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# Internet Taxation: Issues and Legislation in the 108th Congress

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## Summary

The Internet Tax Freedom Act (ITFA), enacted in October 1998 and extended for two years in November 2001, expired on November 1, 2003. The federal moratorium prohibited state and local governments from levying new taxes on Internet access and any multiple or discriminatory taxes on electronic commerce. Taxes on Internet access that were in place before October 1, 1998, were protected by a grandfather clause.

The House approved a permanent moratorium, H.R. 49, on September 17, 2003. H.R. 49 as passed would have (1) permanently extended the moratorium; (2) eliminated the grandfathering protections, and (3) exempted from state and local taxes any form of telecommunications used to provide Internet access. The Congressional Budget Office (CBO) found that H.R. 49 would have imposed an intergovernmental mandate because existing taxes would not be granted grandfathering protection. The Bush Administration supported permanent extension of the moratorium.

The Senate approved a temporary extension of the moratorium, S. 150, on April 29, 2004. S. 150 (1) extended the moratorium for four years, from November 1, 2003, through November 1, 2007; (2) expanded the definition of Internet access to include both providers and buyers of Internet access; (3) grandfathered through November 1, 2007, Internet access taxes enforced before October 1, 1998; (4) grandfathered through November 1, 2005, Internet access taxes enforced before November 1, 2003 (primarily taxes on DSL Internet access service); and (5) excluded from the moratorium taxes on voice or similar service utilizing Internet Protocol (VoIP). In the final days of the 108th Congress, the Senate on November 17, 2004, approved S.Con.Res. 146, which made two modifications to S. 150. It restricted the grandfathering protection for Internet access taxes in Wisconsin to two years instead of four and explicitly protected Texas municipal access line fees. On November 19, the House approved both S. 150 and S. Cons. Res. 146. President George W. Bush signed S. 150 into P.L. 108-435 on December 3, 2004.

An issue previously raised in connection with the Internet tax moratorium is streamlining sales taxes for remote tax collection authority. Companion bills H.R. 3184 and S. 1736 would have granted states that comply with the Streamlined Sales and Use Tax Agreement (a multistate compact) the authority to require remote sellers to collect state and local taxes on interstate sales. A related issue is whether and how to have Congress set the nexus standards under which a state is entitled to impose a business activity tax (BAT, e.g., corporate net income tax, franchise tax, business and occupation tax, gross receipts tax) on a company located outside the state but with some business activities in the state. H.R. 3220 would have established a physical presence standard for business activity taxes.

This report will not be updated further.

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# Internet Taxation: Issues and Legislation in the 108th Congress

## History

The Internet Tax Freedom Act (ITFA) was enacted on October 21, 1998, as Title XI of Division C of P.L. 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[1] The ITFA placed a three-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 access taxes that were "... generally imposed and actually enforced prior to October 1, 1998 ...."

This initial Internet tax moratorium expired on October 21, 2001. The Internet Tax Nondiscrimination Act, P.L. 107-75, was enacted on November 28, 2001. It provided for a two-year extension of the prior moratorium, through November 1, 2003. It also continued the grandfathering protection for pre-existing Internet access taxes.

In the 108th Congress, the House passed H.R. 49 on September 17, 2003. H.R. 49 would have made the moratorium permanent, significantly broadened the definition of Internet access, and eliminated all grandfathering protections.

The Senate approved S. 150 (93-3) on April 29, 2004. S. 150 extended the moratorium for four years from November 1, 2003, until November 1, 2007; grandfathered pre-October 1, 1998 taxes on Internet access through November 1, 2007; grandfathered pre-November 1, 2003 taxes (mostly on digital subscriber line or DSL services) through November 1, 2005; and excluded from the moratorium taxes on voice or similar service utilizing Internet Protocol (VoIP). On November 17, 2004, the Senate approved S.Con.Res. 146, which made two modifications to S. 150. It restricted the grandfathering protection for Internet access taxes in Wisconsin to three years (through November 1, 2006) instead of four and protected the ability of Texas municipalities to collect franchise fees from telecommunications providers that use public lands. On November 19 the House approved both S. 150 and S. Cons. Res. 146. President George W. Bush signed S. 150 into P.L. 108-435 on December 3, 2004.

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[1] Title XII was also part of S. 442, 105th Congress, the underlying ITFA legislation. Titles XI and XII, 112 Stat. 2681-719 through 728 (1998). Title XI is codified as the ITFA in 47 U.S.C. 151 note. Title XII is codified as 19 U.S.C. 2241 note.

# Internet Tax Nondiscrimination Act, P.L. 108-435

The Internet Tax Nondiscrimination Act, S. 150, enacted as P.L. 108-435 on December 3, 2004, amended the Internet Tax Freedom Act (47 U.S.C. 151 note) effective November 1, 2003. The act:

- Extended the Internet tax moratorium for four years, retroactively one year to November 1, 2003, and forward three years until November 1, 2007. The moratorium bars state and local governments from imposing any new taxes on Internet access or imposing any multiple or discriminatory taxes on electronic commerce.

- Clarified that the term "tax on Internet access" applies regardless of whether the tax is imposed on a provider or buyer of Internet access.

- Made explicit that a "tax on Internet access" does not include a tax levied on net income, capital stock, net worth, or property value.

- Provided that the terms "Internet access" and "Internet access service" do "not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access." (This permits some portion of telecommunications services to be included under the tax moratorium.)

- Extended the grandfather protection from November 1, 2003, until November 1, 2007, to state and local governments that taxed Internet access prior to October 1, 1998. An exception was made for a state telecommunications service tax in Wisconsin, for which protection was extended only until November 1, 2006. Protection was extended only until November 1, 2005, for taxes on Internet access that were generally imposed and actually enforced as of November 1, 2003, which reportedly refers mainly to taxes on digital subscriber line (DSL) services.

- Explicitly protected the Texas municipal access line fee. This provision is intended to protect the ability of Texas municipalities to collect franchise fees from telecommunications providers that use public lands.

- Included a new accounting rule that charges for Internet access may be subject to taxation in cases where charges for Internet access are aggregated with charges for telecommunications services or other charges that are subject to taxation — unless the Internet access provider can reasonably identify the charges for Internet access.

- Stated that nothing in the act prevents the collection of any charges for federal or state universal service programs (for telephone

service), or for state or local 911 and E-911 (emergency call) services, nor does it affect any federal or state regulatory non-tax proceeding (such as FCC regulatory proceedings).

- Clarified that the moratorium does not apply to taxes on Voice over Internet Protocol (VoIP) services. This section does not apply to services that are incidental to Internet access, such as voice capable e-mail or instant messaging.

