

INTERNET TAX FREEDOM ACT AMENDMENTS ACT OF  
2007

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OCTOBER 12, 2007.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. CONYERS, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

S U P P L E M E N T A L V I E W S

[To accompany H.R. 3678]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3678) to amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Internet Tax Freedom Act Amendments Act of 2007”.

**SEC. 2. MORATORIUM.**

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

- (1) in section 1101(a) by striking “2007” and inserting “2011”, and
- (2) in section 1104(a)(2)(A) by striking “2007” and inserting “2011”.

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

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

“(c) APPLICATION OF DEFINITION.—

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

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

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

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

“(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

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

“(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).”.

**SEC. 4. DEFINITIONS.**

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

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

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

“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

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

“(i) to provide such service; or

“(ii) to otherwise enable users to access content, information or other services offered over the Internet;

“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and

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

- (3) by amending paragraph (9) to read as follows:

“(9) TELECOMMUNICATIONS.—The term ‘telecommunications’ means ‘telecommunications’ as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and ‘telecommunications service’ as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).”, and

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

“(C) SPECIFIC EXCEPTION.—

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

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

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

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

“(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

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

“(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.”.

#### SEC. 5. CONFORMING AMENDMENTS.

(a) ACCOUNTING RULE.—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking “telecommunications services” each place it appears and inserting “telecommunications”, and

(2) in subsection (b)(2)—

(A) in the heading by striking “SERVICES”,

(B) by striking “such services” and inserting “such telecommunications”, and

(C) by inserting before the period at the end the following: “or to otherwise enable users to access content, information or other services offered over the Internet”.

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

#### SEC. 6. EFFECTIVE DATE.

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

#### PURPOSE AND SUMMARY

H.R. 3678, the “Internet Tax Freedom Act Amendments Act of 2007,” would amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce from November 1, 2007, until November 1, 2011, and make other clarifications to the law.

## BACKGROUND AND NEED FOR THE LEGISLATION

## BACKGROUND AND HISTORY OF THE INTERNET TAX FREEDOM ACT

The Internet Tax Freedom Act (ITFA) was enacted on October 21, 1998 as Title XI of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act. The ITFA placed a 3-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 also grandfathered the State and local access taxes that were “generally imposed and actually enforced prior to October 1, 1998.”

This initial Internet tax moratorium expired on October 21, 2001. The Internet Tax Nondiscrimination Act was then enacted on November 28, 2001. It provided for a 2-year extension of the prior moratorium, through November 1, 2003. The moratorium was then extended for an additional 4 years, through November 1, 2007, by the Internet Tax Nondiscrimination Act of 2003, P.L. 108-435, enacted on December 3, 2004. Taxes on Internet access that were in place before October 1, 1998, were protected by a grandfather clause.

The 2004 extension also grandfathered pre-November 1, 2003 taxes (mostly on digital subscriber line or DSL services) through November 1, 2005, and excluded from the moratorium taxes on voice or similar services utilizing voice over Internet protocol (VoIP), mainly because these services were not as prevalent at the time the original moratorium was enacted in 1998. As part of compromise negotiations in the 108th Congress, the grandfathering protection for Internet access taxes in Wisconsin was limited to 3 years (through November 1, 2006) instead of four, and the ability of Texas municipalities to collect franchise fees from telecommunications providers that use public lands was protected. The 2004 Act also included several modifications to the original ITFA.

Specifically, the 2004 Act accomplished the following:

- Extended the Internet tax moratorium for 4 years, retroactively 1 year to November 1, 2003, and forward 3 years until November 1, 2007. The moratorium bars State and local governments from imposing any new taxes on Internet access or imposing any multiple or discriminatory taxes on electronic commerce.
- Clarified that the term “tax on Internet access” applies regardless of whether the tax is imposed on a provider or buyer of Internet access.
- Made explicit that a “tax on Internet access” does not include a tax levied on net income, capital stock, net worth, or property value.
- Provided that the terms “Internet access” and “Internet access service” do “not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.” This permits some portion (the “backbone”) of telecommunications services to be included under the tax moratorium.
- Extended the grandfather protection from November 1, 2003 until November 1, 2007 for State and local governments that taxed Internet access prior to October 1, 1998. An exception

was made for a State telecommunications service tax in Wisconsin, for which protection was extended only until November 1, 2006. Protection was extended only until November 1, 2005 for taxes on Internet access that were generally imposed and actually enforced as of November 1, 2003. This provision applies mainly to taxes on digital subscriber line (DSL) services.

