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Internet Tax Bills in the 108th Congress

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Internet Tax Bills in the 108th Congress

Summary

The Internet Tax Freedom Act moratorium, enacted in October 1998 and extended for two years in November 2001, is scheduled to expire on November 1, 2003. The federal moratorium prohibits 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 prior to October 1, 1998, are protected by a grandfather clause.

Three bills introduced in the first session of the 108th Congress would (1) make the Internet tax moratorium permanent and (2) remove the grandfather protection for pre-existing access taxes provided under current law. These are the companion bills H.R. 49 (Cox) and S. 52 (Wyden), both named the Internet Tax Nondiscrimination Act, and S. 150 (Allen), named the Internet Tax Non-discrimination Act of 2003. Another bill, H.R. 1481 (Lofgren), the Internet Growth and Freedom Act of 2003, would extend the current moratorium by five years, until November 1, 2008. The Bush Administration supports extending the moratorium.

Two other issues have been raised in connection with the Internet tax moratorium. One is streamlined sales taxes and remote tax collection authority. This entails setting forth the conditions for simplifying state and local sales and use taxes that could persuade Congress to grant states the authority to require out-of-state sellers to collect use taxes on interstate sales to state residents. The remote tax collection rules would apply to interstate mail order and telephone sales as well as to sales transacted over the Internet.

The other related area is to codify nexus standards for state and local business activity taxes (BATs, e.g., corporate income taxes, franchise taxes, and business license taxes). The task is to set federal standards determining whether or not a state is entitled to impose its business activity tax(es) on a company located outside the state but involved in commerce within the state.

The House Judiciary Committee, Subcommittee on Commercial and Administrative Law, held a hearing on H.R. 49 on April 1, 2003. Subcommittee Chairman Chris Cannon promised to hold a separate hearing on the sales tax issue. On May 22, 2003, the subcommittee considered and marked up the bill. A technical amendment in the nature of a substitute was approved by voice vote. H.R. 49 (amended) was forwarded to the full committee. On July 16, 2003, the Judiciary Committee held a markup, adopted one amendment to provide for technological neutrality, and reported the amended bill to the full House. The amended bill would permanently extend the moratorium, eliminate the grandfather protection, and also exempt from state and local taxes any form of telecommunications used to provide Internet access. CBO found the bill would impose an intergovernmental mandate.

The Senate Committee on Commerce, Science, and Transportation held a hearing on the Internet tax moratorium on July 16, 2003. Chairman John McCain has promised to hold a separate hearing on the sales tax issue. This report will be updated as legislative events warrant.

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Internet Tax Bills in the 108th Congress

Background

The Internet Tax Freedom Act (ITFA) was enacted on October 21, 1998, as Title XI of P.L. 105-277 (47 U.S.C. 151 note) the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. 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....”

The original 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. Thus, absent congressional action, the moratorium will expire in 2003, during the first session of the 108th Congress.

Issues

The five main issues surrounding legislation to extend the Internet tax moratorium are:

- Should the moratorium be extended temporarily, permanently, or allowed to sunset?
- Should the grandfathering from the moratorium of existing taxes on Internet access be continued or eliminated?
- Should the definitions of Internet access and discriminatory taxes be amended?
- Will Congress consider granting states the authority to require remote sellers to collect use taxes if the states adopt a streamlined sales tax system?
- Will Congress codify 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) liability?¹

Extension of the Moratorium: Permanent, Temporary, or Sunset?

The intent of the Internet Tax Freedom Act enacted in 1998 was to halt the proliferation of taxes on Internet access, to guarantee that more than one jurisdiction could not tax the same electronic commerce transaction, and to guarantee that commerce over the Internet would not be singled out for discriminatory tax treatment, that is taxation not applied to commerce in similar products but conducted by other means. Supporters of the moratorium felt that the Internet should be protected from the administrative and financial burdens of taxation in order to encourage the advance and dissemination of Internet technology and the economic activity developing around it. Opponents objected that a federal moratorium was an infringement on the states' independent authority to levy taxes and argued that taxes specifically on the Internet were not proliferating.

