

**Calendar No. 509**

105TH CONGRESS }  
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SENATE

{ REPORT  
105-276

**INTERNET TAX FREEDOM ACT**

JULY 30, 1998.—Ordered to be printed

Mr. ROTH, from the Committee on Finance,  
submitted the following

**REPORT**

together with

**MINORITY VIEWS**

[To accompany S. 442]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (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 free flow of commerce via the Internet, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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## I. LEGISLATIVE BACKGROUND AND SUMMARY

### A. LEGISLATIVE BACKGROUND

An amendment in the nature of a substitute to S. 442, the “Internet Tax Freedom Act,” was reported by the Senate Committee on Commerce, Science, and Transportation (“Commerce Committee”) on May 5, 1998 (S. Rept. 105–184). As reported by the Commerce Committee, S. 442 would impose a moratorium on the ability of States and local governments to impose taxes with respect to Internet activity, including both access to and transactions conducted on the Internet. As reported by the Commerce Committee, S. 442 further would direct the Secretaries of State, Treasury, and Commerce, in consultation with private business and appropriate Congressional committees, to undertake a study of the appropriate taxation of Internet activity, and would provide that it is the sense of the Congress that Internet activity be a tariff-free zone. Consistent with the jurisdiction of the Committee on Finance (the “Finance Committee”) over issues related to interstate taxation by States and local governments and international taxation and trade, S. 442 was referred to the Finance Committee through July 30, 1998.

Similar legislation, H.R. 4105, was passed by the House of Representatives on June 23, 1998.

The Finance Committee held a public hearing on S. 442 and other proposals relating to tax and trade issues regarding the Internet on July 16, 1998. The Finance Committee held a markup on July 28, 1998, to consider a substitute amendment to the provisions of S. 442, as reported by the Commerce Committee. At the markup, the Finance Committee approved a substitute amendment to the Commerce Committee’s amendment in the nature of a substitute, and ordered the bill, as amended, favorably reported.

### B. SUMMARY OF COMMITTEE AMENDMENT

The Finance Committee amendment (“committee amendment”) prohibits States and local governments from imposing any Internet access tax, any bit tax, or any multiple or discriminatory tax on electronic commerce during the period beginning on July 29, 1998, and ending two years after the date of the bill’s enactment. The terms Internet access tax and bit tax do not include any taxes on gross or net income derived from the Internet or electronic commerce. Further, the moratorium does not preclude States from continuing to impose taxes on telecommunications services or cable television access.

The committee amendment establishes a temporary Advisory Commission on Electronic Commerce (the “Commission”) to study and develop policy recommendations on the appropriate taxation (domestic and international) and tariff treatment of Internet activity. The Commission’s findings and any legislative recommenda-

tions are required to be transmitted to the Congress within 18 months after the bill's enactment.

The committee amendment provides that it is the sense of the Congress that no new Federal taxes like the State and local taxes to which the moratorium applies should be enacted on Internet activity during the moratorium.

Further, the committee amendment declares that it is the sense of the Congress that international agreements be negotiated providing that international use of the Internet is free from tariffs and discriminatory taxation. The committee amendment also directs the United States Trade Representative to include barriers to electronic commerce in the barriers designated annually in the National Trade Estimates report.

## II. EXPLANATION OF COMMITTEE AMENDMENT

### A. PRESENT-LAW TAX AND TARIFF PROVISIONS

#### FEDERAL TAX PROVISIONS

##### *Income taxation*

There are no special Federal income taxes on Internet services. The Federal income tax applies to Internet services in the same manner that it applies to any other provision of services. Accordingly, the income received by an Internet service provider is includible in that provider's income for Federal income tax purposes. Similarly, a business that pays amounts to an Internet service provider generally may deduct or amortize (as appropriate) those amounts as an ordinary and necessary business expense (assuming the other prerequisites for a deduction or amortization are satisfied).

##### *Federal excise taxation*

Present law imposes no special excise taxes on Internet services. Access to and transactions conducted on the Internet are subject to generally applicable Federal excise taxes in the same manner as other taxable activities. For example, present law imposes a 3-percent Federal excise tax on certain communications services (i.e., local and long distance telephone service). Thus, amounts paid for telephone service connecting users to the Internet are subject to this excise tax in the same manner as other payments for telephone service. Charges for actual Internet service are not subject to this tax, as long as the service provided does not otherwise fall within the statutory provisions governing the communications excise tax (e.g., voice quality local or toll service).

