales and Use Tax Compact, which is to be drafted and adopted by the states. Preserves the option offered in S. 512 to have remote sellers choose to collect either actual state and local use tax rates or a uniform statewide average rate (but does not include the alternative system of a state being able to require collection of actual state and local rates).

New elements: Amends definition of Internet access to include wireless web access services, while excluding telecommunications services generally. Defines Internet access

services to exclude receipt of content or services (to address the concern about bundling taxable services with tax-protected Internet access). Recommends a joint government-business study of the cost of collecting and remitting sales and use taxes for all sellers under current law and the proposed new system – to help determine reasonable vendor compensation. Contains a sense of Congress provision that legislation be enacted by the end of the 107th Congress to determine the factors establishing business activity tax nexus. Introduced October 11, 2001. Referred to the Committee on Health, Education, Labor, and Pensions.

S. 1567 (Enzi). Internet Tax Moratorium and Equity Act. Adapts S. 1545 (Enzi), which was built largely upon S. 512 (Dorgan), to reach greater compromise with S. 288 (Wyden). Like S. 1545, would make permanent the ban on new Internet access taxes, but would continue to grandfather existing access taxes. Would extend the moratorium on multiple and discriminatory taxes by 4 years and some months, until December 31, 2005. Amends definition of Internet access to include wireless web access services, while excluding telecommunications services generally. Defines Internet access services to exclude receipt of content or services (to address the concern about bundling taxable services with tax-protected Internet access). Recommends a joint government-business study of the cost of collecting and remitting sales and use taxes for all sellers – under current law and the proposed new system – to help determine reasonable vendor compensation. Contains a sense of Congress provision that legislation be enacted by the end of the 107th Congress to determine the factors establishing business activity tax nexus.

Includes more detailed provisions than S. 288 providing expedited procedure for Congress to consider a joint resolution to give states the authority to require remote sellers to collect and remit sales and use taxes ("positive trigger"). The states would have to adequately simplify their sales and use tax systems and adopt an interstate compact. As in S. 512 and S. 1542, S. 1567 preserves the option to have remote sellers choose to collect either actual state and local use tax rates or a uniform statewide average rate. In addition, as in S. 512 (but not S. 1542), a state that adopted the streamlined sales tax system could require remote sellers to collect the actual state and local sales or use tax rate – if the state provided information on the rates and granted the seller relief from liability for relying on that information. Lists the same tax simplification criteria found in S. 512 and S. 1542; many are similar to those in S. 288. Introduced October 18, 2001. Referred to the Committee on Commerce, Science, and Transportation.

Senate Amendment 2155 (Enzi and Dorgan). S.Amdt. 2155; Known as the Enzi-Dorgan amendment. Based on S. 1567, the second bill introduced by Senator Mike Enzi that tried to reach a compromise between S. 288 (Wyden) and S. 512 (Dorgan). Offered on the floor of the Senate on November 15, 2001, as an amendment in the nature of a substitute to H.R. 1552. One hour of debate on the amendment was permitted under the unanimous consent agreement governing consideration of H.R. 1552. Tabled by a vote of 57-43 on November 15, 2001.

Contains some changes to S. 1567 (Enzi). Drops definition of Internet access and references to wireless web access services. Keeps new definition of Internet access services to not include receipt of content or services. Adds two criteria for streamlined system: (13) uniform enforcement criteria and a process for ensuring compliance by states adopting the streamlined system; and (14) a process for resolving conflicts of law among states in implementing the system.

Would extend the moratorium on multiple and discriminatory taxes by 4 years and some months, until December 31, 2005. Would place a permanent ban on new Internet access taxes but continue to grandfather existing access taxes. To address the concern about the bundling of taxable services with tax-protected Internet access, would define Internet access services to exclude the receipt of content or services. To address the concerns about business activity tax nexus, contains a sense of Congress provision that legislation be enacted by the end of the 107th Congress to determine the factors establishing business activity nexus.