Strong supporters of the original moratorium would generally like to see the moratorium extended beyond 2003, preferably permanently. Those who acquiesced to a temporary moratorium as a pause to evaluate the effects of the Internet and the condition of state and local sales taxes might agree to another temporary moratorium, accompanied by an agenda to be accomplished during the extension. Those who feel that the states can be trusted to treat the Internet in a fair manner do not believe that the federal moratorium needs to be extended and could be allowed to sunset.

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 would presumably also provide both the producers and consumers of Internet services greater certainty about the absence of future state and local taxation of the Internet.

In contrast, a temporary extension of the moratorium would set a future time for Congress to review the conditions of the moratorium. The 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 an interval for the states to further simplify their sales and use taxes. States could then hope that the next time an extension of the moratorium was considered, Congress might consider granting states the authority to require remote (out-of-state) sellers to collect use taxes from customers at the time of the sale. (See discussion below on *Streamlined Sales Taxes and Remote Collection Authority*.)

¹ 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 — see CRS Report RL31177, *Extending the Internet Tax Moratorium and Related Issues*, by Nonna A. Noto.

Allowing the moratorium to sunset would permit the states to tax Internet access. The trend in practice, however, has been for states to repeal their Internet access taxes. With or without the moratorium, Congress would need to act before states could gain the authority to require out-of-state sellers without physical presence in the state to collect use taxes from consumers.

The Bush Administration supports extending the Internet tax moratorium before the current moratorium ends on November 1, 2003.² H.R. 49 (amended), as ordered reported by the House Judiciary Committee, would permanently extend the moratorium.

Grandfathering of Existing Access Taxes: Continue or Not?

The Internet Tax Freedom Act grandfathered 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 applying their sales and use tax to Internet access.³ Subsequently, Connecticut, Iowa, 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 seven states imposing a sales and use tax on Internet access as of April 2003: New Mexico, North Dakota, Ohio (on businesses only, not consumers), South Dakota, Tennessee, 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 grandfathering protection was continued when the ITFA moratorium was extended for two years in 2001. The issue now is whether the grandfathering will be continued if the moratorium is extended beyond 2003, either temporarily or permanently.

Removing the grandfathering protection would, in effect, ban all state and local taxes on Internet access. In its cost estimates for bills introduced in past years, the Congressional Budget Office determined that eliminating the grandfathering protection would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA, P.L. 104-4, 2 U.S.C. 1501-1571).

In the 107th Congress, bills to temporarily extend the moratorium typically extended the grandfathering protection. In contrast, bills to permanently extend the moratorium were divided between those retaining the grandfathering and those

² Letter from Treasury Secretary John W. Snow and Commerce Secretary Donald L. Evans to House Judiciary Committee Chairman F. James Sensenbrenner, Washington, May 14, 2003.

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

⁴ Vertex, Inc., *Tax Cybrary*, available online at [<http://www.vertexinc.com>].

eliminating it. H.R. 49 (amended), as ordered reported by the House Judiciary Committee, would eliminate the grandfathering protection.

Definitions

Taxation of Internet access most commonly refers to the application of state and local sales taxes to the monthly charge that subscribers pay for access to the Internet through Internet service providers (ISPs) such as America Online (AOL), Microsoft Network (MSN), or EarthLink.

According to Section 1104(5) 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.” The breadth of this definition gives rise to the concern that the tax-protection of Internet access may extend to “bundled” products and services that might otherwise be taxable if purchased on their own. This could include information services, cable television, books, magazines, games, music, and movies. These types of products and services can be offered online and sold together with Internet access service.