- Explicitly protected the Texas municipal access line fee, to protect the ability of Texas municipalities to collect franchise fees from telecommunications providers that use public lands.
- Included a new accounting rule that charges for Internet access may be subject to taxation in cases where they are aggregated with charges for telecommunications services or other charges that are subject to taxation, unless the Internet access provider can reasonably identify the charges for Internet access.
- Clarified that the moratorium does not apply to taxes on Voice over Internet Protocol (VoIP) services, but does apply to services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.
- Provided for the Government Accountability Office (GAO) to study and report to Congress on the effects of the Internet tax moratorium on the revenues of State and local governments and on the deployment and adoption of broadband technologies for Internet access throughout the United States, including under-served rural areas. The GAO study, issued in January 2006, compared deployment in States that tax broadband Internet access service with States that do not.

Although the Act called for a 3-year moratorium going forward, the grandfather provision protects those Internet access taxes that were generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute, and either: (1) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency had interpreted and applied such tax to Internet access services, or (2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

H.R. 3678, THE “INTERNET TAX FREEDOM ACT AMENDMENTS ACT  
OF 2007”

H.R. 3678 was introduced by Chairman John Conyers, Jr., with bipartisan support from six original cosponsors, on September 27, 2007. The bill would extend the moratorium for 4 years, extend grandfather protection for 4 years for Internet access taxes levied before October 1998, and provide a more narrowly focused definition for Internet access.

Specifically, the bill defines Internet access as the service of providing a connection to the Internet, with closely-related Internet communications services such as e-mail and instant messaging. In addition, the bill amends the current definition of “telecommuni-

cations” to include unregulated or non-utility telecommunications (such as cable service), and removes the current exception from the moratorium for taxing Voice over Internet Protocol (VoIP), so that States and localities will now be free to tax these services.

#### GROSS RECEIPTS TAX ISSUES IN CERTAIN STATES

A small group of States have recently enacted taxes that apply to almost all large businesses in the State, including Internet access providers. The new gross receipts taxes in these States, including Michigan, Texas, Ohio, and Washington, serve as general business taxes and either substitute for or supplement the corporate income tax currently in place in those States, whereas in all other States, corporate income taxes serve as the general business tax.

The problem that has arisen for those four States is that the originally enacted and further amended ITFA contains an explicit protection for corporate income taxes imposed on Internet access providers, but not for gross receipts taxes. Thus, these States could suffer a disproportionate loss, because their approach to general business taxation is not excepted, while the more prevalent approach, a tax on corporate profits is excepted and can be used to impose a tax on profits earned from providing Internet access services. If an Internet access provider in a gross receipts tax State refused to pay the tax on its receipts attributable to providing Internet access service, under the current wording of ITFA a court might well uphold that refusal.

H.R. 3678 addresses this problem by creating an exemption for States that have enacted gross receipts taxes as a substitute for State corporate income taxes and not as taxes directed to Internet access. To be exempt, the State law must meet certain criteria. First, the law must have been enacted between June 20, 2005 and November 1, 2007, or, in the case of a State business and occupation tax, enacted after January 1, 1932 and before January 1, 1936. Second, the law must replace, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth. Finally, the law must be imposed on a broad range of business activity and must not be discriminatory in its application to providers of communication services, Internet access, or telecommunications.

#### HEARINGS

The Committee’s Subcommittee on Commercial and Administrative Law held an oversight hearing on “The Internet Tax Freedom Act: Internet Tax Moratorium” on May 22, 2007. Witnesses at the hearing included: David C. Quam, Director of Federal Relations at the National Governors Association; Mark Murphy, Fiscal Policy Analyst for the American Federation of State, County and Municipal Employees; Jerry Johnson, Vice Chairman of the Oklahoma Tax Commission; Scott Mackey, a partner at Kimbell Sherman Ellis; and Dr. John Rutledge, Senior Fellow at the Heartland Institute. The purpose of this hearing was to gather information for members regarding the significant issues concerning the moratorium.