- Provided for the GAO (Government Accountability Office) to study the effects of the Internet tax moratorium on the revenues of state and local governments and on the deployment and adoption of broadband technologies for Internet access throughout the United States, including rural underserved areas. The study is to compare deployment in states that tax broadband Internet access service with states that do not. The Comptroller General is to report the findings, conclusions, and any recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce by November 1, 2005.

## Issues

The five main issues surrounding Internet taxation and e-commerce in the 108th Congress were as follows:

- whether to extend the moratorium on Internet access taxes temporarily or permanently or allow it to sunset;

- whether to grandfather protection for states that imposed taxes on Internet access before the original moratorium was enacted;

- to define Internet access and discriminatory taxes to the satisfaction of all stakeholders;

- whether to grant states the authority to require remote sellers to collect use taxes if the states adopted a streamlined sales tax system; and

- Congressional codification of guidelines for establishing whether or not a business engaged in interstate commerce has nexus in a jurisdiction for purposes of business activity tax (BAT, e.g., corporate income tax, franchise tax, business license tax) liability.[2]

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[2] The issues remain similar to those considered in 2001, when the Internet tax moratorium was temporarily extended for two years. For a longer discussion of the extension of the moratorium, grandfathering of existing access taxes, and collecting sales and use taxes on interstate sales — in relation to bills introduced in the first session of the 107th Congress — (continued...)

## The Moratorium: Permanent vs. Temporary Extension, or Sunset?

The intent of the Internet Tax Freedom Act enacted in 1998 was to prevent state taxes on Internet access, to ensure that multiple jurisdictions could not tax the same electronic commerce transaction, and to ensure that commerce over the Internet would not be singled out for discriminatory tax treatment. Supporters of the moratorium felt that the Internet should be protected from the administrative and financial burdens of taxation to encourage the advance of Internet technology and associated economic activity. Opponents contended that a federal moratorium infringed on the states' independent authority to levy taxes and that Internet transactions and services should not be afforded preferential tax treatment.

A permanent extension of the moratorium would eliminate the need for Congress to revisit the issues surrounding Internet taxation when a temporary moratorium expired. Permanent extension presumably could also provide both the producers and consumers of Internet services greater certainty about state and local taxation of the Internet. Opponents contended, however, that a permanent extension would not address the underlying issue of federal restrictions on state taxation and the clarification of the definition of Internet access.

In contrast, a temporary extension of the moratorium allows Congress to periodically review the conditions of the moratorium and the effect of the moratorium on the states. Reassessment could be made in the context of developments in computer technology and business organization, as well as state and local government revenues. A temporary extension would also provide time for the states to further simplify their sales and use taxes. (See the discussion below on *Streamlined Sales Taxes and Remote Collection Authority*.)

Allowing the moratorium to sunset would permit the states to tax Internet access, although, in practice, the trend has been for states to repeal their Internet access taxes. As Internet technology continues to change the telecommunications industry, however, state and local governments will likely modify how the industry is taxed. A sunset of the moratorium could induce states to address the taxation of telecommunications more broadly.

H.R. 49 provided for a permanent extension of the moratorium. The Bush Administration supported a permanent extension. S. 150 (P.L. 108-435) provided for a four-year extension of the moratorium retroactively from November 1, 2003, until November 1, 2007.

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[2] (...continued)
see CRS Report RL31177, *Extending the Internet Tax Moratorium and Related Issues*, by Nonna A. Noto.

## Grandfathering of Existing Access Taxes

The Internet Tax Freedom Act exempted from the moratorium taxes on Internet access that were "... generally imposed and actually enforced prior to October 1, 1998...." When ITFA legislation was being considered in the spring of 1998, 10 states and the District of Columbia were already applying their sales tax to Internet access services.[3] Subsequently, Connecticut, Iowa, Tennessee, and the District of Columbia eliminated their tax on Internet access, and South Carolina has not enforced the collection of its tax during the federal moratorium. This left six states imposing a sales tax (or equivalent tax) on Internet access as of November 2004: New Mexico, North Dakota, Ohio (on businesses only, not consumers), South Dakota, Texas (on monthly charges over $25), and Wisconsin.[4] In addition, Hawaii levies its general excise tax, New Hampshire its communications services tax (imposed on all two-way communications equipment), and Washington state its business and occupation tax (a gross receipts tax levied on business) on Internet access. The Congressional Budget Office believes that several local jurisdictions in Colorado, Ohio, South Dakota, Texas, Washington, and Wisconsin also are collecting taxes on Internet access.[5]

The grandfathering protection was continued when the ITFA moratorium was extended for two years in 2001 (through November 1, 2003). The issue before the 108th Congress was whether the grandfathering of existing Internet access taxes would be continued if the moratorium was renewed, either temporarily or permanently. H.R. 49, as passed by the House, would have eliminated the grandfathering protections. S. 150 (P.L. 108-435) extended the grandfathering protection for pre-October 1998 taxes through November 1, 2007. A second grandfathering issue had arisen as states began to tax Internet access provided through digital subscriber lines (DSL), a high-speed telephone service. DSL is considered a telecommunication service and was exempt from the original moratorium and thus taxable. P.L 108-435 grandfathered pre-November 2003 taxes (mostly taxes on DSL service) only through November 1, 2005.

In its cost estimates for H.R. 49 and S. 150, the Congressional Budget Office (CBO) determined that eliminating the grandfathering protection for Internet access taxes would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA, P.L. 104-4, 2 U.S.C. 1501-1571).[6] According to

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[3] National Conference of State Legislatures, "Which States Tax Internet Access?" March 25, 1998. Available at [http://www.ncsl.org/programs/fiscal/intertax.htm].

[4] Vertex, Inc., *Tax Cybrary*. Available at [http://www.vertexinc.com].

[5] Congressional Budget Office, "Cost Estimate for S. 150, the Internet Tax Nondiscrimination Act," Sept. 9, 2003. Contained in U.S. Congress, Senate, Committee on Commerce, Science, and Transportation, *Internet Tax Non-discrimination Act of 2003*, Report on S. 150, 108th Cong., 1st Sess., Report 108-155, Sept. 29, 2003 (Washington: GPO, 2003), p. 7. Cost estimate also available at [http://www.cbo.gov].

[6] Congressional Budget Office, "Cost Estimate for H.R. 49, Internet Tax Nondiscrimination Act," as ordered reported by the House Committee on the Judiciary on July 16, 2003, (continued...)

