

107TH CONGRESS
1ST SESSION

H. R. 2526

To make permanent the moratorium enacted by the Internet Tax Freedom Act; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2001

Mr. GOODLATTE (for himself, Mr. BOUCHER, and Mr. COX) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To make permanent the moratorium enacted by the Internet Tax Freedom Act; 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Internet Tax Fairness
5 Act of 2001”.

6 **SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREE-**

7 **DOM ACT MORATORIUM.**

8 (a) PERMANENT EXTENSION; INTERNET ACCESS
9 TAXES.—Section 1101 of the Internet Tax Freedom Act
10 (47 U.S.C. 151 note) is amended—

1 **“TITLE I—JURISDICTIONAL**
2 **STANDARDS**

3 **“SEC. 101. IMPOSITION OF STATE AND LOCAL BUSINESS AC-**
4 **TIVITY TAXES ON INTERSTATE COMMERCE.**

5 “(a) IN GENERAL.—No State or subdivision thereof
6 shall have power to impose, for any taxable year ending
7 after the date of enactment of this title, a business activity
8 tax on any person relating to such person’s activities that
9 affect interstate commerce, unless such person has a sub-
10 stantial physical presence in such State or subdivision. A
11 substantial physical presence is not established if the only
12 business activities within such State or subdivision by or
13 on behalf of such person during such taxable year are any
14 or all of the following:

15 “(1) The solicitation of orders or contracts by
16 such person or such person’s representative in such
17 State or subdivision for sales of tangible or intan-
18 gible personal property or services, which orders or
19 contracts are approved or rejected outside the State,
20 or subdivision and, if approved, are fulfilled by ship-
21 ment or delivery of such property from a point out-
22 side the State or subdivision or by the performance
23 of such services outside the State or subdivision.

24 “(2) The solicitation of orders or contracts by
25 such person or such person’s representative in such

1 State or subdivision in the name of or for the benefit
2 of a prospective customer of such person, if orders
3 or contracts by such customer to such person to en-
4 able such customer to fill orders or contracts result-
5 ing from such solicitation are orders or contracts de-
6 scribed in paragraph (1).

7 “(3) The presence or use of intangible personal
8 property in such State or subdivision, including pat-
9 ents, copyrights, trademarks, logos, securities, con-
10 tracts, licenses and permits issued by any govern-
11 mental agency or authority authorizing the holder to
12 conduct any business activity, money, deposits,
13 loans, electronic or digital signals, and web pages,
14 whether or not subject to licenses, franchises, or
15 other agreements.

16 “(4) The use of the Internet to create or main-
17 tain a World Wide Web site accessible by persons in
18 such State or subdivision.

19 “(5) The use of an Internet service provider,
20 on-line service provider, internetwork communication
21 service provider, or other Internet access service pro-
22 vider, or World Wide Web hosting services to main-
23 tain or take and process orders via a web page or
24 site on a computer that is physically located in such
25 State or subdivision.

1 “(6) The use of any service provider for trans-
2 mission of communications, whether by cable, sat-
3 ellite, radio, telecommunications, or other similar
4 system.

5 “(7) The leasing or owning of substantial prop-
6 erty in such State or subdivision for less than 30
7 days. Property in such State or subdivision for pur-
8 poses of being assembled, manufactured, processed,
9 or tested by a person or persons within such State
10 or subdivision for the benefit of the owner or lessee,
11 or used to furnish a service by a person or persons
12 within such State or subdivision to the owner or les-
13 see, shall be disregarded in determining whether
14 such 30-day limit has been exceeded.

15 “(8) The assigning of employees, representa-
16 tives, or agents in such State or subdivision for less
17 than 30 days. Presence of employees, representatives
18 or agents for purposes directly relating to the pur-
19 chasing goods or services, gathering news and cov-
20 ering events, meeting with government officials, at-
21 tending conferences, seminars and similar functions,
22 and participating in charitable activities shall be dis-
23 regarded in determining whether such 30-day limit
24 has been exceeded.

1 “(9) The affiliation with another person located
2 in the State or subdivision, unless—

3 “(A) the other person located in the State
4 or subdivision is the person’s agent under the
5 terms and conditions of subsection (d); and

6 “(B) the activity of the other person in the
7 State or subdivision constitutes substantial
8 physical presence under this subsection and is
9 performed to establish, enhance, or maintain
10 the market in the State or subdivision for the
11 person.

12 “(10) The use of an unaffiliated representative
13 or independent contractor in such State or subdivi-
14 sion for the purpose of performing warranty or re-
15 pair services with respect to tangible or intangible
16 personal property sold by a person located outside
17 the State or subdivision.

18 “(b) DOMESTIC CORPORATIONS; PERSONS DOMI-
19 CILED IN OR RESIDENTS OF A STATE.—The provisions
20 of subsection (a) shall not apply to the imposition of a
21 business activity tax by any State or subdivision thereof
22 with respect to—

23 “(1) any corporation which is incorporated
24 under the laws of such State; or

1 “(2) any individual who, under the laws of such
2 State, is domiciled in, or a resident of, such State.