#### INTERNATIONAL TRADE PROVISIONS

Present law provides no direction to the President regarding Congress' interest in or intent with respect to the conduct of international negotiations regarding barriers to electronic commerce. Nothing in the law directs the President to include barriers to electronic commerce among the barriers cataloged annually in the National Trade Estimates report prepared by the United States Trade Representative. The National Trade Estimates report serves as a

compendium of foreign barriers to U.S. commerce and a presumptive target for future negotiations with our trading partners.

STATE AND LOCAL GOVERNMENT TAXATION OF INTERSTATE  
TRANSACTIONS

Under the United States Constitution, a State or local government may impose taxes on sales that occur within its jurisdiction or on the use of property within its jurisdiction. Approximately 6,600 State and local jurisdictions impose sales and use taxes.<sup>1</sup> A limited number of States have applied their sales or other excise taxes to Internet activity. The allowable sales tax authority of a State or local government extends to mail order sales by out-of-State vendors to residents of the State if the sale is deemed to take place within the taxing jurisdiction.<sup>2</sup> There are, however, limitations on the methods State and local jurisdictions may employ to collect sales and use taxes.

State and local sales and use taxes are levied on the final purchaser, but are collected primarily through the vendor. In the case of a sale by an out-of-State vendor, the U.S. Supreme Court has held that a State or local government cannot constitutionally require the vendor to collect and remit use taxes unless the vendor has a sufficient business nexus with the State.<sup>3</sup> In the *National Bellas Hess* case, the Court found that the required nexus was not present if the vendor's only connection with customers in the State was by common carriers or the United States mail.<sup>4</sup> The Court based this conclusion on due process considerations and on the Commerce Clause of the United States Constitution, which reserves to Congress the power to regulate and control interstate commerce.<sup>5</sup> The required nexus has been held to exist when the vendor arranges sales through local agents or maintains retail stores in the taxing State.

Subsequently, in 1992, the U.S. Supreme Court ruled that an out-of-state mail-order house with neither outlets nor sales representatives in the State is not required to collect and pay use tax on goods purchased for use in the State.<sup>6</sup> The Court ruled that the due process clause did not bar enforcement of the State's use tax, but held that enforcing the State's use tax would be inconsistent with the Court's commerce clause jurisprudence. The Court concluded by observing that "the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve."<sup>7</sup>

B. REASONS FOR CHANGE

Use of the Internet and of electronic commerce in general is expanding exponentially and comprises an increasingly important segment of the national and global economy. Fair and administra-

<sup>1</sup> Advisory Commission on Intergovernmental Relations, Significant Features of Fiscal Federalism, Vol. 1 (1995), table 27.

<sup>2</sup> See, e.g., *McLeod v. J.E. Dilworth Co.*, 322 U.S. 327 (1944).

<sup>3</sup> *National Bellas Hess, Inc., v. Department of Revenue of the State of Illinois*, 386 U.S. 753 (1967) (henceforth referred to as *National Bellas Hess*).

<sup>4</sup> *Id.* at 754.

<sup>5</sup> *Id.* at 760.

<sup>6</sup> *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

<sup>7</sup> *Id.* at 318.

ble rules for taxing and regulating use of the Internet, and electronic commerce in general, should be developed. Otherwise, inconsistent or difficult to administer tax rules could present impediments to development of this sector of the economy. The Committee determined that a limited moratorium, accompanied by a review of appropriate tax and trade issues, will give Congress the opportunity to evaluate proper State and local government interstate taxation, Federal taxation, and trade treatment of the Internet and electronic commerce.

### C. EXPLANATION OF PROVISIONS

The committee amendment substitutes the provisions described below for the provisions of S. 442, as reported by the Commerce Committee.