CBO, the prohibition of taxes on Internet access that were then collected in up to 10 states and a few local jurisdictions in six states, would cost these jurisdictions approximately $80 million to $120 million per year. This estimate alone exceeded the UMRA threshold of $59 million in 2003, in the case of H.R. 49, and $64 million in 2007 (adjusted annually for inflation), in the case of S. 150. CBO noted that additional state and local revenues could be lost if more telecommunications services and information content were redefined as Internet access.

In addition, in a report released in October 2003, the Center on Budget and Policy Priorities estimated that as many as 27 states could lose approximately $70 million per year if they could not tax DSL Internet access services.[7] CBO estimated the revenues that would be lost from prohibiting taxes on DSL at $40 million in 2003 and a projected $80 million per year by 2008.

## Definitions

The ITFA tax moratorium prohibits new taxes on Internet access and multiple or discriminatory taxes on electronic commerce. The act's definitions of Internet access and of discriminatory tax, in particular, have been the source of some concern and legal uncertainty for state and local governments, providers of new-technology Internet access service, telecommunications companies offering bundled communications and information services, supporters of federal and state universal service programs, and companies with "dot.com" subsidiaries.

**Taxation of Internet Access.** The taxation of Internet access most commonly refers to the application of state and local sales taxes to the monthly charges that retail subscribers pay for access to the Internet. These payments may go to traditional dial-up Internet service providers (ISPs) such as America Online (AOL) and EarthLink, or to the local telephone or cable TV company. According to the Federation of Tax Administrators, the tax may also take the form of a sales and use tax or excise tax levied specifically on telecommunications, communication, information services or data processing services, the definition of which encompasses "charges for Internet access." S. 150 (P.L. 108-435) clarified that a "tax on Internet access" applies regardless of whether the tax is imposed on a provider or buyer of Internet access.

Some examples can help illustrate the size of the tax burden at issue. If the tax were levied at a combined state and local sales tax rate of 7%, the tax on a dial-up modem service costing $22 per month would be $1.54 per month or $18.48 per year. On a DSL (digital subscriber line) service costing $35 per month, the tax would be

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[6] (...continued)
Washington, July 21, 2003; and "Cost Estimate for S. 150, the Internet Tax Nondiscrimination Act." Both available at [http://www.cbo.gov].

[7] Michael Mazerov, "Making the Internet Tax Freedom Act Permanent in the Form Currently Proposed Would Lead to a Substantial Loss for States and Localities," Center on Budget and Policy Priorities, Oct. 20, 2003. Available at [http://www.cbpp.org].

$2.45 per month or $29.40 per year. On a cable modem service costing $45 per month, the tax would be $3.15 per month or $37.80 per year.[8]

***Telecommunications Industry Concerns.*** Telecommunications carriers were concerned that Internet access offered through some primarily telecommunications technologies, such as DSL or wireless services, might not be treated as exempt from tax, while access offered over other technologies, such as cable modem, would be exempt. In an attempt to address these concerns, both H.R. 49 and S.150 provided that all forms of telecommunications services used to provide Internet access would be exempt from state and local taxes under the moratorium.[9]

S. 150 (P.L. 108-435) added the phrase shown below in italics to the definition of Internet access and Internet access service. According to Section 1105(5) (new numbering) of the Internet Tax Freedom Act,

> The term "Internet access" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services *except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.* [Emphasis added.]

As a result, some portion of telecommunications services may be included under the tax moratorium.

***State and Local Government Concerns.*** State and local governments were concerned, however, that the revised language would broaden the current tax exemption far beyond retail Internet access. The expanded definition could also exempt not only the services that connect the consumer to the Internet, but also all of the telecommunications services that compose the Internet backbone.[10] While not quantifying the likely cost, CBO indicated that this interpretation of S. 150 could reduce state and local revenues from taxes on telecommunications.[11]

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[8] Monthly prices from Matt Richtel, "In a Fast-Moving Web World, Some Prefer the Dial-Up Lane," *The New York Times*, April 19, 2004, and Jim Hu, "Study: Price gives DSL an edge in broadband, CNET news.com, March 23, 2004 available at [http://news.com.com Study+Price+gives+DSL+an+edge+in+broadband/2100-1032_3-5178050.html]. Common state-local sales tax rate selected from Federation of Tax Administrators, Comparison of State and Local Retail Sales Taxes, Jan. 2004. Available at [http://www.taxadmin.org/fta/rate/sl_sales.html]. Calculation of sample tax bills by CRS.

[9] For more information, see U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Internet Tax Non-discrimination Act of 2003*, Report on S. 150,108th Cong., 1st sess., S.Rept. 108-155, Sept. 29, 2003 (Washington: GPO, 2003).

[10] Harley Duncan and Mattt Tomalis, "On the ITFA: Telecom's Trojan Horse," *State Tax Notes*, Jan.12, 2004, pp. 129-132.

[11] Congressional Budget Office, "Cost Estimate for S. 150, Internet Tax Nondiscrimination Act," Sept. 9, 2003. Available at [http://www.cbo.gov] and included in Senate Commerce Committee, Report on S. 150, S.Rept. 108-155, p.8.

A report issued in September 2003 by the Multistate Tax Commission (MTC) estimated that H.R. 49 would cost state and local governments from $4 billion to $8.75 billion annually by 2006. This estimate did not include potential losses from bundling of services. It did include the reduction of sales, excise, income, property, and other business taxes on Internet access and telecommunications. In contrast, if the moratorium were limited to sales taxes solely on Internet access to customers (the so-called last mile of service), including broadband, and removing the grandfathering, the cost would be limited to approximately $500 million in 2006.[12]

S. 150 (P.L. 108-435) made explicit that the term "tax on Internet access" does not include a tax levied on net income, capital stock, net worth, or property value. It extended the grandfather protection for existing Internet access taxes until November 1, 2007, with the exception of Wisconsin where protection ends on November 1, 2006. It explicitly protected the Texas municipal access line fee; this protects the ability of Texas municipalities to collect franchise fees from telecommunications providers that use public lands.

In addition, state and local governments were concerned that with the growth of Internet telephony (Voice over Internet Protocol, VoIP), there would be less traditional telephone service (POTS) remaining in the tax base. Currently, state and local taxes on voice telephone services produce $12 billion in annual revenues.[13] S. 150 (P.L. 108-435) clarified that the tax moratorium does not apply to VoIP services, which may be taxed. H.R. 4129 and S. 2281 as introduced would have prohibited state and local taxation of VoIP applications.[14]

***Bundling of Services.*** The breadth of coverage in the first sentence of the definition of Internet access shown above gives rise to concern on the part of state and local revenue departments that the tax-protection of Internet access may extend to "bundled" products and services that might otherwise be taxable if purchased on their own. These could include data and information services, cable television, books, magazines, games, music, and video on demand, for example. These types of products and services can be offered online and sold as part of an Internet access service.[15]

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[12] Dan Bucks, Elliott Dubin, and Ken Beier, "Revenue Impact on State and Local Governments of Permanent Extension of the Internet Tax Freedom Act" (Washington: Multistate Tax Commission), Sept. 24, 2003. Available at [http://www.mtc.gov].