In addition, the Subcommittee held a hearing on proposed legislation to amend the “Internet Tax Freedom Act,” on July 26, 2007.

Witnesses at the hearing included Representative John Campbell (D-CA); Representative Anna G. Eshoo (R-CA); David C. Quam, Director of Federal Relations at the National Governors Association; and Meredith Garwood, Vice President Tax Policy at Time Warner Cable.

#### COMMITTEE CONSIDERATION

On October 10, 2007, the Committee met in open session and ordered the bill H.R. 3678 favorably reported with amendment, by a rollcall vote of 38 to 0, a quorum being present.

#### COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 3678:

1. An amendment by Mr. Goodlatte to the amendment by Mr. Conyers, to extend the moratorium on taxing Internet access permanently. Defeated 15–21. (The Conyers amendment was later adopted by voice vote.)

#### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....		X	
Mr. Berman .....		X	
Mr. Boucher .....		X	
Mr. Nadler .....		X	
Mr. Scott .....		X	
Mr. Watt .....		X	
Ms. Lofgren .....	X		
Ms. Jackson Lee .....		X	
Ms. Waters .....		X	
Mr. Delahunt .....		X	
Mr. Wexler .....		X	
Ms. Sánchez .....		X	
Mr. Cohen .....		X	
Mr. Johnson .....		X	
Ms. Sutton .....		X	
Mr. Gutierrez .....		X	
Mr. Sherman .....		X	
Ms. Baldwin .....		X	
Mr. Weiner .....		X	
Mr. Schiff .....		X	
Mr. Davis .....			
Ms. Wasserman Schultz .....		X	
Mr. Ellison .....		X	
Mr. Smith (Texas) .....	X		
Mr. Sensenbrenner, Jr. ....	X		
Mr. Coble .....	X		
Mr. Gallegly .....	X		
Mr. Goodlatte .....	X		
Mr. Chabot .....			
Mr. Lungren .....	X		
Mr. Cannon .....	X		
Mr. Keller .....	X		
Mr. Issa .....			
Mr. Pence .....			
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Feeney .....	X		
Mr. Franks .....	X		

## ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Gohmert .....	X		
Mr. Jordan .....	X		
Total .....	15	21	

2. An amendment by Mr. Goodlatte to the amendment by Mr. Conyers, to extend the moratorium on taxing Internet access for 8 years, until November 1, 2015. Adopted 20 to 18.

## ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....		X	
Mr. Berman .....		X	
Mr. Boucher .....		X	
Mr. Nadler .....		X	
Mr. Scott .....		X	
Mr. Watt .....		X	
Ms. Lofgren .....	X		
Ms. Jackson Lee .....			
Ms. Waters .....		X	
Mr. Delahunt .....		X	
Mr. Wexler .....		X	
Ms. Sánchez .....	X		
Mr. Cohen .....		X	
Mr. Johnson .....		X	
Ms. Sutton .....		X	
Mr. Gutierrez .....		X	
Mr. Sherman .....		X	
Ms. Baldwin .....		X	
Mr. Weiner .....		X	
Mr. Schiff .....		X	
Mr. Davis .....	X		
Ms. Wasserman Schultz .....			
Mr. Ellison .....		X	
Mr. Smith (Texas) .....	X		
Mr. Sensenbrenner, Jr. ....	X		
Mr. Coble .....	X		
Mr. Gallegly .....	X		
Mr. Goodlatte .....	X		
Mr. Chabot .....	X		
Mr. Lungren .....	X		
Mr. Cannon .....	X		
Mr. Keller .....	X		
Mr. Issa .....	X		
Mr. Pence .....	X		
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Feeney .....	X		
Mr. Franks .....	X		
Mr. Gohmert .....	X		
Mr. Jordan .....	X		
Total .....	20	18	

