

Calendar No. 429

110TH CONGRESS  
1ST SESSION**H. R. 3678**

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IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2007

Received and read the first time

OCTOBER 18, 2007

Read the second time and placed on the calendar

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**AN ACT**

To amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce.

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 Freedom  
5        Act Amendments Act of 2007”.

6        **SEC. 2. MORATORIUM.**

7        The Internet Tax Freedom Act (47 U.S.C. 151 note)  
8        is amended—

1 (1) in section 1101(a) by striking “2007” and  
2 inserting “2011”, and

3 (2) in section 1104(a)(2)(A) by striking “2007”  
4 and inserting “2011”.

5 **SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET**  
6 **ACCESS.**

7 Section 1104 of the Internet Tax Freedom Act (47  
8 U.S.C. 151 note) is amended by adding at the end the  
9 following:

10 “(c) APPLICATION OF DEFINITION.—

11 “(1) IN GENERAL.—Effective as of November  
12 1, 2003—

13 “(A) for purposes of subsection (a), the  
14 term ‘Internet access’ shall have the meaning  
15 given such term by section 1104(5) of this Act,  
16 as enacted on October 21, 1998; and

17 “(B) for purposes of subsection (b), the  
18 term ‘Internet access’ shall have the meaning  
19 given such term by section 1104(5) of this Act  
20 as enacted on October 21, 1998, and amended  
21 by section 2(c) of the Internet Tax Non-  
22 discrimination Act (Public Law 108–435).

23 “(2) EXCEPTIONS.—Paragraph (1) shall not  
24 apply until November 1, 2007, to a tax on Internet  
25 access that is—

1           “(A) generally imposed and actually en-  
2           forced on telecommunications service purchased,  
3           used, or sold by a provider of Internet access,  
4           but only if the appropriate administrative agen-  
5           cy of a State or political subdivision thereof  
6           issued a public ruling prior to July 1, 2007,  
7           that applied such tax to such service in a man-  
8           ner that is inconsistent with paragraph (1); or

9           “(B) the subject of litigation instituted in  
10          a judicial court of competent jurisdiction prior  
11          to July 1, 2007, in which a State or political  
12          subdivision is seeking to enforce, in a manner  
13          that is inconsistent with paragraph (1), such  
14          tax on telecommunications service purchased,  
15          used, or sold by a provider of Internet access.

16          “(3) NO INFERENCE.—No inference of legisla-  
17          tive construction shall be drawn from this subsection  
18          or the amendments to section 1105(5) made by the  
19          Internet Tax Freedom Act Amendments Act of 2007  
20          for any period prior to November 1, 2007, with re-  
21          spect to any tax subject to the exceptions described  
22          in subparagraphs (A) and (B) of paragraph (2).”.

23 **SEC. 4. DEFINITIONS.**

24          Section 1105 of the Internet Tax Freedom Act (47  
25          U.S.C. 151 note) is amended—

1 (1) in paragraph (1) by striking “services”,  
2 (2) by amending paragraph (5) to read as fol-  
3 lows:

4 “(5) INTERNET ACCESS.—The term ‘Internet  
5 access’—

6 “(A) means a service that enables users to  
7 connect to the Internet to access content, infor-  
8 mation, or other services offered over the Inter-  
9 net;

10 “(B) includes the purchase, use or sale of  
11 telecommunications by a provider of a service  
12 described in subparagraph (A) to the extent  
13 such telecommunications are purchased, used or  
14 sold—

15 “(i) to provide such service; or

16 “(ii) to otherwise enable users to ac-  
17 cess content, information or other services  
18 offered over the Internet;

19 “(C) includes services that are incidental  
20 to the provision of the service described in sub-  
21 paragraph (A) when furnished to users as part  
22 of such service, such as a home page, electronic  
23 mail and instant messaging (including voice-  
24 and video-capable electronic mail and instant

1           messaging), video clips, and personal electronic  
2           storage capacity; and