#### STATE AND LOCAL TAX MORATORIUM

In lieu of the approximately six-year moratorium provided in S. 442, the committee amendment would prohibit imposition of State and local taxes on the Internet during the period beginning on July 29, 1998 and ending two years after the date of the bill's enactment.<sup>8</sup> Taxes to which the moratorium applies include any State or local government taxes on Internet access, any bit taxes, or any multiple or discriminatory taxes on electronic commerce. The terms Internet access tax and bit tax do not include any taxes on gross or net income derived from the Internet or electronic commerce or other non-transactional taxes such as State or local government real and personal property taxes. Further, the restrictions on Internet access taxes and bit taxes do not preclude States from continuing to impose taxes on telecommunications services or cable television access. In general, the prohibition on multiple taxes applies to taxes imposed by more than one State, but for which credits for out-of-state taxation are not allowed, and the prohibition on discriminatory taxes applies to taxes imposed at different rates than taxes imposed on the same or similar transactions conducted by other means.

As stated above, the committee amendment provides that the moratorium applies only to taxes imposed after July 28, 1998 (the date of Finance Committee action). Thus, the committee amendment does not affect the ability of States or local governments to collect tax with respect to transactions occurring before July 29, 1998, or the rights of parties in any dispute concerning State and local taxation of Internet activity during periods before July 29, 1998. The committee amendment does not grandfather any existing State or local taxes on Internet activity occurring during the period of the moratorium. Further, nothing in the committee amendment modifies the present-law rules for determining when an interstate seller has a "nexus" with a State for determining whether sales and use taxes are imposed on an interstate transaction or for requiring an out-of-state seller to collect such taxes.

<sup>8</sup>The moratorium does not affect taxes, fees, and other charges imposed pursuant to Federal law. Thus, for example, the universal service charges currently being imposed by the Federal Communications Commission to fund certain programs anticipated by 1996 telecommunications legislation are not addressed by the committee amendment.

## ESTABLISH NATIONAL ADVISORY COMMISSION

The committee amendment establishes a temporary Advisory Commission on Electronic Commerce (“the Commission”) to study and recommend appropriate rules for international, Federal, State, and local government income and excise taxation of transactions using the Internet and other comparable interstate or international sales activities, as well as appropriate tariff treatment of such activities. In conducting this study, the Commission may review how the imposition of barriers to international use of the Internet will affect the United States relative to foreign markets, issues relating to taxation of interstate sales, particularly electronic commerce, and the impact, if any, of Internet usage on the revenue base of the Federal communications excise tax (Internal Revenue Code section 4251).

The Commission is to be comprised of 16 members, as follows:

*Federal Government representatives.*—The Secretaries of State, Treasury, and Commerce, and the United States Trade Representative, or the designee of each such cabinet member are to represent the Federal Government.

*State and local government representatives.*—A total of six representatives of State and local governments are to be appointed, two members each by the Speaker of the House of Representatives and the Majority Leader of the Senate, and one member each by the Minority Leader of the House or Representatives and the Minority Leader of the Senate.

*Electronic industry and consumer representatives.*—A total of six representatives of the electronic industry and of consumer groups are to be appointed, two members each by the Speaker of the House of Representatives and the Majority Leader of the Senate, and one member each by the Minority Leader of the House of Representatives and the Minority Leader of the Senate.

The committee expects that the Congressional leadership will coordinate their appointments to the Commission to assure the broadest possible State and local government and private sector representation, and that the private sector appointments will include representatives of local, national, and international businesses and users of electronic commerce.

The committee amendment does not provide an independent budget for the Commission; however, the Commission is to have reasonable access to materials, resources and facilities, data, and other information from the Departments of Justice,<sup>9</sup> Commerce, State, and Treasury and the Office of the United States Trade Representative. The committee amendment does not override any privacy or similar protections for materials held by these agencies; accordingly, the Commission will not have access to these protected materials.<sup>10</sup>

The Commission is directed to submit its findings, with any legislative recommendations, to the Congress within 18 months of the date of the bill’s enactment. The adoption of any such findings or

<sup>9</sup>The Department of Justice is included in this list of agencies because of, inter alia, its oversight of Federal antitrust laws as they affect the electronic commerce industry.

<sup>10</sup>For example, the committee amendment does not provide any exceptions to the taxpayer privacy protections under section 6103 of the Internal Revenue Code.

recommendations by the Commission requires agreement of at least two-thirds of the Commission members serving at the time the findings or recommendations are made.