3. A motion by Mr. Davis to reconsider the vote on the Goodlatte amendment to extend the moratorium for 8 years. Adopted 21 to 16.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....	X		
Mr. Berman .....	X		
Mr. Boucher .....	X		
Mr. Nadler .....	X		
Mr. Scott .....	X		
Mr. Watt .....	X		
Ms. Lofgren .....	X		
Ms. Jackson Lee .....	X		
Ms. Waters .....	X		
Mr. Delahunt .....	X		
Mr. Wexler .....	X		
Ms. Sánchez .....	X		
Mr. Cohen .....	X		
Mr. Johnson .....	X		
Ms. Sutton .....	X		
Mr. Gutierrez .....	X		
Mr. Sherman .....			
Ms. Baldwin .....	X		
Mr. Weiner .....	X		
Mr. Schiff .....			
Mr. Davis .....	X		
Ms. Wasserman Schultz .....	X		
Mr. Ellison .....	X		
Mr. Smith (Texas) .....		X	
Mr. Sensenbrenner, Jr. ....		X	
Mr. Coble .....		X	
Mr. Gallegly .....		X	
Mr. Goodlatte .....		X	
Mr. Chabot .....		X	
Mr. Lungren .....		X	
Mr. Cannon .....		X	
Mr. Keller .....		X	
Mr. Issa .....		X	
Mr. Pence .....		X	
Mr. Forbes .....		X	
Mr. King .....		X	
Mr. Feeney .....			
Mr. Franks .....		X	
Mr. Gohmert .....		X	
Mr. Jordan .....		X	
Total .....	21	16	

4. The amendment by Mr. Goodlatte to extend the moratorium for 8 years, on reconsideration. Defeated 17 to 22.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....		X	
Mr. Berman .....		X	
Mr. Boucher .....		X	
Mr. Nadler .....		X	
Mr. Scott .....		X	
Mr. Watt .....		X	
Ms. Lofgren .....	X		
Ms. Jackson Lee .....		X	
Ms. Waters .....		X	
Mr. Delahunt .....		X	
Mr. Wexler .....		X	
Ms. Sánchez .....		X	
Mr. Cohen .....		X	
Mr. Johnson .....		X	

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Ms. Sutton .....		X	
Mr. Gutierrez .....		X	
Mr. Sherman .....		X	
Ms. Baldwin .....		X	
Mr. Weiner .....		X	
Mr. Schiff .....		X	
Mr. Davis .....		X	
Ms. Wasserman Schultz .....		X	
Mr. Ellison .....		X	
Mr. Smith (Texas) .....	X		
Mr. Sensenbrenner, Jr. ....	X		
Mr. Coble .....	X		
Mr. Gallegly .....	X		
Mr. Goodlatte .....	X		
Mr. Chabot .....	X		
Mr. Lungren .....	X		
Mr. Cannon .....	X		
Mr. Keller .....	X		
Mr. Issa .....	X		
Mr. Pence .....	X		
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Feeney .....			
Mr. Franks .....	X		
Mr. Gohmert .....	X		
Mr. Jordan .....	X		
Total .....	17	22	

5. An amendment by Mr. Goodlatte to amend the bill to extend the moratorium on taxing Internet access for 6 years, until November 1, 2013. Defeated 16 to 21.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....		X	
Mr. Berman .....		X	
Mr. Boucher .....		X	
Mr. Nadler .....		X	
Mr. Scott .....		X	
Mr. Watt .....		X	
Ms. Lofgren .....	X		
Ms. Jackson Lee .....		X	
Ms. Waters .....		X	
Mr. Delahunt .....		X	
Mr. Wexler .....		X	
Ms. Sánchez .....		X	
Mr. Cohen .....		X	
Mr. Johnson .....		X	
Ms. Sutton .....		X	
Mr. Gutierrez .....		X	
Mr. Sherman .....			
Ms. Baldwin .....		X	
Mr. Weiner .....		X	
Mr. Schiff .....		X	
Mr. Davis .....		X	
Ms. Wasserman Schultz .....		X	
Mr. Ellison .....		X	
Mr. Smith (Texas) .....	X		
Mr. Sensenbrenner, Jr. ....	X		
Mr. Coble .....	X		
Mr. Gallegly .....	X		