[13] Michael Mazerov, "A Permanent Ban on Internet Access Taxation Risks Serious Erosion of State and Local Telephone Tax Revenue as Phone Calls Migrate to the Internet," Center on Budget and Policy Priorities, Washington, DC, Feb. 11, 2004, p. 1. Available at [http://www.cbpp.org].

[14] For objections to a tax prohibition on VoIP, see Michael Mazerov, "Proposed 'Voice over Internet Protocol Regulatory Freedom Act' Threatens to Strip States and Localities of Billions of Dollars in Annual Tax Revenues," Center on Budget and Policy Priorities, Washington, DC, July 20, 2004. Available at [http://www.cbpp.org].

[15] Harley Duncan and Matt Tomalis, "On the Internet Tax Freedom Act: The Forgotten First Sentence," *State Tax Notes*, March 29, 2004, pp. 1105-1108.

S. 150 (P.L. 108-435) included a new accounting rule that addressed the bundling issue. Under this rule, Internet access service may be taxable if access fees are aggregated with fees for otherwise taxable telecommunications services. If the Internet access provider can reasonably identify the charges for Internet access, then the Internet access is not taxable.

***Funding Universal Service.*** Some members of Congress were concerned about protecting the financing source for the Universal Service Fund (USF).[16] The USF is administered by the Universal Service Administrative Company, an independent not-for-profit organization operating under the auspices of the Federal Communications Commission (FCC). The USF is financed by mandatory contributions from interstate telecommunications carriers.[17] A company's USF contribution is a percentage of its interstate and international end-user revenues.[18] Some states also levy charges on the intrastate retail revenues of telecommunications carriers for their state's universal service fund.[19]

Supporters of the universal service programs were concerned that efforts to protect Internet access and associated telecommunications services should not reduce the funding base for universal service. S. 150 (P.L. 108-435) does not prevent the federal government or the states from imposing or collecting the fees or charges on telecommunications that are used to finance the universal service program. Nor does it prevent states or local governments from collecting fees or charges to support 911 or E-911 (emergency) services. Nor does it affect any federal or state regulatory proceeding that is not related to taxation.

**Multiple Taxes.** The ban on multiple taxes prohibits more than one state, or more than one local jurisdiction at the same level of government (i.e., more than one county or one city) from imposing a tax on the same transaction — unless a credit is offered for taxes paid to another jurisdiction. However, the state, county, and city in

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[16] The USF subsidizes telephone service to low income consumers and to high-cost rural and insular areas. Through the E-rate or education-rate program instituted by the Telecommunications Act of 1996, the USF also subsidizes telecommunications discounts for schools and libraries. Also as a result of the 1996 Act, the USF subsidizes communications links between rural health care providers and urban medical centers. For further information on the E-rate program, see CRS Issue Brief IB98040, *Telecommunications Discounts for Schools and Libraries: The "E-Rate" Program and Controversies*, by Angele A. Gilroy.

[17] All telecommunications providers that provide service between states must contribute to the USF. This includes long distance companies, local telephone companies, wireless telephone companies, paging companies, and payphone providers.

[18] The percentage, known as the contribution factor, is set quarterly, and varies depending on the financing needs of the universal service programs. The federal universal service contribution factor for the third quarter of 2003 was 0.095 or 9.5%. The proposed contribution factor for the fourth quarter of 2004 was 0.089 or 8.9%. Federal Communications Commission, Contribution Factors and Quarterly Filings, available at [http://www.fcc.gov/wcb/universal_service/quarter.html].

[19] State charges are typically levied on the intrastate retail revenues of wireline carriers and, in some states, wireless carriers as well.

which an electronic commerce transaction takes place could all levy their sales taxes on the transaction.

**Discriminatory Taxes.** In practice, the ban on discriminatory taxes on electronic commerce means that transactions arranged over the Internet are to be taxed in the same manner as mail order or telephone sales. Under the current judicial interpretation of nexus as applied to mail-order sales, a state cannot require an out-of-state seller to collect a use tax from the customer unless the seller has a physical presence in the taxing state.[20] (A use tax is the companion tax to the sales tax, applicable to interstate sales.) Congress or the Supreme Court would need to act to grant or approve the states' ability to require out-of-state tax collection, whether the transaction was arranged over the Internet or by mail-order, telephone, or other means.

The second part of the ITFA's definition of discriminatory tax lists conditions under which a remote seller's use of a computer server, an Internet access service, or online services does not establish nexus. These circumstances include the sole ability to access a site on a remote seller's out-of-state computer server; the display of a remote seller's information or content on the out-of-state computer server of a provider of Internet access service or online services; and processing of orders through the out-of-state computer server of a provider of Internet access service or online services. Some businesses have taken advantage of these nexus limits in the ITFA's definition of discriminatory tax to establish what are referred to as Internet kiosks or dot-com subsidiaries. The businesses claim that these Internet-based operations are free from sales and use tax collection requirements. Critics object that these methods of business organization are an abuse of the definition of discriminatory tax.

## Streamlined Sales Taxes and Remote Collection Authority

In the 106th and 107th Congresses, the debate surrounding legislation to extend the Internet tax moratorium was linked to the states' quest for sales and use tax collection authority. The issue is whether Congress is willing to grant states the authority to require remote (out-of-state) sellers to collect use taxes on interstate sales conditioned on a simplification of state and local sales and use tax systems. Bills were introduced that enumerated criteria for a simplified sales and use tax system and procedures for Congress to grant tax collection authority — in conjunction with an extension of the moratorium.

In contrast, in the 108th Congress, the sales tax issue was pursued separately from the moratorium. Companion bills H.R. 3184 (Istook and Delahunt) and S. 1736 (Enzi) would have granted states that comply with the Streamlined Sales and Use Tax Agreement the authority to require remote sellers to collect state and local use taxes on interstate sales.

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[20] For additional discussion, see CRS Report RS20577, *State Sales Taxation of Internet Transactions*, by John R. Luckey.