3 “(c) SALES OR SOLICITATION OF ORDERS OR CON-
4 TRACTS FOR SALES BY INDEPENDENT CONTRACTORS.—
5 For purposes of subsection (a), a person shall not be con-
6 sidered to have engaged in business activities within a
7 State or subdivision thereof during any taxable year mere-
8 ly by reason of sales of tangible or intangible personal
9 property or services in such State or subdivision, or the
10 solicitation of orders or contracts for such sales in such
11 State or subdivision, on behalf of such person by one or
12 more independent contractors, or by reason of the mainte-
13 nance of an office in such State or subdivision by one or
14 more independent contractors whose activities on behalf
15 of such person in such State or subdivision consist solely
16 of making such sales, or soliciting orders or contracts for
17 such sales.

18 “(d) ATTRIBUTION OF ACTIVITIES AND PRES-
19 ENCE.—For purposes of this section, the substantial phys-
20 ical presence of any person shall not be attributed to any
21 other person absent the establishment of an actual agency
22 relationship between such persons that—

23 “(1) results from the consent by both persons
24 that one person act on behalf and subject to the con-
25 trol of the other; and

1 “(2) relates to the activities of the person with-
2 in the State or subdivision thereof.

3 “(e) DEFINITIONS.—For purposes of this title:

4 “(1) BUSINESS ACTIVITY TAX.—The term ‘busi-
5 ness activity tax’ means a tax imposed on, or meas-
6 ured by, net income, a business license tax, a busi-
7 ness and occupation tax, a franchise tax, a single
8 business tax or a capital stock tax, or any similar
9 tax or fee imposed by a State or subdivision thereof
10 on a business for the right to do business within the
11 State or subdivision or which is measured by the
12 amount of such business or related activity.

13 “(2) INDEPENDENT CONTRACTOR.—The term
14 ‘independent contractor’ means a commission agent,
15 broker, or other independent contractor who is en-
16 gaged in selling, or soliciting orders or contracts for
17 the sale of, tangible or intangible personal property
18 or services for more than one principal and who
19 holds himself or herself out as such in the regular
20 course of his or her business activities.

21 “(3) INTERNET.—The term ‘Internet’ means
22 collectively the myriad of computer and tele-
23 communications facilities, including equipment and
24 operating software, which comprise the inter-
25 connected world-wide network of networks that em-

1 ploy the Transmission Control Protocol/Internet
2 Protocol, or any predecessor or successor protocols
3 to such Protocol.

4 “(4) INTERNET ACCESS.—The term ‘Internet
5 access’ means a service that enables users to access
6 content, information, electronic mail, or other serv-
7 ices offered over the Internet, and may also include
8 access to proprietary content, information, and other
9 services as a part of a package of services offered to
10 users.

11 “(5) REPRESENTATIVE.—The term ‘representa-
12 tive’ does not include an independent contractor.

13 “(6) SOLICITATION OF ORDERS OR CON-
14 TRACTS.—The term ‘solicitation of orders or con-
15 tracts’ includes activities normally ancillary to such
16 solicitation.

17 “(7) STATE.—The term ‘State’ means any of
18 the several States, the District of Columbia, or any
19 territory or possession of the United States.

20 “(8) WORLD WIDE WEB.—The term ‘World
21 Wide Web’ means a computer server-based file ar-
22 chive accessible, over the Internet, using a hypertext
23 transfer protocol, file transfer protocol, or other
24 similar protocols.

1 “(f) APPLICATION OF SECTION.—This section shall
2 not be construed to limit, in any way, constitutional re-
3 strictions otherwise existing on State or local taxing au-
4 thority.

5 **“SEC. 102. ASSESSMENT OF BUSINESS ACTIVITY TAXES.**

6 “(a) LIMITATIONS.—No State or subdivision thereof
7 shall have power to assess after the date of enactment of
8 this title any business activity tax which was imposed by
9 such State or subdivision for any taxable year ending on
10 or before such date, on or measured by the business activ-
11 ity within such State that affect interstate commerce, if
12 the imposition of such tax for a taxable year ending after
13 such date is prohibited by section 101.

14 “(b) COLLECTIONS.—The provisions of subsection
15 (a) shall not be construed—

16 “(1) to invalidate the collection on or before the
17 date of enactment of this title of any business activ-
18 ity tax imposed for a taxable year ending on or be-
19 fore such date; or

20 “(2) to prohibit the collection after such date of
21 any business activity tax which was assessed on or
22 before such date for a taxable year ending on or be-
23 fore such date.

1 **“SEC. 103. TERMINATION OF SUBSTANTIAL PHYSICAL PRES-**
2 **ENCE.**

3 “If a State or subdivision thereof has imposed a busi-
4 ness activity tax on a person as described in section 101,
5 and the person so obligated no longer has a substantial
6 physical presence in that State or subdivision, the obliga-
7 tion to pay a business activity tax applies only for the pe-
8 riod in which the person has a substantial physical pres-
9 ence.

10 **“SEC. 104. SEPARABILITY.**

11 “If any provision of this title or the application of
12 such provision to any person or circumstance is held in-
13 valid, the remainder of this title or the application of such
14 provision to persons or circumstances other than those to
15 which it is held invalid, shall not be affected thereby.”.

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