There is also concern that Internet access offered through some technologies, such as DSL (digital subscriber line) or wireless services, might not be treated as exempt, while access offered over other technologies, such as dial-up telephone lines and cable, is exempt. In an attempt to make the tax exemption neutral across the various technologies delivering Internet access, H.R. 49 (amended), as ordered reported by the House Judiciary Committee, would provide that all forms of telecommunications services used to provide Internet access would be exempt from state and local taxes. This language could also have the effect of exempting from tax the underlying telephone and cable services used to provide Internet access, which heretofore have remained subject to tax under the current ITFA law.

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, in order to eliminate double taxation. However, the state, county, and city in which an electronic commerce transaction takes place could all levy their sales tax on the transaction. There has not been much controversy over this definition.

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.⁵ (A use tax is the companion tax to the sales tax, applicable to interstate sales.) Congress

⁵ For additional discussion, see CRS Report RS20577, *State Sales Taxation of Internet Transactions*, by John R. Luckey.

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 in the Act.

Streamlined Sales Taxes and Remote Collection Authority

In the past two Congresses, a major controversy surrounding the bills to extend the original Internet tax moratorium involved the states' quest for sales and use tax collection authority. The issue was whether or not Congress was willing to indicate its willingness to eventually grant states the authority to require remote (out-of-state) sellers to collect use taxes on interstate sales. To possibly earn that authority, states would need to simplify their state and local sales and use tax systems to an acceptable degree.

Under current law, sellers with substantial nexus (defined as physical presence) in a state are already required to collect state (and local) tax on their sales arranged over the Internet (or by telephone, mail order, or other means) to customers in that state. In-state sellers are required to collect sales taxes from the buyer. Out-of-state sellers with a physical presence in the state (such as a warehouse or retail store) are required to collect use taxes from the buyer. (A use tax is complementary to a sales tax. It is levied on purchases made outside the state for use within the state.) In contrast, out-of-state sellers without nexus in the state are not required to collect the use tax. Some of these sellers may collect use tax voluntarily. If the out-of-state seller does not collect the use tax, it is technically the buyer's obligation to pay the tax to his home state. In practice, however, use tax compliance by non-business purchasers is low.

Aware of this low consumer compliance, many states have long wanted to be able to require out-of-state sellers without physical presence in the state (referred to as remote sellers) to collect the use tax from the customer and remit it to the customer's home state. This would apply to all interstate sales, whether arranged over the Internet or by other means. Whether or not there is an Internet tax moratorium, separate congressional action would be needed in order for states to obtain the authority to require remote sellers to collect use taxes from customers at the time of the sale.

In its 1967 *National Bellas Hess*⁶ decision, and again in its 1992 *Quill* decision,⁷ the U.S. Supreme Court denied states the ability to require a seller to collect use taxes on interstate mail-order sales unless the seller had a physical presence in the taxing state. The Court concluded that the complexity of the state and local sales tax systems imposed an undue burden on interstate commerce.

Acknowledging administrative complexity as an obstacle to remote collection, the states began a serious effort at state and local sales and use tax simplification 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. It would require participating states and local governments to have only one statewide tax rate for each type of product effective in 2006. Each state would retain the power to determine which products are taxed or exempt and the rate of tax for the state. The agreement provides for streamlined tax administration and audit requirements for sellers.

During their 2003 sessions, individual state legislatures are considering 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 a state sales tax must 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 system to conform with the agreement.) As of July 18, 2003, 20 states had enacted legislation conforming with all or part of the agreement.⁸ These 20 states represent approximately 30% of the population of states with sales taxes. The Streamlined Sales Tax Implementing States (SSTIS) still need to meet to confirm whether these states meet the required conformity.

Separately, a coalition of a few nationwide sellers reached agreements with 38 states and the District of Columbia to begin collecting their use tax 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.

⁶ *National Bellas Hess, Inc., v. Illinois Department of Revenue*, 386 U.S. 753 (1967).

⁷ *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

⁸ Streamlined Sales Tax Project, State Legislative Status of Streamlined Sales and Use Tax Agreement (As of July 7, 2003). Available online at [<http://www.streamlinedsalestax.org>] under St. Legislative Status. Updated by phone by the National Conference of State Legislatures (NCSL), on July 18, 2003.