The chairmen of the committees of jurisdiction in both the House and Senate indicated that they wanted to pursue the moratorium extension independently from the sales tax issue. Representative Cannon, Chairman of the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee, and Senator McCain, Chairman of the Senate Committee on Commerce, Science, and Transportation, each indicated that his committee would hold a hearing on the sales tax issue, in addition to the hearing held on the moratorium extension. The House Subcommittee on Commercial and Administrative Law held an oversight hearing on October 1, 2003.[21]

Under current law, a vendor with substantial nexus (usually defined as physical presence) in its customer's state collects the state (and local) sales tax on sales arranged over the Internet (or by telephone, mail order, or other means). In contrast, an out-of-state vendor without substantial nexus in the customer's state is not required to collect the sales tax.[22] Technically, the customer is required to remit a "use" tax to his or her state of residence.[23] In practice, however, use tax compliance by non-business purchasers is low. Because of this low compliance, many states have long wanted to require out-of-state vendors without physical presence in the respective states (referred to as remote sellers) to collect the use tax from the customer. This would apply to all interstate sales, whether arranged over the Internet or by catalog, telephone, or other means.

Acknowledging administrative complexity as a major obstacle to remote collection, the states began a concerted effort to simplify state and local sales and use tax through the Streamlined Sales Tax Project (SSTP). The project commenced in March 2000, midway through the initial ITFA moratorium (October 1998 - October 2001). The SSTP continued its work after the moratorium was extended in November 2001. On November 12, 2002, 34 states and the District of Columbia approved a model interstate agreement to simplify their sales tax systems, known as the Streamlined Sales and Use Tax Agreement. The agreement establishes uniform definitions for taxable goods and services and requires that a participating state and local government have only one statewide tax rate for each type of product by 2006. Each state would retain the power to define taxable products and establish the tax rate. The agreement provides for streamlined tax administration and audit requirements for sellers.

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[21] U.S. Congress, House, Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, *Streamlined Sales and Use Tax Agreement: States' Efforts to Facilitate Sales Tax Collection from Remote Vendors*, oversight hearing, 108th Cong., 1st sess., serial no. 57, Oct. 1, 2003 (Washington: GPO, 2003). Available at [http://www.house.gov/judiciary/].

[22] In 1967 and again in 1992, the Supreme Court concluded that the complexity of the state and local sales tax systems imposed an undue burden on interstate commerce. The Court invited the Congress to take action on this issue. See the following decisions: National Bellas Hess, Inc. *v.* Illinois Department of Revenue, 386 U.S. 753 (1967) and Quill Corp. *v.* North Dakota, 504 U.S. 298 (1992).

[23] The use tax is the companion tax to the sales tax and was created to ensure that cross border transactions are not favored in the state tax code.

During their 2003 sessions, many state legislatures considered legislation to bring their own state and local sales tax laws into conformity with the model tax agreement. For the agreement to come into effect, at least 10 states representing at least 20% of the combined population of the 45 states with state sales taxes were required to petition for membership into the agreement and be found to be in conformance with the agreement. (There is some question about whether in order to qualify as conforming, 10 states must simply approve the agreement or must actually change the administration of their sales tax systems to conform with the agreement.) As of April 2004, 20 states had enacted legislation conforming with all or part of the agreement.[24] The combined population of these 20 states represents approximately 30% of the population of states with sales taxes. The states have yet to petition for membership in the compact. October 1, 2005, is the target date for making the compact's governing board operational. Collection by sellers of sales and use taxes on remote sales is to remain voluntary under the agreement until either Congress or the Supreme Court acts to make collection mandatory.

Separately, a coalition of a few nationwide sellers reached agreements with 38 states and the District of Columbia to begin collecting their use taxes voluntarily, starting February 3, 2003, in exchange for amnesty on previously uncollected taxes. Among the retailers participating initially were Wal-Mart Stores Inc., Target Corp., and Toys R Us Inc. Other retailers have entered into similar voluntary agreements.

## Business Activity Tax (BAT) Nexus Standards

The possibility that states could be authorized to require remote vendors to collect sales and use taxes on interstate sales raised concerns that states would then attempt to impose income and other business taxes on those vendors. In response, some multistate businesses asked Congress to clarify nexus standards for state and local business activity taxes (BATs).[25] Past court decisions and the landmark P.L. 86-272 enacted in 1959 (15 U.S.C. 381 et seq.) established physical presence as the standard for sufficient nexus, but only for the sale of tangible goods, and only for taxes on net income.

Congress clarified nexus in P.L. 86-272 by identifying those activities which would *not* establish nexus. Generally, soliciting the sale of tangible goods in a state for shipment by common carrier from locations outside the state would not be sufficient to trigger nexus. Thus, for products shipped across state lines, state corporate income taxes are levied at the *source*, not the *destination*, of the product.

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[24] Streamlined Sales Tax Project, State Legislative Status of Streamlined Sales and Use Tax Agreement (as of July 1, 2004). Available at [http://www.streamlinedsalestax.org] under St. Legislative Status.

[25] Business activity taxes are commonly thought of as corporate income taxes, but may also include franchise taxes, business license taxes, business and occupation taxes, a tax on gross receipts, gross income or gross profits, value-added taxes, single business taxes, and capital stock taxes. They do not include taxes on transactions, like sales and use taxes or excise taxes.

Proponents of federally defined nexus standards contend that current federal law does not sufficiently define substantial nexus. The issue before Congress is whether to codify nexus rules for intangible property and services, not just tangible goods. Currently, each state independently implements rules that establish nexus for economic activities that are not covered by P.L. 86-272. Although state rules are very similar for many services and activities, there is still significant variation among states on the threshold for establishing nexus. In theory, Congress could establish uniform federal standards for imposing state business activity taxes on out-of-state businesses.

Some representatives of state and local governments, however, are concerned that enacting federal nexus guidelines could restrict their ability to levy corporate income taxes or other BATs on business activities conducted in their state. For example, if Congress implemented thresholds at the midpoint level of all existing state nexus rules, by definition, many states would lose taxpayers that did not meet the new standard for substantial nexus. The states with the lowest thresholds would fare the worst under such a scenario.

The remote collection authority bills offered in earlier Congresses typically provided that out-of-state vendors that collected sales and use taxes would not then be subject to business activity taxes by virtue of their tax collection for the state.[26] In the 108th Congress, as in the past, the BAT nexus issue was kept separate from both the extension of the Internet tax moratorium and the sales tax simplification issue. H.R. 3220 (Goodlatte and Boucher) would have established physical presence as the nexus standard for levying state and local business activity taxes on interstate commerce. It would have extended the protections of P.L. 86-272 to all sales (including services and intangible property, not just tangible personal property) and to other state and local business activity taxes, not just net income taxes.[27]

# Action in the 108th Congress

## Moratorium Legislation

Several bills to extend the Internet tax moratorium were introduced in the 108th Congress. H.R. 49 was amended and reported by the House Judiciary Committee on July 16, 2003, and approved by the House on September 17, 2003. S. 150 was amended and approved by the Senate on April 29, 2004. S.Con.Res. 146, which made two modifications to S. 150, was approved by the Senate on November 17, 2004. The House approved both S. 150 and S.Con.Res. 146 on November 19.

