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

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Summary

The moratorium imposed by the Internet Tax Freedom Act on state and local taxation of the Internet expires on October 21, 2001. Several bills have been introduced in the 107th Congress to extend the moratorium. Some bills address state and local sales and use taxation of the Internet, defining nexus for business activity taxes on interstate commerce, or special treatment of digital commerce. To help explain which bills address which issues, this report provides a side-by-side comparison of the bills and a brief description of each bill. The report will be updated as other bills are introduced.

The Internet Tax Freedom Act, enacted in 1998, 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 ten states as of October 1, 1998. The moratorium is scheduled to expire on October 21, 2001. Several bills have been introduced in the 107th Congress to extend the moratorium. Some bills address other issues related to state and local taxation of the Internet and interstate commerce. The major issues that differentiate the bills are:

- whether to extend the current moratorium permanently or temporarily;
- whether to treat Internet access taxes differently from multiple and discriminatory taxes on electronic commerce;
- whether to continue to grandfather existing Internet access taxes;
- whether, 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 and/or sales and use taxes.

For further discussion of the underlying issues, see CRS Report RL30667, *Internet Tax Legislation: Distinguishing Issues*, by Nonna A. Noto.

Table 1 presents a side-by-side comparison of the bills introduced in the House and **Table 2**, the Senate. 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. In two cases, it also notes the number and sponsor of the identical bill in the other chamber: H.R. 1410 (Istook))/S. 512 (Dorgan) and H.R. 1675 (Cox)/S. 777 (Allen).

Column 2 indicates the bill's position on the extension of the current federal moratorium, which has two components. The first prohibits state or local governments from imposing new taxes on "Internet access services." The second prohibits them from imposing any "multiple or discriminatory taxes on electronic commerce." Some bills would extend both parts of the moratorium temporarily, by two (S. 1481), four (H.R. 1410/S. 512) or five years (S. 246). Others would extend the moratorium on multiple and discriminatory taxes temporarily, by five years, but would make the moratorium on Internet access taxes permanent (H.R. 1552/S. 589 and S. 288). Still others would make both parts of the moratorium permanent (H.R. 1675/S. 777 and H.R. 2526).

Column 3 indicates whether the bill would extend the grandfathering provision in current law 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 (existing Internet access taxes). Removing the grandfathering protection would ban all state and local taxes on Internet access. With one exception, the bills that propose a permanent ban on Internet access taxes would remove the grandfathering protection for existing taxes (H.R. 1552, H.R. 1675/S. 777, H.R. 2526, and S. 288). The exception is S. 589 which would implicitly extend the grandfathering by simply extending the current moratorium permanently. In contrast, the bills to temporarily extend both parts of the current moratorium would implicitly extend the grandfathering provisions (S. 246, S. 1481, and H.R. 1410/S. 512).

Column 4 describes other Internet and interstate issues addressed by the bills. Three bills would address sales and use taxation of interstate sales: S. 288 (Wyden) and H.R. 1410 (Istook)/S. 512 (Dorgan). Under S. 288, Congress would have to approve the simplified sales tax system before granting states collection authority. Under H.R. 1410/S. 512, Congress would grant collection authority automatically to states that signed an interstate compact on simplified taxes. S. 288 would require one sales and use tax rate per state. H.R. 1410/S. 512 would permit local-option rates. S. 1481 (Wyden) contains a sense of Congress statement regarding tax simplification. 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 interstate nexus: H.R. 2526 (Goodlatte and Boucher) and S. 664 (Gregg and Kohl). S. 664 lists eight, and H.R. 2526 ten, business activities that would **not** constitute nexus. S. 664 would apply the new nexus standard for imposing both state business activity taxes and the duty to collect and remit sales or use taxes on interstate commerce. S. 664 would apply it to business activity taxes only. S. 288 addresses nexus.