In the 106th and 107th Congresses, 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.⁹ In the 108th Congress, the chairmen of the committees of jurisdiction in both the House and Senate have indicated that they want 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, have each indicated that their committee will hold a hearing on the sales tax issue, in addition to the hearing held on the moratorium extension.

Business Activity Tax (BAT) Nexus Standards

The states' efforts to expand sellers' interstate collection responsibilities for sales and use taxes has heightened another interstate tax concern of business. For several years some representatives of business have urged Congress to clarify the determinants of nexus for state and local business activity taxes (BATs) in the context of interstate commerce. (Business activity taxes are commonly thought of as corporate income taxes, but may also include franchise taxes, business license taxes, business and occupation taxes, apportionable gross receipts taxes, value-added taxes, single business taxes, and capital stock taxes.) The issue is whether and how to codify in federal law conditions that would *not* establish the nexus required for a state to be able to impose its business activity taxes (BAT) on a company located outside the state but involved in certain types of commercial relationships within the state.

Some businesses feel that states have become too aggressive in trying to tax them based on an indirect, transitory (short-term), or Internet-based presence in the state. Bills were introduced in the 106th and 107th Congresses that set forth the new term of “substantial physical presence” as the nexus requirement for business activity taxes. The bills enumerated several situations that would not establish substantial physical presence in a jurisdiction. These included certain non-agent business relationships, uses of the Internet or communications, techniques for advertizing and soliciting sales, and the presence of intangible property. In some bills the same nexus criteria were applied to sales and use tax collection responsibility as to BAT liability.

Representatives of state and local governments objected that enacting the proposed nexus guidelines would seriously restrict the ability of states to levy their corporate income taxes (or other BATs) on business activities being conducted in their state by companies located or headquartered in other states. Critics cited

⁹ In the 106th Congress, the bills addressing sales tax simplification and tax collection authority were H.R. 3709 (Cox) which passed the House, H.R. 4267 (Hyde and Conyers, representing the majority on the Advisory Commission on Electronic Commerce (ACEC)), H.R. 4460 (Hyde and Conyers, representing the ACEC minority), H.R. 4462 (Bachus), and S. 2775 (Dorgan). In the 107th Congress, the bills addressing sales tax simplification and tax collection authority were the companion bills H.R. 1410 (Istook)/S. 512 (Dorgan), S. 288 (Wyden), S. 1542 (Enzi), S. 1567 (Enzi), and S.Amdt. 2155 (Enzi-Dorgan) to H.R. 1552.

Internet kiosks located in a retail store, warranty services offered in the state, and the ability to return products ordered over the Internet to retail stores as examples of activities that were evidence of a company's physical presence in a state, even if the business activities were conducted in the name of the company's "dot.com" subsidiary.

To help keep the BAT nexus issue separate from the sales tax issue, the bills in earlier Congresses that addressed streamlined sales taxes and remote collection authority typically provided that a business's being required to collect sales and use taxes from customers from other states would not imply an obligation to pay business activity taxes to those other states.

In the 106th and 107th Congresses, nexus language was introduced both independently from and in combination with an extension of the Internet Tax Freedom Act moratorium.¹⁰

Action in Congress

Thus far, four Internet tax bills have been introduced in the first session of the 108th Congress. Three would make the moratorium permanent and remove the grandfathering protection offered under current law to states that had Internet access taxes in place prior to October 1, 1998. These are the companion bills H.R. 49 (Cox) and S. 52 (Wyden), named the Internet Tax Nondiscrimination Act, and S. 150 (Allen), named the Internet Tax Non-discrimination Act of 2003. The fourth bill would extend the current moratorium for five years — H.R. 1481 (Lofgren), the Internet Growth and Freedom Act of 2003.