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Goodlatte .....	X		
Mr. Chabot .....	X		
Mr. Lungren .....	X		
Mr. Cannon .....	X		
Mr. Keller .....	X		
Mr. Issa .....	X		
Mr. Pence .....			
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Feeney .....			
Mr. Franks .....	X		
Mr. Gohmert .....	X		
Mr. Jordan .....	X		
Total .....	16	21	

6. Reporting the bill favorably as amended. Approved 38 to 0.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....	X		
Mr. Berman .....	X		
Mr. Boucher .....	X		
Mr. Nadler .....	X		
Mr. Scott .....	X		
Mr. Watt .....	X		
Ms. Lofgren .....	X		
Ms. Jackson Lee .....	X		
Ms. Waters .....	X		
Mr. Delahunt .....	X		
Mr. Wexler .....	X		
Ms. Sánchez .....	X		
Mr. Cohen .....	X		
Mr. Johnson .....	X		
Ms. Sutton .....	X		
Mr. Gutierrez .....	X		
Mr. Sherman .....			
Ms. Baldwin .....	X		
Mr. Weiner .....	X		
Mr. Schiff .....	X		
Mr. Davis .....	X		
Ms. Wasserman Schultz .....	X		
Mr. Ellison .....	X		
Mr. Smith (Texas) .....	X		
Mr. Sensenbrenner, Jr. ....	X		
Mr. Coble .....	X		
Mr. Gallegly .....	X		
Mr. Goodlatte .....	X		
Mr. Chabot .....	X		
Mr. Lungren .....	X		
Mr. Cannon .....	X		
Mr. Keller .....	X		
Mr. Issa .....	X		
Mr. Pence .....	X		
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Feeney .....			
Mr. Franks .....	X		
Mr. Gohmert .....	X		
Mr. Jordan .....	X		
Total .....	38	0	

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3678, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 12, 2007.*

Hon. JOHN CONYERS, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3678, the Internet Tax Freedom Act Amendments Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Elizabeth Cove, who can be reached at 225-3220.

Sincerely,

PETER R. ORSZAG,  
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.  
Ranking Member

*H.R. 3678—Internet Tax Freedom Act Amendments Act of 2007.*

## SUMMARY

H.R. 3678 would extend a moratorium on certain State and local taxation of online services and electronic commerce until November 1, 2011. The bill also would amend part of an exception to that prohibition for certain States. Under current law, the moratorium is set to expire on November 1, 2007. CBO estimates that enacting H.R. 3678 would have no impact on the Federal budget, but it would impose significant annual costs on some State and local governments.

By extending and expanding the moratorium on certain types of State and local taxes, H.R. 3678 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act

(UMRA). CBO estimates that the mandate would cause some State and local governments to lose revenue beginning in November 2007; those losses would exceed the threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation) beginning in fiscal year 2008. While there is some uncertainty about the number of States affected, CBO estimates that the direct costs to States and local governments would probably total more than \$80 million annually. The bill contains no new private-sector mandates as defined in UMRA.

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that enacting H.R. 3678 would have no impact on the Federal budget.

#### INTERGOVERNMENTAL MANDATES CONTAINED IN THE BILL

The Internet Tax Freedom Act (ITFA), as amended, currently prohibits State and local governments from imposing taxes on Internet access until November 1, 2007. The ITFA, enacted in 1998, also contains an exception to this moratorium, sometimes referred to as the grandfather clause, which allows certain State and local governments to continue taxing Internet access if such tax was generally imposed and enforced prior to October 1, 1998.

H.R. 3678 would extend the moratorium until November 1, 2011, and would amend part of an exception to that prohibition, effective on November 1, 2007. The effect of that amendment would be to prohibit State and local taxation of telecommunications services “purchased, used, or sold by a provider of Internet access” that the provider uses to connect its customers to the Internet. The new prohibition would ban taxes currently levied by some States on telecommunications services purchased by Internet service providers, also known as “backbone” services. These extensions and expansions of the moratorium constitute intergovernmental mandates as defined in UMRA because they would prohibit States from collecting taxes that they otherwise could collect, and in some cases, are currently collecting.