Five bills deal solely with the extension of the federal moratorium on state and local taxes: H.R. 1552 (Cox), identical bills H.R. 1675 (Cox)/S. 777 (Allen), S. 246 (Smith, B.), and S. 589 (Smith, B.). Three bills would both extend the moratorium and address sales and use taxation of interstate sales: S. 288 (Wyden), H.R. 1410 (Istook)/S. 512 (Dorgan). S. 1481 (Wyden) includes a sense of Congress statement on tax simplification. H.R. 2526 (Goodlatte and Boucher) would both make the moratorium permanent and codify new nexus standards for state and local business activity taxes. 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 Current 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 12/31/05	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. Preserves the option to have sellers collect actual local use tax rates.
H.R. 1552 (Cox) Reported by Subcommit-tee 8/2/01	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. 1675 (Cox)/ S. 777 (Allen)	Makes permanent	Eliminates	–
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.

Table 2. Comparison of Internet Tax Bills in the Senate

Bill Number (Sponsor)	Extension of Current Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
S. 246 (Smith, B.)	Extends by 5 years, until 10/21/06	Implicitly extends	–
S. 288 (Wyden)	Makes permanent the ban on Internet access taxes. Extends by 5 years, until 12/31/06, 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.
S. 512 (Dorgan)/ H.R. 1410 (Istook)	Extends by 4 years, until 12/31/05	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. Preserves the option to have remote sellers collect actual local use tax rates instead of one rate per state.
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 10/21/03	Implicitly extends	Sense of Congress statement encouraging efforts at tax simplification by states and business

Internet Tax Bills Introduced in the 107th Congress

H.R. 1410 (Istook). Introduced April 4, 2001. Referred to the Committee on the Judiciary. Internet Tax Moratorium and Equity Act. Identical to S. 512 (Dorgan). Would extend the current moratorium by four years, 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. Would preserve the option to have sellers collect actual local use tax rates, rather than requiring a statewide average tax rate.

H.R. 1552 (Cox). Introduced April 24, 2001. Referred to the Committee on the Judiciary. Reported by the Subcommittee on Commercial and Administrative Law on August 2, 2001. Internet Tax Nondiscrimination Act. Would make the moratorium on Internet access taxes permanent and remove the grandfathering protection for existing Internet access taxes. Would extend the current moratorium on multiple or discriminatory taxes on electronic commerce by 5 years, until December 31, 2006.

H.R. 1675 (Cox). Introduced May 2, 2001. Referred to the Committee on the Judiciary. 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.

H.R. 2421 (Stearns). Introduced June 28, 2001. Referred to the Committee on Energy and Commerce and the Committee on the Judiciary. 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.

H.R. 2526 (Goodlatte and Boucher). Introduced July 17, 2001. Referred to the Committee on the Judiciary. Internet Tax Fairness Act of 2001. Would make permanent the current 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 S. 664 which would apply the new nexus standards to sales and uses taxes as well as business activity taxes.

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

S. 288 (Wyden). Introduced February 8, 2001. Referred to the Committee on Commerce, Science, and Transportation. 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 current moratorium against multiple and discriminatory taxes on electronic commerce by 5 years, until December 31, 2006. Would encourage states to simplify their sales and use taxes. Would not authorize states (in advance) to require use tax collection, but would provide fast-track authority 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 ("positive trigger"). Calls for one tax rate per state, for all sales, both within-state and interstate (no local-option taxes). Calls for clear standards limiting business activity tax nexus to sellers that have "continuous and systematic contacts" with the state.

S. 512 (Dorgan). Introduced March 9, 2001. Referred to the Committee on Finance. Internet Tax Moratorium and Equity Act. Identical to H.R. 1410 (Istook). Would extend the current moratorium by four years, 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 ("negative trigger"). Would preserve the option to have sellers collect actual local use tax rates, rather than requiring a statewide average tax rate.

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

S. 664 (Gregg and Kohl). Introduced March 29, 2001. Referred to the Committee on Finance. 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 (included among the 10 in H.R.2526 applying to business activity taxes only.)

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

S. 1481 (Wyden). Introduced October 2, 2001. Referred to the Committee on Commerce, Science, and Transportation. Internet Tax Moratorium Extension Act. Would extend the current moratorium for 2 years, until October 21, 2003. Expresses the sense of Congress that states and businesses develop a streamlined simplified plan for protecting state revenues affected by Internet use, without burdening interstate commerce.