The work of the Commission must comply with the provisions of the Federal Advisory Commission Act. Thus, the Commission must hold public meetings. The Commission is required to provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local officials to testify.

The committee amendment does not provide any expedited procedures for Congressional consideration of the Commission's recommendations.

#### SENSE OF THE CONGRESS RESOLUTION ON NEW FEDERAL INTERNET TAXES

The committee amendment provides that it is the sense of the Congress that no new Federal taxes like the State and local government taxes to which the two-year moratorium applies should be enacted on Internet activity during the moratorium.

#### INTERNATIONAL TRADE PROVISIONS

The committee amendment amends section 181 of the Trade Act of 1974 to ensure that the U.S. Trade Representative will include barriers to U.S. electronic commerce among the items catalogued in the annual National Trade Estimates report on foreign barriers to trade. The committee amendment would, in addition, provide a clear statement of Congress' intent in that the President should seek international agreements to remove barriers to global electronic commerce, then outlines the negotiating objectives the President should pursue. Those objectives include:

- (1) assuring that our trading partners do not impose either tariff or non-tariff barriers to electronic commerce;
- (2) eliminating existing barriers to trade in goods and services via the Internet; and
- (3) eliminating barriers to trade in goods and services, such as telecommunications equipment and services, that are essential to the future growth of electronic commerce.

#### D. EFFECTIVE DATE

The committee amendment is effective on the date of enactment.

### III. BUDGET EFFECTS OF THE BILL

#### A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the provisions of S. 442 as reported by the Finance Committee.

The provisions of the committee amendment are estimated to have no effect on Federal revenues.

## B. BUDGET AUTHORITY AND TAX EXPENDITURES

## BUDGET AUTHORITY

In compliance with section 308(a)(1) of the budget Act, the Committee states that the provisions of the committee amendment involve no new or increased budget authority.

## TAX EXPENDITURES

In compliance with section 308(a)(2) of the Budget Act, the Committee states that the provisions of the committee amendment involve no new or increased tax expenditures.

## C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office submitted the following statement on S. 442, as amended by the Finance Committee.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 30, 1998.*

Hon. WILLIAM V. ROTH, Jr.,  
*Chairman, Committee on Finance,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate and mandates statement for S. 442, the Internet Tax Freedom Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), and Pepper Santalucia (for the mandates statement).

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, Director).

Enclosures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 442—Internet Tax Freedom Act*

Summary: S. 442 would impose a two-year moratorium on certain state and local taxation of online services and electronic commerce. In addition, the bill would establish an Advisory Commission on Electronic Commerce to examine issues related to the taxation of electronic commerce. Finally, the bill would require the Office of the United States Trade Representative to include an analysis of electronic commerce in its annual report on barriers to market access in foreign countries. CBO estimates that enacting S. 442 would result in new discretionary spending of \$1 million to \$2 million over the 1999–2003 period, assuming appropriation of the necessary amounts.

S. 442 could affect direct spending and receipts, so pay-as-you-go procedures would apply, but CBO estimates that any such effects would be negligible.

S. 442 contains no private-sector mandates, but by imposing a moratorium on certain types of state and local taxes, the bill would



impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO cannot estimate whether the direct costs of this mandate would exceed the statutory threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation).

Estimated cost to the Federal Government: S. 442 would establish an advisory commission to examine issues related to the taxation of electronic commerce. The Commission would exist for up to 18 months and would consist of representatives of federal, state, and local governments, citizens, and business interests. The bill would authorize the commission to have reasonable access to information, resources, and space to conduct meetings from the Departments of Commerce, Justice, and the Treasury. CBO estimates the commission's expenses for the next 18 months would be less than \$500,000 annually because no staff or contractual support would be authorized by the bill. CBO expects that nonfederal participants would bear a significant portion of the costs of the commission.

S. 442 would authorize the commission to accept and use gifts and donations to assist in its work. Donations of money are recorded in the budget as governmental receipts (revenues), and the use of any such amounts would be direct spending. CBO expects that any such effects would be negligible.

S. 442 would require the Office of the U.S. Trade Representative to include an analysis of electronic commerce in its annual report concerning barriers to market access in foreign countries. Based on information from the Department of Commerce, CBO estimates this work would cost less than \$500,000, assuming appropriation of the necessary funds. The costs of this legislation fall within budget function 370 (commerce and housing credit).