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[26] For more on state BATs, see CRS Report RL32297, *State Corporate Income Taxes: A Description and Analysis,* by Steven Maguire.

[27] For a critique of H.R. 3220 from the vantage point of states, see Michael Mazerov, "Proposed 'Business Activity Tax Nexus' Legislation Would Seriously Undermine State Taxes on Corporate Profits and Harm the Economy," Council on Budget and Policy Priorities, Washington, DC, revised Oct. 4, 2004. Available at [http://www.cbpp.org].

President George W. Bush signed S. 150 into law, P.L. 108-435, on December 3, 2004.

Both H.R. 49 and S. 150 expanded the definition of Internet access to ensure technological neutrality. The two bills differed on the treatment of existing Internet access taxes and the length of the moratorium. H.R. 49 would have imposed a permanent moratorium and would have immediately removed the grandfathering protection provided to states with Internet access taxes in place prior to October 1, 1998. S. 150 (P.L. 108-435), in contrast, extended the moratorium for four years, extended the grandfathering for pre-1998 taxes for the life of the moratorium, and grandfathered pre-2003 taxes (on DSL services) for two years. Following is a summary of selected Internet-related legislation beginning with legislation originating in the House.

**H.R. 49.** The Internet Tax Nondiscrimination Act was introduced by Representative Cox on January 7, 2003, and was referred to the House Committee on the Judiciary. A hearing on H.R. 49 was held by the Subcommittee on Commercial and Administrative Law on April 1, 2003. Subcommittee consideration and markup occurred on May 22, 2003. A technical amendment in the nature of a substitute was approved by voice vote. The amended bill was forwarded to the full committee.

On July 16, 2003, the House Judiciary Committee held a markup of H.R. 49, approved one amendment, and reported the amended H.R. 49 to the full House (H.Rept. 108-234). The approved amendment was introduced on a bipartisan basis by Representative Watt (D) and Subcommittee Chairman Cannon (R).[28] It was intended to provide technological neutrality in the exemption from taxes on Internet access, without regard to the means by which Internet access is delivered. The amendment added to the definition of Internet access (in Section 1104(5) of the original Internet Tax Freedom Act) the phrase shown below in italic type:

> (5) INTERNET ACCESS. — The term "Internet access" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services, *except to the extent such services are used to provide Internet access*.[29] [Emphasis added.]

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[28] The language of the Watt-Cannon amendment that was approved in the full Judiciary Committee was different from the Watt amendment introduced but withdrawn in the Subcommittee on Commercial and Administrative Law.

[29] The highlighted phrase was also added to the definition of "Internet access service" in Section 1101(e)(3)(D) of the Internet Tax Freedom Act. This pertains to the exception to the moratorium for making communications for commercial purposes that include material harmful to minors, if access by minors is not restricted. The addition of the phrase keeps the definition of "Internet access service" similar to the definition of "Internet access" in the ITFA. However, in this section the phrase may be redundant, because under Section 1101(e)(2) neither (A) a telecommunications carrier engaged in the provision of a telecommunications service, nor (B) a person engaged in the business of providing an

(continued...)

The amendment intended to treat all Internet access services — including DSL, wireless services (WiFi), or satellite — the same as Internet access service delivered via dial-up connections. However, the language of the amendment could also have exempted underlying telephone and cable services used to provide Internet access. These underlying telecommunications services are often taxed by state and local governments. Furthermore, with the removal of the grandfather clause that protects taxes on Internet access that were generally imposed and actually enforced prior to October 1, 1998, the moratorium might also have been interpreted to include other taxes on Internet access providers, such as income and property taxes.

In its cost estimate of July 21, 2003, the Congressional Budget Office (CBO) determined that H.R. 49, as ordered reported by the House Judiciary Committee, would have imposed an intergovernmental mandate. CBO estimated that repealing the grandfather clause would lead to revenue losses (on Internet access) totaling $80 million to $120 million per year for the group of approximately 10 states and several local governments that were then taxing Internet access. This amount alone exceeded the threshold of $59 million in 2003 established by the Unfunded Mandates Reform Act (UMRA). In addition, amending the definition of Internet access (with the Watt-Cannon amendment) could have exempted some telecommunications services used to provide Internet access that were otherwise subject to state and local taxes under current ITFA law.[30] The presence of an unfunded intergovernmental mandate in excess of the threshold amount means that a point of order may be raised when a bill is considered on the House or Senate floor.[31]

H.R. 49 was brought to the House floor on September 17, 2003, under a suspension of the rules. This procedure, designed for noncontroversial bills, provides for an up-or-down vote with no floor amendments and requires a two-thirds majority vote. Despite objections from representatives of states with grandfathered Internet access taxes, the House passed H.R. 49, as reported by the Judiciary Committee, by voice vote.

**H.R. 1481.** Internet Growth and Freedom Act of 2003. H.R. 1481 would have temporarily extended the moratorium imposed by the Internet Tax Freedom Act for five years, until November 1, 2008. The bill would have continued the grandfather protection for pre-existing Internet access taxes. H.R. 1481 was introduced by Representative Lofgren on March 27, 2003, and referred to the Committee on the Judiciary.

**H.R. 4129.** VoIP Regulatory Freedom Act of 2004. The bill was similar to S. 2281 as introduced. It would have reserved to the federal government the responsibility and authority to regulate the offering or provision of a voice-over-

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[29] (...continued)
Internet access service, is considered as making a communication of material for commercial purposes.

[30] Congressional Budget Office, "Cost Estimate for H.R. 49, Internet Tax Nondiscrimination Act." Available at [http://www.cbo.gov].

[31] For an explanation of congressional procedures required under UMRA, see CRS Report RS20058, *Unfunded Mandates Reform Act Summarized*, by Keith Bea and Richard S. Beth.

Internet-protocol (VoIP) application. It would have enumerated several responsibilities for the Federal Communications Commission. It would have prohibited state regulation of VoIP. The bill would have prohibited state or local governments from imposing a tax or other charge for the purpose of generating revenues for governmental purposes on the offering or provision of a VoIP application. An exemption was provided for fees imposed for a specific privilege, service, or benefit conferred. H.R. 4129 was introduced by Representative Pickering on April 2, 2004. It was referred to the Committee on Energy and Commerce and subsequently the Subcommittee on Telecommunications and the Internet, and to the Committee on the Judiciary.