3           “(D) does not include voice, audio or video  
4           programming, or other products and services  
5           (except services described in subparagraph (A),  
6           (B), or (C)) that utilize Internet protocol or any  
7           successor protocol and for which there is a  
8           charge, regardless of whether such charge is  
9           separately stated or aggregated with the charge  
10          for services described in subparagraph (A), (B),  
11          or (C).”,

12          (3) by amending paragraph (9) to read as fol-  
13          lows:

14               “(9) TELECOMMUNICATIONS.—The term ‘tele-  
15               communications’ means ‘telecommunications’ as  
16               such term is defined in section 3(43) of the Commu-  
17               nications Act of 1934 (47 U.S.C. 153(43)) and ‘tele-  
18               communications service’ as such term is defined in  
19               section 3(46) of such Act (47 U.S.C. 153(46)), and  
20               includes communications services (as defined in sec-  
21               tion 4251 of the Internal Revenue Code of 1986 (26  
22               U.S.C. 4251)).”, and

23               (4) in paragraph (10) by adding at the end the  
24               following:

25               “(C) SPECIFIC EXCEPTION.—

1           “(i) SPECIFIED TAXES.—Effective  
2 November 1, 2007, the term ‘tax on Inter-  
3 net access’ also does not include a State  
4 tax expressly levied on commercial activity,  
5 modified gross receipts, taxable margin, or  
6 gross income of the business, by a State  
7 law specifically using one of the foregoing  
8 terms, that—

9           “(I) was enacted after June 20,  
10 2005, and before November 1, 2007  
11 (or, in the case of a State business  
12 and occupation tax, was enacted after  
13 January 1, 1932, and before January  
14 1, 1936);

15           “(II) replaced, in whole or in  
16 part, a modified value-added tax or a  
17 tax levied upon or measured by net in-  
18 come, capital stock, or net worth (or,  
19 is a State business and occupation tax  
20 that was enacted after January 1,  
21 1932 and before January 1, 1936);

22           “(III) is imposed on a broad  
23 range of business activity; and

24           “(IV) is not discriminatory in its  
25 application to providers of commu-

1                    nication services, Internet access, or  
 2                    telecommunications.

3                    “(ii) MODIFICATIONS.—Nothing in  
 4                    this subparagraph shall be construed as a  
 5                    limitation on a State’s ability to make  
 6                    modifications to a tax covered by clause (i)  
 7                    of this subparagraph after November 1,  
 8                    2007, as long as the modifications do not  
 9                    substantially narrow the range of business  
 10                    activities on which the tax is imposed or  
 11                    otherwise disqualify the tax under clause  
 12                    (i).

13                    “(iii) NO INFERENCE.—No inference  
 14                    of legislative construction shall be drawn  
 15                    from this subparagraph regarding the ap-  
 16                    plication of subparagraph (A) or (B) to  
 17                    any tax described in clause (i) for periods  
 18                    prior to November 1, 2007.”.

19 **SEC. 5. CONFORMING AMENDMENTS.**

20                    (a) ACCOUNTING RULE.—Section 1106 of the Inter-  
 21 net Tax Freedom Act (47 U.S.C. 151 note) is amended—

22                    (1) by striking “telecommunications services”  
 23                    each place it appears and inserting “telecommuni-  
 24                    cations”, and

25                    (2) in subsection (b)(2)—

1 (A) in the heading by striking “SERVICES”,  
2 (B) by striking “such services” and insert-  
3 ing “such telecommunications”, and  
4 (C) by inserting before the period at the  
5 end the following: “or to otherwise enable users  
6 to access content, information or other services  
7 offered over the Internet”.

8 (b) VOICE SERVICES.—The Internet Tax Freedom  
9 Act (47 U.S.C. 151 note) is amended by striking section  
10 1108.

11 **SEC. 6. EFFECTIVE DATE.**

12 This Act, and the amendments made by this Act,  
13 shall take effect on November 1, 2007, and shall apply  
14 with respect to taxes in effect as of such date or thereafter  
15 enacted, except as provided in section 1104 of the Internet  
16 Tax Freedom Act (47 U.S.C. 151 note).

Passed the House of Representatives October 16,  
2007.

Attest: LORRAINE C. MILLER,  
*Clerk.*





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1<sup>ST</sup> Session

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