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. By allowing the proposed advisory commission to accept and use donations, S. 442 could affect both direct spending and receipts, but CBO estimates that any such donations would be significantly less than \$500,000 a year.

Intergovernmental and private-sector impact: S. 442 contains no private-sector mandates, but by imposing a moratorium on certain types of state and local taxes, the bill would impose an intergovernmental mandate as defined in UMRA. CBO cannot estimate whether the direct costs of this mandate would exceed the statutory threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation). CBO's estimate of the bill's impact on state, local, and tribal governments is provided as a separate enclosure.

Previous CBO estimates: CBO has completed cost estimates for four other versions of the Internet Tax Freedom Act. On June 23, 1998, CBO transmitted an estimate of H.R. 3529, as ordered reported by the House Committee on the Judiciary on June 17, 1998. On June 19, 1998, CBO transmitted an estimate of H.R. 3849, as reported by the House Committee on the Judiciary on June 19, 1998. On May 22, 1998, CBO transmitted an estimate of the federal costs of H.R. 3849, as ordered reported by the House Committee on Commerce on May 14, 1998. And on January 21, 1998, CBO transmitted an estimate of the federal costs of S. 442, as ordered

reported by the Senate Committee on Commerce, Science, and Transportation on November 4, 1997. Differences between those estimates and this estimate of S. 442 reflect differences in the bills.

Estimate prepared by: Mark Hadley.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE MANDATES STATEMENT

*S. 442—Internet Tax Freedom Act*

Summary: S. 442 contains no private-sector mandates, but by imposing a moratorium on certain types of state and local taxes, the bill would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). For reasons described below, CBO cannot estimate whether the direct costs of this mandate would exceed the statutory threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation).

Intergovernmental mandates contained in the bill: S. 442 would impose a two-year moratorium on certain state and local taxes, including taxes on Internet access and online services. This moratorium would constitute an intergovernmental mandate as defined in UMRA. The bill would not grandfather any states or localities that have already imposed such taxes.

*Is the statutory threshold exceeded?*

Estimated direct costs of mandates to State, local, and tribal governments: Because it is unclear what should be counted as the direct costs of the moratorium, CBO cannot determine whether the threshold for intergovernmental mandates would be exceeded in either year of the moratorium.

*Total direct costs of mandates*

UMRA defines the direct costs of an intergovernmental mandate as “the aggregate estimated amounts that all state, local, and tribal governments . . . would be prohibited from raising in revenues in order to comply with the federal intergovernmental mandate.” Twelve states, including the District of Columbia, have sought to impose their sales and use taxes on Internet access and online services. (These twelve include Illinois, which taxes the services in only very limited circumstances.) Twelve home-rule cities in Colorado also impose such taxes.

Information from states and industry sources indicates that while total collections and unpaid assessments for all twelve states in 1997 were close to \$50 million, actual collections alone were significantly lower than that amount. The difference occurs because, in some of the states, companies are challenging the applicability of the tax to the service they provide or the state’s finding that they are obliged to collect the tax on the state’s behalf. In those cases, the companies are not collecting or remitting the tax, but they are accruing a potential tax liability to the states. CBO is unsure whether a tax that is being assessed but is not being paid should be counted toward the direct costs of a mandate when the applicability or constitutionality of the tax is being litigated.

Whichever measure is used, the potential cost of the mandate would grow over the two years that the moratorium would be in effect, because of the projected growth of the market for Internet access and online services. Some industry analysts have predicted that the market will more than double in the next three years. Growth of this magnitude would push collections plus potential tax liability for the twelve states over \$50 million, but whether actual collections would reach that threshold would depend on the outcome of litigation. If the states prevail in court, the total mandate cost for the twelve states would exceed the threshold.

It is possible that, in the absence of this legislation, some state and local governments would enact new taxes or decide to apply existing taxes to Internet access or online services during the next two years. It is also possible that some governments would repeal existing taxes or preclude their application to these services. Such changes would affect the ultimate cost of the mandate but are extremely difficult to predict. Therefore, for the purposes of estimating the direct costs of the mandate in this bill, CBO considered only the revenues from taxes that are currently in place.