#### ESTIMATED DIRECT COSTS OF MANDATES TO STATE AND LOCAL GOVERNMENTS

UMRA includes in its definition of the direct costs of a mandate the amounts that State and local governments would be prohibited from raising in revenues to comply with the mandate. Amending the grandfather clause would result in direct costs (in the form of forgone tax revenues) to those State and local governments that are currently collecting such revenues but would be precluded from doing so after H.R. 3678 is enacted.

The primary budget impact of the bill would be the revenue losses—starting in November 2007—resulting from prohibiting State and local taxation of telecommunications services purchased by providers of Internet access. While there is some uncertainty about the number of jurisdictions currently collecting such taxes—and the precise amount of those collections—CBO believes that as many as eight States (Illinois, Pennsylvania, Alabama, Florida, New Hampshire, Missouri, Washington and Minnesota) and several local jurisdictions in those States are currently collecting such

taxes. Those taxes total more than \$80 million annually in just two States. This estimate is based on information from the States involved and from industry contacts.

It is possible that if the moratorium were allowed to expire as scheduled under current law, some State and local governments would enact new taxes or decide to apply existing taxes to Internet access during the next five years. It is also possible that some governments would repeal existing taxes or preclude their application to these services. Because such changes are difficult to predict, for the purposes of estimating the direct costs of the mandate, CBO considered only the revenues from taxes that are currently in place and being collected.

#### ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill contains no new private-sector mandates as defined in UMRA.

#### ESTIMATE PREPARED BY:

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#### ESTIMATE APPROVED BY:

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Deputy Assistant Director for Budget Analysis

#### PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3678 is intended to amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 3 of the Constitution.

#### ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3678 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

#### SECTION-BY-SECTION ANALYSIS

*Sec. 1. Short Title.* Section 1 sets forth the short title of the bill as the “Internet Tax Freedom Act Amendments Act of 2007.”

*Sec. 2. Moratorium.* Section 2 of the bill extends the moratorium on taxation of Internet access for 4 years, until November 1, 2011. It also extends for 4 years the grandfathering of States that tax Internet access, until November 1, 2011.

*Sec. 3. Grandfathering of States that Tax Internet Access.* Section 3 of the bill phases out any grandfather protection that States may have received under the Internet Tax Nondiscrimination Act of 2004. This section clarifies that, effective as of November 1, 2003, the 1998 definition of Internet access applies to the 1998 grandfathering provision in section 1104(a) of the Internet Tax Freedom Act (ITFA) (47 U.S.C. 151 note); and the 2004 definition of Internet access applies to the 2003 grandfathering provision in section 1104(b) of ITFA.

In addition, section 3 of the bill holds harmless until November 1, 2007, those States who satisfy three criteria: they taxed the transport of the Internet (the “backbone”) before July 1, 2007; they issued public rulings or had sought to enforce the collection of taxes through litigation commenced before July 1, 2007; and they have asserted that they are covered by the grandfathering provisions amended by Public Law No. 108–435. This section further provides that there shall be no inference of legislative construction from the amendments made by the bill as to the validity of such taxes that were imposed before November 1, 2007.

*Sec. 4. Definitions.* Section 4 of the bill amends current law to define Internet access as the service of providing a connection to the Internet, and includes closely-related Internet communications services such as e-mail and instant messaging; amends the definition of “telecommunications” to include unregulated non-utility telecommunications (such as cable service); affirmatively protects from taxation the transport of the Internet (the “backbone”); and removes the current exception to the moratorium for taxing Voice over Internet Protocol (VoIP), so that States and localities will be free to tax those services.

In addition, this section creates a specific exception to ensure that recently-enacted general business taxes in certain States will be applied to Internet services providers (as they are to most other businesses in the State) and are not inadvertently preempted by an extension of the Internet Tax Freedom Act. To be exempt the State tax law must meet certain criteria. First, the law must have been enacted between June 20, 2005 and November 1, 2007 or, in the case of a State business and occupation tax, enacted after January 1, 1932, and before January 1, 1936. Second, the law must replace, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth. Finally, the law must be imposed on a broad range of business activity and must not be discriminatory in its application to providers of communication services, Internet access, or telecommunications.