The House Judiciary Committee, Subcommittee on Commercial and Administrative Law, held a hearing on H.R. 49 (Cox) on April 1, 2003. Subcommittee consideration and markup were held on May 22, 2003. A technical amendment in the nature of a substitute was approved by voice vote. H.R. 49 (amended) was forwarded to the full committee by voice vote.

Three other amendments were proposed but withdrawn in the subcommittee, with the hope by the sponsors that the issues they raised would be considered again. The Delahunt amendment addressed the interstate sales tax collection issue. Subcommittee Chairman Christopher B. Cannon had agreed at the April 1 hearing to hold a separate hearing on the sales tax collection issue. The Watt amendment addressed the tax protection for Internet access delivered in variously bundled service packages and for different forms of telecommunications used to access the Internet (e.g., DSL and wireless). Chairman Cannon agreed to work with Representative Watt on the effort to further define Internet access before the full

¹⁰ In the 106th Congress, BAT nexus guidelines were included as part of H.R. 4267 (Hyde and Conyers, representing the majority opinion of the Advisory Commission on Electronic Commerce) and were the main purpose of S. 2401 (Gregg and Kohl). The BAT nexus bills in the 107th Congress were H.R. 2526 (Goodlatte and Boucher) and S. 664 (Gregg and Kohl).

committee took up the bill. The Baldwin amendment would have preserved the grandfathering protection.

On July 16, 2003, the House Judiciary Committee held a markup of H.R. 49 (as amended in the nature of a substitute). The Committee approved one amendment and defeated two others. The bill was then reported favorably to the full House. The two defeated amendments were both introduced by Representative Sheila Jackson Lee. One would have preserved the current grandfathering protection permanently. The other would have gradually eliminated the grandfathering protection, cutting the permitted state and local tax rates in half two years after enactment of the bill and eliminating the taxes entirely four years after enactment of the bill.

The amendment that was approved was introduced on a bipartisan basis by Representative Melvin Watt and Subcommittee Chairman Chris Cannon.¹¹ 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 would add to the definition of Internet access (in Section 1104(5) of the Internet Tax Freedom Act) the phrase shown below in bold 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.** [Emphasis added.]

The amendment would protect from state and local taxes all forms of telecommunications services used to provide Internet access. Purportedly, it would make Internet access service made available via DSL (digital subscriber line) or wireless services free from tax, just as Internet access service delivered via dial-up phone and cable service has been. The language of the amendment could also possibly free from tax the underlying telephone and cable services used to provide Internet access, even if those telecommunications services also provided capabilities in addition to accessing the Internet, such as telephone service.

In its cost estimate, the Congressional Budget Office (CBO) has determined that H.R. 49, as ordered reported by the House Judiciary Committee, would impose an intergovernmental mandate. CBO has estimated that repealing the grandfather clause would lead to revenue losses totaling \$80 million to \$120 million per year for the group of approximately 10 states and several local governments in a few states that currently tax Internet access. This amount exceeds the threshold of \$59 million in 2003 (adjusted annually for inflation) established by the Unfunded Mandates Reform Act (UMRA). In addition, amending the definition of Internet access could free from tax some telecommunications services used to provide Internet access that are

¹¹ 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.

otherwise subject to state and local taxes under current ITFA law.¹² The presence of an unfunded intergovernmental mandate in excess of the threshold amount means that a point of order may be raised when the bill is considered on the House or Senate floor.¹³

Also on July 16, 2003, the Senate Committee on Commerce, Science, and Transportation held a hearing on the Internet tax moratorium. Chairman John McCain indicated that he preferred that the legislation to extend the moratorium be independent from the sales tax simplification and collection issue. He said he expected to hold a separate hearing on the interstate sales tax issue later this year.

Internet Tax Bills Introduced in the 108th Congress

Table 1 succinctly compares the bills introduced thus far in the House of Representatives and Table 2 the bills introduced in the Senate. Each bill is described in more detail in the subsequent text.