The moratorium in S. 442 would also apply to “bit taxes,” which are taxes based in some way on the volume of digital information being transmitted. According to both state officials and industry representatives, no state or locality has adopted this type of tax. In addition, the Moratorium would apply to “multiple or discriminatory taxes on electronic commerce.” CBO could not identify any current state or local taxes that would clearly meet the definitions provided in the bill for these two types of taxes.

Appropriation or other federal financial assistance provided in bill to cover mandate costs: None.

Other impacts on State, local, and tribal governments: S. 442 would establish an Advisory Commission on Electronic Commerce made up of federal officials and representatives of state and local governments, the electronic industry, and consumer groups. The commission would study and write a report on the tax treatment of Internet access and electronic commerce at the federal, state, local, and international levels. As part of its study, the commission could examine ways to simplify the administration of sales and use taxes on interstate commerce in general.

Previous CBO estimates: CBO has completed intergovernmental mandates statements for seven other versions of the Internet Tax Freedom Act. All but one of these versions would impose a moratorium on some categories of state and local taxes. In each case, we determined that the moratorium would constitute an intergovernmental mandate as defined in UMRA. The direct costs that we estimated for the mandate in each bill differed depending on the scope and duration of the moratorium. For two versions, we determined that the costs of complying with the mandate would exceed the threshold established in UMRA. For the remaining four versions, we could not determine whether the threshold was exceeded. H.R. 3849, as reported by the House Judiciary Committee on June 19, 1998, contained an intergovernmental mandate but did not include a moratorium on state and local taxes.

Date	Bill number	Version	Threshold determination
June 18, 1997 .....	S. 442 .....	As introduced .....	Threshold exceeded.
January 21, 1998 .....	S. 442 .....	As ordered reported by Senate Commerce, Science and Transportation Committee.	Cannot determine.
March 25, 1998 .....	H.R. 1054 .....	As approved by a subcommittee of House Commerce Committee.	Threshold exceeded.
May 22, 1998 .....	H.R. 3849 .....	As ordered reported by House Commerce Committee.	Cannot determine.
June 19, 1998 .....	H.R. 3849 .....	As reported by House Judiciary Committee.	Below threshold.
June 23, 1998 .....	H.R. 3529 .....	As ordered reported by House Ju- diciary Committee.	Cannot determine.
July 20, 1998 .....	H.R. 4105 .....	As passed by the House of Rep- resentatives.	Cannot determine.

Estimate prepared by: Pepper Santalucia.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the roll call votes in the Committee's consideration of S. 442.

##### MOTION TO REPORT THE BILL

The bill (S. 442) was ordered favorably reported, as amended by the Chairman's amendment in the nature of a substitute (as amended) by a roll call vote of 11 yeas and 1 nay on July 28, 1998. The vote, with a quorum present, was as follows (proxy votes are not counted in the total vote on a motion to order a bill reported):

*Yeas.*—Senators Roth, Chafee, Grassley (proxy), Hatch, D'Amato (proxy), Murkowski (proxy), Nickles, Gramm, Lott (proxy), Jeffords (proxy), Mack, Moynihan, Baucus, Rockefeller (proxy), Breaux (proxy), Conrad, Moseley-Braun (proxy), Bryan and Kerrey.

*Nay.*—Senator Graham.

##### VOTES ON OTHER AMENDMENTS

(1) An amendment by Senator Kerrey (and Chafee) to provide for a two-year moratorium (rather than a three-year) on the imposition of State and local taxes on the Internet and an advisory commission to study and make recommendations on appropriate tax and tariff treatment of such Internet activities (report due 18 months after enactment) was approved by a roll call vote of 11 yeas and 9 nays.

*Yeas.*—Senators Chafee, Jeffords (proxy), Moynihan, Baucus, Rockefeller (proxy), Breaux (proxy), Conrad, Graham, Moseley-Braun (proxy), Bryan and Kerrey.

*Nays.*—Senator Roth, Grassley (proxy), Hatch, D'Amato (proxy), Murkowski (proxy), Nickles, Gramm, Lott (proxy), and Mack.