*Sec. 5. Conforming Amendments.* Section 5 of the bill makes conforming amendments to the Internet Tax Freedom Act.

*Sec. 6. Effective Date.* Section 6 of the bill provides that the bill and the amendments made by it shall take effect on November 1, 2007, and shall apply to taxes in effect as of that date or enacted thereafter, except as provided in section 1104 of ITFA.

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

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**INTERNET TAX FREEDOM ACT**

\* \* \* \* \*

**TITLE XI—MORATORIUM ON CERTAIN TAXES**

\* \* \* \* \*

**SEC. 1101. MORATORIUM.**

(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, **[2007]** 2011:

(1) \* \* \*

\* \* \* \* \*

**SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.**

(a) PRE-OCTOBER 1998 TAXES.—

(1) \* \* \*

(2) TERMINATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection shall not apply after November 1, **[2007]** 2011.

\* \* \* \* \*

(c) APPLICATION OF DEFINITION.—

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

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

(B) for purposes of subsection (b), the term “Internet access” shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108–435).

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

(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

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

(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amend-

*ments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).*

**SEC. 1105. DEFINITIONS.**

For the purposes of this title:

(1) **BIT TAX.**—The term “bit tax” means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications **【services】**.

\* \* \* \* \*

**【(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. The term “Internet access” does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.**】**

*(5) INTERNET ACCESS.—The term “Internet access”—*

*(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;*

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

*(i) to provide such service; or*

*(ii) to otherwise enable users to access content, information or other services offered over the Internet;*

*(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and*

*(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), or (C).*

\* \* \* \* \*

**【(9) TELECOMMUNICATIONS SERVICE.**—The term “telecommunications service” has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).**】**

*(9) TELECOMMUNICATIONS.—The term “telecommunications” means “telecommunications” as such term is defined in*

section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and “telecommunications service” as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).

(10) TAX ON INTERNET ACCESS.—

(A) \* \* \*

\* \* \* \* \*

(C) SPECIFIC EXCEPTION.—

(i) SPECIFIED TAXES.—Effective November 1, 2007, the term “tax on Internet access” also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

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

(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

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

(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

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

(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.

**SEC. 1106. ACCOUNTING RULE.**

(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for [telecommunications services] *telecommunications* or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

(b) DEFINITIONS.—In this section:

(1) CHARGES FOR INTERNET ACCESS.—The term “charges for Internet access” means all charges for Internet access as defined in section 1105(5).

(2) CHARGES FOR TELECOMMUNICATIONS [SERVICES].—The term “charges for [telecommunications services] *telecommunications*” means all charges for [telecommunications services] *telecommunications*, except to the extent [such services] *such telecommunications* are purchased, used, or sold by a provider of Internet access to provide Internet access *or to otherwise enable users to access content, information or other services offered over the Internet.*

\* \* \* \* \*

**[SEC. 1108. EXCEPTION FOR VOICE SERVICES OVER THE INTERNET.**

[Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.]

\* \* \* \* \*

SUPPLEMENTAL VIEWS

The mark-up of H.R. 3678 was a clear triumph of politics over policy. While we all supported the bill on final passage, this legislation had the potential to be so much better.

We support a permanent ban on the ability of states and localities to impose taxes on Internet access or multiple or discriminatory taxes on e-commerce. We are not alone in this support. Collectively, 242 Members of the House are sponsors or co-sponsors of the two bills, H.R. 743 and H.R. 1077, that would make the Internet tax moratorium permanent. This support is broad and bipartisan with 88 Democrats and 154 Republicans calling for a permanent ban. A permanent extension is also consistent with the past actions of the House, which passed a permanent ban in 2003.

We support permanence because it is the best way to ensure that the Internet continues to grow and to drive the American economy.