With regard to authorizing sales tax collection, includes an expedited ("fast track") procedure for Congress to consider a joint resolution to give states the authority to require sellers to collect use taxes if the states adequately simplified their sales and use tax systems and adopted an interstate compact, based on the proposal in S. 288 (Wyden). (The requirement for Congress to actively approve the simplified sales tax system is referred to as a "positive trigger.")

Drawing from S. 512 (Dorgan), offers the option for remote sellers to collect either actual state and local use tax rates or a uniform statewide average rate. Under an alternate system, a state that adopted the streamlined sales tax system could require remote sellers to collect the actual state and local sales or use tax rate – if the state provided information on the rates and granted the seller relief from liability for relying on that information. In a sense of Congress provision, enumerates 14 specific features to be addressed in developing a streamlined sales and use tax system. Recommends a joint government-business study of the cost of collecting and remitting sales and use taxes for all sellers (local and remote) under both current law and the proposed new system – to help determine reasonable vendor compensation.

H.R. 1552, P.L. 107-75. Internet Tax Nondiscrimination Act. Extends the prior moratorium by two years, until November 1, 2003. The Senate passed the bill received from the House, by voice vote, on November 15, 2001, after S.Amdt. 2155 (Enzi) was tabled. Enacted as P.L. 107-75 on November 28, 2001.

For Additional Information

Hearings in the 107th Congress

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Commercial and Administrative Law. *Internet Tax Nondiscrimination Act.* Hearing on H.R. 1552 and H.R. 1675. Serial No. 26, 107th Congress, 1st session, June 26, 2001. Washington: U.S. Govt. Print. Off., 2001.

—— *Internet Tax Moratorium and Equity Act.* Hearing on H.R. 1410. Serial No. 31, 107th Congress, 1st session, July 18, 2001. Washington: U.S. Govt. Print. Off., 2001.

—— Hearing on H.R. 2526. 107th Congress, 1st session, September 11, 2001. Interrupted by terrorist attacks.

U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Hearing on Extension of the Internet Tax Moratorium. 107th Congress, 1st session, March 14, 2001. [Proceedings not yet published.]

—— Committee on Finance. *Cybershopping and Sales Tax: Finding the Right Mix.* Hearing. 107th Congress, 1st session, August 1, 2001. [Proceedings not yet published.]

CRS Reports

CRS Report RL31177. *Extending the Internet Tax Moratorium and Related Issues*, by Nonna A. Noto.

CRS Report RL30667. *Internet Tax Legislation: Distinguishing Issues*, by Nonna A. Noto. (Analyzes the bills in the 106th Congress.)

CRS Report RL30412. *Internet Taxation: Bills in the 106th Congress*, by Nonna A. Noto.

CRS Report 98-509 E. *Internet Tax Bills in the 105th Congress*, 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.

Other Congressional Reports

U.S. Congress. House. *Internet Tax Nondiscrimination Act.* Report to Accompany H.R. 1552, Including Cost Estimate of the Congressional Budget Office. H.Rept. 107-240, 107th Congress, 1st session, October 16, 2001.

U.S. Congress. Joint Committee on Taxation. *Overview of Issues Related to the Internet Tax Freedom Act and of Proposals to Extend or Modify the Act.* Scheduled for a Hearing Before the Senate Committee on Finance on August 1, 2001. JCX-64-01, 107th Congress, 1st session, July 30, 2001.

U.S. Congressional Budget Office. *Economic Analysis of Taxing Internet and Other Remote Sales.* Statement of G. Thomas Woodward, Assistant Director for Tax Analysis. CBO Testimony before the U.S. Senate, Committee on Finance. August 1, 2001.

U.S. General Accounting Office. *Sales Taxes: Electronic Commerce Growth Presents Challenges; Revenue Losses Are Uncertain.* GAO report GGD/OCE-00-165. Washington, June 30, 2000.