

105TH CONGRESS
1ST SESSION

S. 442

To establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the flow of commerce via the Internet, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 1997

Mr. WYDEN (for himself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the flow of commerce via the Internet, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Internet Tax Freedom
3 Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) As a massive global network spanning not
7 only State but international borders, the Internet is
8 inherently a matter of interstate and foreign com-
9 merce within the jurisdiction of the United States
10 Congress under article I, section 8 of the United
11 States Constitution.

12 (2) Even within the United States, the Internet
13 does not respect State lines and operates independ-
14 ently of State boundaries. Addresses on the Internet
15 are designed to be geographically indifferent.
16 Internet transmissions are insensitive to physical
17 distance and can have multiple geographical
18 addresses.

19 (3) Because transmissions over the Internet are
20 made through packet-switching it is impossible to
21 determine with any degree of certainty the precise
22 geographic route or endpoints of specific Internet
23 transmissions and infeasible to separate intrastate
24 from interstate, and domestic from foreign, Internet
25 transmissions.

1 (4) Inconsistent and inadministrable taxes im-
2 posed on Internet activity by State and local govern-
3 ments threaten not only to subject consumers, busi-
4 nesses, and other users engaged in interstate and
5 foreign commerce to multiple, confusing, and bur-
6 densome taxation, but also to restrict the growth
7 and continued technological maturation of the
8 Internet itself, and to call into question the contin-
9 ued viability of this dynamic medium.

10 (5) Because the tax laws and regulations of so
11 many jurisdictions were established long before the
12 Internet or interactive computer services, their appli-
13 cation to this new medium in unintended and unpre-
14 dictable ways threatens every Internet user, access
15 provider, vendor, and interactive computer service
16 provider.

17 (6) The electronic marketplace of services,
18 products, and ideas available through the Internet or
19 interactive computer services can be especially bene-
20 ficial to senior citizens, the physically challenged,
21 citizens in rural areas, and small businesses. It also
22 offers a variety of uses and benefits for educational
23 institutions and charitable organizations.

24 (7) Consumers, businesses, and others engaging
25 in interstate and foreign commerce through the

1 Internet or interactive computer services could be-
 2 come subject to more than 30,000 separate taxing
 3 jurisdictions in the United States alone.

4 (8) The consistent and coherent national policy
 5 regarding taxation of Internet activity, and the con-
 6 comitant uniformity, simplicity, and fairness that is
 7 needed to avoid burdening this evolving form of
 8 interstate and foreign commerce can best be
 9 achieved by the United States exercising its author-
 10 ity under article I, section 8, clause 3 of the United
 11 States Constitution.

12 **SEC. 3. MORATORIUM ON IMPOSITION OF TAXES ON**
 13 **INTERNET OR INTERACTIVE COMPUTER**
 14 **SERVICES.**

15 (a) MORATORIUM.—Except as otherwise provided in
 16 this section, no State or political subdivision thereof may
 17 impose, assess, or attempt to collect a tax directly or indi-
 18 rectly on—

19 (1) the Internet or interactive computer serv-
 20 ices; or

21 (2) the use of the Internet or interactive com-
 22 puter services.

23 (b) PRESERVATION OF STATE AND LOCAL TAXING
 24 AUTHORITY.—Subsection (a)—

1 (1) does not apply to taxes imposed on or meas-
2 ured by net income derived from the Internet or
3 interactive computer services;

4 (2) does not apply to fairly apportioned busi-
5 ness license taxes applied to businesses having a
6 business location in the taxing jurisdiction; and

7 (3) does not affect a State or political subdivi-
8 sion thereof's authority to impose a sales or use tax
9 on sales or other transactions effected by use of the
10 Internet or interactive computer services if—

11 (A) the tax is the same as the tax gen-
12 erally imposed and collected by that State or
13 political subdivision thereof on interstate sales
14 or transactions effected by mail order, tele-
15 phone, or other remote means within its taxing
16 jurisdiction; and

17 (B) the obligation to collect the tax from
18 sales or other transactions effected by use of
19 the Internet or interactive compute services is
20 imposed on the same person or entity as in the
21 case of sales or transactions effected by mail
22 order, telephone, or other remote means.

1 **SEC. 4. ADMINISTRATION POLICY RECOMMENDATIONS TO**
2 **CONGRESS.**

3 (a) **CONSULTATIVE GROUP.**—The Secretaries of the
4 Treasury, Commerce, and State, in consultation with ap-
5 propriate committees of the Congress, consumer and busi-
6 ness groups, States and political subdivisions thereof, and
7 other appropriate groups, shall—

8 (1) undertake an examination of United States
9 and international taxation of the Internet and inter-
10 active computer services, as well as commerce con-
11 ducted thereon; and

12 (2) jointly submit appropriate policy rec-
13 ommendations concerning United States domestic
14 and foreign policies toward taxation of the Internet
15 and interactive computer services, if any, to the
16 President within 18 months after the date of enact-
17 ment of this Act.

18 (b) **PRESIDENT.**—Not later than 2 years after the
19 date of enactment of this Act, the President shall transmit
20 to the appropriate committees of Congress policy rec-
21 ommendations on the taxation of sales and other trans-
22 actions effected on the Internet or through interactive
23 computer services.

24 (c) **RECOMMENDATIONS TO BE CONSISTENT WITH**
25 **TELECOMMUNICATIONS ACT OF 1996 POLICY STATE-**
26 **MENT.**—The Secretaries and the President shall take care

1 to ensure that any such policy recommendations are fully
2 consistent with the policy set forth in paragraphs (1) and
3 (2) of section 230(b) of the Communications Act of 1934
4 (47 U.S.C. 230(b)).

5 **SEC. 5. DECLARATION THAT THE INTERNET BE FREE OF**
6 **FOREIGN TARIFFS, TRADE BARRIERS, AND**
7 **OTHER RESTRICTIONS.**

8 It is the sense of the Congress that the President
9 should seek bilateral and multilateral agreements through
10 the World Trade Organization, the Organization for Eco-
11 nomic Cooperation and Development, the Asia Pacific
12 Economic Cooperation Council, or other appropriate inter-
13 national fora to establish that activity on the Internet and
14 interactive computer services is free from tariff and tax-
15 ation.

16 **SEC. 6. DEFINITIONS.**

17 For purposes of this Act—

18 (1) **INTERNET; INTERACTIVE COMPUTER SERV-**
19 **ICE.**—The terms “Internet” and “interactive com-
20 puter service” have the meaning given such terms by
21 paragraphs (1) and (2), respectively, of section
22 230(e) of the Communications Act of 1934 (47
23 U.S.C. 230(e)).

24 (2) **TAX.**—The term “tax” includes any tax, li-
25 cense, or fee that is imposed by any governmental

1 entity, and includes the imposition on the seller of
2 an obligation to collect and remit a tax imposed on
3 the buyer.

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