**S. 52.** Internet Tax Nondiscrimination Act. S. 52 would have permanently extended the moratorium imposed by the Internet Tax Freedom Act. This bill would have removed the grandfathering protection for taxes on Internet access that were generally imposed and actually enforced prior to October 1, 1998, by removing from the ITFA the grandfather clause and the definition of generally imposed and actually enforced taxes. This bill was the companion to H.R. 49. S. 52 was introduced on January 7, 2003, by Senator Wyden. It was referred to the Committee on Commerce, Science, and Transportation.

**S. 150 (2003 actions).** Internet Tax Non-discrimination Act of 2003. S. 150 was introduced on January 13, 2003, by Senator Allen and was referred to the Committee on Commerce, Science, and Transportation. The Committee held a hearing on S. 150 on July 16, 2003. It marked up the bill on July 31, 2003. An amendment in the nature of a substitute offered by Senator Allen and co-sponsor of S. 150, Senator Wyden, was approved by voice vote and the amended bill was ordered reported favorably. On September 29, 2003, S. 150 was reported by the Commerce Committee (S.Rept. 108-155) and sequentially referred to the Finance Committee for a period of up to 30 days. The bill was discharged from the Finance Committee with no changes on October 29, 2003.

The first two sections of S. 150 as amended by the Commerce Committee were similar to H.R. 49 as passed by the House. The first section named the bill the Internet Tax Non-discrimination Act. The second section would have permanently extended the moratorium, removed the grandfathering protection for existing taxes on Internet access, and made conforming amendments to remove the reference to grandfathered taxes elsewhere in the ITFA. It would have added to the definitions of Internet access and Internet access services the phrase "...except to the extent such services are used to provide Internet access" following "telecommunications services," just as was added to H.R. 49 by the Watt-Cannon amendment in the House Judiciary Committee. Senators Allen and Wyden agreed to refine the definition of Internet access to better reflect their intentions to protect Internet access from taxation and not the underlying communications medium. They also intended that the moratorium be neutral with respect to whatever technology is used to provide Internet access. The Commerce Committee report on S. 150 (S.Rept. 108-155)

spelled out the committee's intentions with regard to the amended definition of Internet access.[32]

In addition, S. 150 as ordered reported, included a third section that would have continued to grandfather existing taxes on Internet access for three more years, until September 30, 2006. A fourth section of the bill clarified that the ITFA does not prevent the federal government or the states from imposing or collecting the fees or charges on telecommunications that are used to finance the universal service program authorized by Section 254 of the Communications Act of 1934.

For reasons similar to those given above with respect to H.R. 49, in its cost estimate for S. 150, the Congressional Budget Office determined that the bill as ordered reported by the Senate Committee on Commerce, Science, and Transportation would have imposed an intergovernmental mandate beginning in 2007, once the grandfathering protection was removed.[33] This meant that a point of order could be raised when the bill was considered on the Senate floor. The Senate began consideration of S. 150 on November 6, 2003. The bill was pulled on November 7, 2003, for further negotiation on the definition of Internet access.

**S. 150 (2004 actions).** Internet Tax Nondiscrimination Act. On April 27, 2004, Senator McCain offered a compromise amendment to S. 150, S.Amdt. 3048, which became the version of S. 150 approved by the Senate (93-3) on April 29, 2004. S. 150, as amended, would (1) extend the moratorium four years, through November 1, 2007; (2) expand the definition of Internet access to include both providers and buyers of Internet access; (3) grandfather Internet access taxes enforced before October 1, 1998, through November 1, 2007; (4) grandfather Internet access taxes enforced before November 1, 2003 (primarily taxes on DSL Internet access service) through November 1, 2005; and (5) exclude from the moratorium taxes on voice or similar service utilizing Internet Protocol (VoIP).

After bicameral negotiations, still more modifications to S. 150 were needed to gain House approval. On November 17, 2004, the Senate approved S.Con.Res. 146 by voice vote, making two modifications to S. 150. It restricted the grandfathering protection for Internet access taxes in Wisconsin to three years instead of four (until

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[32] The modified definition of Internet access is meant to clarify that, under the ITFA, neither Internet access nor the transmission component of Internet access is subject to taxation. (Neither the access nor transmission component of DSL would be taxable.) This definition is not meant to affect state and local taxation of traditional telecommunications and other services not used to provide Internet access. It is not meant to exempt from state or local taxation otherwise taxable products or services bundled with Internet access. The lapse of grandfathering protection is not meant to affect the authority of state and local governments to assess and collect traditional sales and use taxes, excise taxes, property taxes, corporate income taxes, gross receipts taxes, business and occupation taxes, and other such taxes generally applied and not enumerated in section 1101(a) of the ITFA. U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Internet Tax Non-discrimination Act of 2003*, Report on S. 150, 108th Cong., 1st Sess., S.Rept. 108-155, Sept. 29, 2003 (Washington: GPO, 2003), pp. 2-4.

[33] Congressional Budget Office, "Cost Estimate for S. 150, Internet Tax Nondiscrimination Act." Available at [http://www.cbo.gov].

November 1, 2006). It protected the Texas municipal access line fee, preserving the ability of Texas municipalities to collect franchise fees from telecommunications providers that use public lands. On November 19 the House approved both S. 150 and S.Con.Res. 146 by voice vote. President George W. Bush signed S. 150 into law, P.L. 108-435, on December 3, 2004.

**S. 2084.** Internet Tax Ban Extension and Improvement Act. S. 2084 would have (1) extended the Internet tax moratorium for two years (through October 31, 2005); (2) included in the moratorium taxes on Internet access delivered through DSL; (3) grandfathered all Internet access taxes that were imposed before November 1, 2003; (4) clarified the definition of Internet access services; and (5) implemented an accounting rule that would allow the taxation of Internet access if access were offered as part of a bundled package and the access provider did not separate Internet access charges from the other services. The inclusion of DSL in the definition of Internet access services addressed the concern that the moratorium should be neutral with respect to technology. However, the grandfather clause would have allowed states that were already levying taxes on DSL Internet access to continue to collect the tax. S 2084 was introduced by Senators Alexander and Carper on February 12, 2004, and referred to the Committee on Commerce, Science, and Transportation. Elements of S. 2084 were included in S. 150 as enacted.