(2) An amendment by Senator Graham that would require out-of-State direct marketers to collect State and local state and use taxes when the company (a) solicits in the State and (b) delivers products into the State was defeated by a roll call vote of 6 yeas, 13 nays and 1 abstention. The vote was as follows:

*Yeas.*—Senators Moynihan, Breaux (proxy), Conrad, Graham, Moseley-Braun (proxy) and Bryan.

*Nays.*—Senators Roth, Chafee, Grassley (proxy), Hatch, D’Amato (proxy), Murkowski (proxy), Nickles, Gramm, Lott (proxy), Jeffords (proxy), Mack, Baucus and Kerrey.

*Abstention.*—Senator Rockefeller.

(3) An amendment by Senator Conrad that would provide that the moratorium applies only to new taxes imposed on Internet access services delivered after July 28, 1998, and that the moratorium would not impair the ability of any State or local government to continue collecting taxes on Internet access that were generally imposed and actually enforced under State or local law before July 28, 1998, was defeated by a roll call vote of 10 yeas and 10 nays. The vote was as follows:

*Yeas.*—Senators Lott (proxy), Moynihan, Baucus, Rockefeller (proxy), Breaux (proxy), Conrad, Graham, Moseley-Braun (proxy), Bryan and Kerrey (proxy).

*Nays.*—Senators Roth, Chafee, Grassley (proxy), Hatch, D’Amato (proxy), Murkowski (proxy), Nickles, Gramm, Jeffords (proxy) and Mack.

## V. REGULATORY IMPACT AND OTHER MATTERS

### A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the committee amendment to the bill, S. 442.

#### IMPACT ON INDIVIDUALS AND BUSINESSES

The committee amendment places a moratorium on any State or local government tax, license, or fee being imposed directly or indirectly on the Internet or interactive computer services beginning on July 29, 1998, and ending two years after the date of enactment. The committee amendment establishes an Advisory Commission on Electronic Commerce to study and develop policy recommendations on the appropriate taxation (domestic and international) and tariff treatment of Internet activity. The committee amendment also directs the United States Trade Representative to include barriers to electronic commerce in the barriers designated annually in the National Trade Estimates report.

#### IMPACT ON PERSONAL PRIVACY AND PAPERWORK

The committee amendment should not have any adverse impact on personal privacy, nor should it increase any taxpayer paperwork. The moratorium against certain State and local taxes on Internet activities may reduce the burdens of complying with State and local tax requirements during the two-year period.

### B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4).

The Congressional Budget Office (“CBO”) has reviewed the provisions of the bill (S. 442) as approved by the Committee on July 28, 1998. In accordance with the requirements of Public Law 104-4, the CBO has determined that the provisions of the bill, as amended, contain no Federal private sector mandates.

The bill, as amended, will impose a Federal intergovernmental mandate by prohibiting certain State and local taxes on Internet activities for a period ending two years after the date of enactment. The amount of the intergovernmental mandate is indeterminate at the present time, depending on what taxes that the States and local governments may or may not have enacted in the absence of such moratorium. (See CBO statement in Part III.C., above.)

#### **VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In the opinion of the Committee, in order to expedite the business of the Senate, it is necessary to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

## VII. MINORITY VIEWS

The undersigned Member of the Committee on Finance opposed the Internet Tax Freedom Act, as reported by the Finance Committee on July 28, 1998. I opposed the bill because of its adverse impact on states and main street businesses.

First, as a former governor, I believe that if states and local governments are to properly address important issues, such as—education and police protection—which are traditionally the responsibility of the states, then the Federal government should not restrict the states' ability to finance those issues. The bill both preempts existing taxes and precludes state and local governments' right to decide how to fund its priorities during the moratorium.

Second, I offered an amendment, which failed, to address remote sellers and the collection of state and local sales taxes. Currently remote sellers (mail order sales or Internet sales) are not required to collect the sales or use tax due by the purchaser of the good, unless the remote seller has a nexus in the purchaser's state. Lost tax revenues are growing as remote sales grow. The annual state revenue loss in mail order sales alone is estimated at \$3.3 billion. This is unfair to states, who have limited means of collecting the sales or use tax due from the purchaser. Current practice also is unfair to main street businesses who must collect the sales tax.

Because Internet Tax Freedom Act as drafted harms the tax bases of states and provides unfair competition to main street businesses, I opposed it.

BOB GRAHAM.

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