Table 1. Comparison of Internet Tax Bills in the House

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
H.R. 49 (Cox) as reported by Judiciary Committee	Permanent	No	Exemption from Internet access taxes extended to all forms of telecommunications used to provide access
H.R. 1481 (Lofgren)	5 years, until Nov. 1, 2008	Yes	—

¹² 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*. Washington, July 21, 2003. Available on the Web at [<http://www.cbo.gov>] and on the LIS for H.R. 49 under CBO Cost Estimates.

¹³ 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, Washington, February 9, 1999, 4-5.

Table 2. Comparison of Internet Tax Bills in the Senate

Bill Number (Sponsor)	Extension of Moratorium	Grandfathering of Existing Internet Access Taxes	Other Internet or Interstate Tax Issues
S. 52 (Wyden)	Permanent	No	—
S. 150 (Allen)	Permanent	No	—

House of Representatives

H.R. 49 (Cox). Internet Tax Nondiscrimination Act. H.R. 49 would permanently extend the moratorium imposed by the Internet Tax Freedom Act. Would remove 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. Companion to S. 52 (Wyden). Introduced January 7, 2003. Referred to the Committee on the Judiciary. Referred to the Subcommittee on Commercial and Administrative Law on March 6, 2003. Hearing held on April 1, 2003. Subcommittee consideration and markup session held on May 22, 2003. A technical amendment in the nature of a substitute approved by voice vote. Three other amendments proposed but withdrawn in the subcommittee. H.R. 49 (amended) forwarded to the full committee by voice vote.

On July 16, 2003, the full committee held a markup. One bipartisan amendment was approved; it provided that all forms of telecommunications services used to provide Internet access would be exempt from Internet access taxes (to make the exemption technologically neutral). Two amendments were defeated, one to preserve the grandfathering and another to phase out the grandfathering in two stages. H.R. 49 (as amended in the nature of a substitute) reported favorably to the full House by voice vote. In its cost estimate, the Congressional Budget Office has determined that H.R. 49 as ordered reported by the House Judiciary Committee would impose an intergovernmental mandate. This means that a point of order could be raised when the bill is considered on the House or Senate floor.

H.R. 1481 (Lofgren). Internet Growth and Freedom Act of 2003. H.R. 1481 would temporarily extend the moratorium imposed by the Internet Tax Freedom Act by five years, until November 1, 2008. Would continue the grandfather protection for pre-existing Internet access taxes. Introduced March 27, 2003. Referred to the Committee on the Judiciary.

Senate

S. 52 (Wyden). Internet Tax Nondiscrimination Act. S. 52 would permanently extend the moratorium imposed by the Internet Tax Freedom Act. Would remove 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. Companion to H.R. 49 (Cox). Introduced January 7, 2003. Referred to the Committee on Commerce, Science, and Transportation.

S. 150 (Allen). Internet Tax Non-discrimination Act of 2003. S. 150 would permanently extend the moratorium imposed by the Internet Tax Freedom Act. Would remove the grandfathering protection for taxes on Internet access that were generally imposed and actually enforced prior to October 1, 1998. Would remove the reference in the ITFA to the moratorium beginning on October 1, 1998. Would remove from the ITFA the definition of Internet access (which includes the grandfather clause) but would retain the definition of generally imposed and actually enforced taxes. Introduced January 13, 2003. Referred to the Committee on Commerce, Science, and Transportation.

For Additional Information

Hearings in the 108th Congress

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Commercial and Administrative Law. *Internet Tax Nondiscrimination Act*. Hearing on H.R. 49. Serial No. 13. 108th Cong., 1st sess., April 1, 2003. Washington: GPO, 2003. 102 p. 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 Electronic Briefing Book, *Taxation*, Internet Taxation, “Taxing Internet Transactions,” available at [<http://www.congress.gov/brbk/html/ebtxr70.html>].

CRS Report RL31177, *Extending the Internet Tax Moratorium and Related Issues*, January 17, 2002, 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*, December 6, 2001, by Nonna A. Noto.