**S. 2281.** VoIP Regulatory Freedom Act of 2004. A similar bill, H.R. 4129, was introduced in the House. S. 2281 focused on the taxation and regulation of Voice over Internet Protocol technology. It would have prohibited state taxation and regulation of VoIP-related technology. The legislation would have mandated that "...responsibility and authority to regulate the offering or provision of a voice-over-Internet-protocol application is reserved solely to the Federal Government." S. 2281 was introduced by Senator Sununu on April 5, 2004, and was referred to the Committee on Commerce, Science, and Transportation. Hearings were held on June 16. On July 22 the bill was ordered reported favorably with an amendment in the nature of a substitute. On November 19, 2004, S. 2281 was reported (without a written report) by Senator McCain with an amendment in the nature of a substitute. Among other substantial changes to the bill, the amended version dropped the provision that would have prevented state or local governments from imposing any tax, fee, surcharge, or other charge for the purpose of generating revenues for governmental purposes on the offering or provision of a VoIP application.

**S. 2348.** S. 2348 would have extended the moratorium through June 1, 2005, without other modifications to the original ITFA. The bill was introduced by Senators Enzi, Feinstein, and Hutchison on April 26, 2004, and placed on the Senate legislative calendar.

## Internet Commerce Related Legislation

**H.R. 3184.** Streamlined Sales and Use Tax Act. H.R. 3184 was the companion to S. 1736. H.R. 3184 would have granted states that are parties to the Streamlined Sales and Use Tax Agreement (a multistate compact approved November 12, 2002) the authority to require remote sellers to collect and remit state and local sales and use taxes, even if the seller does not have a physical presence in the taxing state. This bill enumerated 18 minimum simplification requirements that

the agreement must meet. H.R. 3184 was introduced September 25, 2003. It was referred to the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law.

**H.R. 3220.** Business Activity Tax Simplification Act of 2003. H.R. 3220 would have (1) amended P.L. 86-272 to extend to all sales (not just tangible personal property) and to other state and local business activity taxes (not just net income taxes) the protection from taxation on interstate commerce if the only activity within a state was soliciting orders for sales; (2) established physical presence as the nexus standard for levying state and local business activity taxes on interstate commerce; (3) generally required use of employees or property in a state for more than 21 days per calendar year to establish nexus; (4) enumerated exempt business activities; and (5) set the minimum time limit at one day, instead of more than 21 days, for a live performance or live sporting event before more than 100 spectators, for the sale within a state of tangible personal property where delivery of the property originates and is completed within the state, and for the performance of services to real property within a state. The bill was introduced on a bipartisan basis by Representatives Goodlatte (R) and Boucher (D) on October 1, 2003, and was referred to Committee on the Judiciary. The Subcommittee on Commercial and Administrative Law held hearings on the bill on May 13, 2004. No Senate counterpart to H.R. 3220 was introduced.

**S. 1736.** The Streamlined Sales and Use Tax Act. S. 1736 was the companion to H.R. 3184 (see the description of H.R. 3184 above). The bill was introduced by Senator Enzi on October 15, 2003, and referred to the Committee on Finance.

## Summary Tables

**Table 1** succinctly compares the Internet tax moratorium bills introduced in the House of Representatives and the Senate. **Table 2** lists bills on related e-commerce issues introduced in the House and the Senate. The bills are described in more detail in the text immediately above.

## Table 1. Comparison of Internet Tax Bills in the House and Senate

| Bill Number | Extension of Moratorium | Grandfathering Provisions | Other Issues |
|---|---|---|---|
| H.R. 49 passed by the House | Permanent | No | Extended the exemption from Internet access taxes to all forms of telecommunications used to provide access. |
| H.R. 1481 | 5 years, until Nov. 1, 2008 | Yes | — |
| H.R. 4129 | n/a | n/a | Banned state and local taxation of VoIP applications and prohibited state regulation of VoIP services. |
| S. 52 | Permanent | No | — |
| S. 150 as enacted , P.L. 108-435 | 4 years, until Nov. 1, 2007 | Yes, for pre-1998 taxes through Nov. 1, 2007, and for pre-2003 taxes (on DSL) through Nov. 1, 2005 | Extended the exemption from Internet access taxes to all forms of telecommunications used to provide access. Clarified that the ITFA moratorium does not prevent collection of federal or state fees or charges used to finance the USF program. VoIP is not included in the moratorium. |
| S. 2084 | 2 years, until Nov. 1, 2005 | Yes | Modified the definition of Internet access services to include DSL. |
| S. 2281 as amended | n/a | n/a | Dropped provision to ban state and local taxation of VoIP applications. |
| S. 2348 | 18 months, until June 1, 2005 | Yes | — |

## Table 2. Bills on Internet Related Tax Issues in the House and Senate

| Bill Number | Issue |
|---|---|
| H.R. 3184 | Would have granted states that comply with the Streamlined Sales and Use Tax Agreement the authority to require remote sellers to collect state and local use taxes on interstate sales, subject to minimum simplification requirements for the agreement. Companion to S. 1736. |
| S. 1736 | Companion to H.R. 3184. |
| H.R. 3220 | Would have established physical presence as the nexus standard for levying state and local business activity taxes on interstate commerce. |

# For Additional Information

## Hearings in the 108th Congress

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Commercial and Administrative Law. *Business Activity Tax Simplification Act of 2003*. Hearing on H.R. 3220. 108th Cong., 2nd Sess., serial No. 84, May 13, 2004. Washington: GPO, 2004. Available at [http://www.house.gov/judiciary].

____. *Internet Tax Nondiscrimination Act*. Hearing on H.R. 49. 108th Cong., 1st sess., serial no. 13, April 1, 2003. Washington: GPO, 2003. Available at [http://www.house.gov/judiciary/].

____. *Streamlined Sales and Use Tax Agreement: States' Efforts to Facilitate Sales Tax Collection from Remote Vendors*. Hearing. 108th Cong., 1st sess., serial no. 57, October 1, 2003. Washington: GPO, 2003. Available at [http://www.house.gov/judiciary/].

U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. *Internet Tax Moratorium*. Hearing. 108th Cong., 1st sess., July 16, 2003. Not yet published. Written testimony available at [http://commerce.senate.gov].

## CRS Reports

CRS Report RL31177, *Extending the Internet Tax Moratorium and Related Issues*, by Nonna A. Noto. (Addresses issues raised in the 107th Congress.)

CRS Report RL31252, *Internet Commerce and State Sales and Use Taxes*, by Steven Maguire.

CRS Report RL31158, *Internet Tax Bills in the 107th Congress: A Brief Comparison*, by Nonna A. Noto