A permanent moratorium gives businesses the certainty that they need to make the significant capital expenditures that are necessary to build a broadband Internet networks. Broadband networks do not build themselves. They require companies to spend billions of dollars to construct, maintain, and update those systems. Those companies, in turn, need to know what their cost structure will be in order to secure the financing necessary to spend those billions of dollars. Only a permanent ban gives the kind of long term security necessary to procure that financing on the best possible terms.

A permanent moratorium helps to keep Internet access affordable. According to CRS, while roughly 99% of all U.S. zip codes have at least some access to broadband Internet technology, only 45% of U.S. households have purchased broadband Internet access.<sup>1</sup> According to the FCC, one of the main reasons why more households have not adopted broadband is cost.<sup>2</sup> At a time when

<sup>1</sup> CONGRESSIONAL RESEARCH SERVICE, BROADBAND INTERNET ACCESS AND THE DIGITAL DIVIDE: FEDERAL ASSISTANCE PROGRAMS 2 (Aug. 14, 2007).

<sup>2</sup> Federal Communications Commission, *Fourth Report to Congress*, “Availability of Advanced Telecommunications Capability in the United States,” GN Docket No. 04-54, FCC 04-208, Sep-

America is falling behind other countries in terms of broadband penetration, why would Congress do anything that makes accessing the Internet more expensive?

In addition to the 242 co-sponsors in the House, a permanent ban on Internet access taxes enjoys support from a broad swath of society, including the Don't Tax Our Web Coalition, which is made up of the following companies and organizations: Association for Competitive Technology, the American Electronics Association, AOL, Apple, Americans for Tax Reform, AT&T, Americans for Technology Leadership, Charter Communications, Comcast, the Computing Technology Industry Association, Corning Inc., CTIA - the Wireless Association, Direct Marketing Association, Ebay, Electronic Industries Alliance, Embarq, Freedom Works, Information Technology Association of America, Level 3 Communications, NAM, National Cable and Telecommunications Association, National Taxpayers Union, NetChoice, Qwest, Software Information Industry Association, Small Business & Entrepreneurship Council, Software Finance & Tax Executives Council, Sprint/Nextel, TechNet, Telecommunications Industry Association, Time Warner Communications, T-Mobile, US Chamber of Commerce, US Telecom Association, US Internet Industry Association, Verizon, and Yahoo. The Business Software Alliance also "believes that a permanent ban is the best way to make the Internet an even more important economic force for growth and jobs."

In addition to the business community, publications such as the *Wall Street Journal*,<sup>3</sup> the *Los Angeles Times*,<sup>4</sup> and the *National Journal*<sup>5</sup> have all called for a permanent ban. Permanence has the support of the Administration<sup>6</sup> and consumer groups such as the Michigan Taxpayers Alliance, The American Conservative Union, American Legislative Exchange Council, the Club for Growth, and the Hispanic Technology & Telecommunications Partnership among others.

Opponents of permanence argue that the sunsets allow Congress to consider any problems in the administration of the Internet Tax Freedom Act. The general implication is that the moratorium should be revisited to prevent Internet access providers from unjustly denying states access to their revenue. But that argument ignores two things. First, while it is true that Congress has made changes to the law virtually every time it has extended the moratorium, those changes have largely been directed at preventing *states* from circumventing the law, not the other way around. For example, the definition of "Internet access" was modified in 2004 to prevent states from taxing Internet access providers that purchase capacity over wire, cable, fiber to connect end-users to the Internet backbone. That definition is modified again in this bill, also to ensure that States do not tax the Internet backbone. Why does Congress have to make this change again? Because eight States (Ala-

tember 9, 2004, p. 38 (available at [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/FCC-04-208A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-04-208A1.pdf)).

<sup>3</sup> Editorial, *Broadband Taxman*, WALL ST. J., Sept. 26, 2007, at A20.

<sup>4</sup> Editorial, *Don't Tax Internet Access*, +L.A. TIMES, Oct. 8, 2007 (available at <http://www.latimes.com/news/print/edition/asection/la-ed-moratorium8oct08,1,4443110.story?ctrack=3&cset=true>).

<sup>5</sup> Editorial, *Hands Off the 'Net'*, +NATIONAL REVIEW, Oct. 11, 2007 (available at <http://article.nationalreview.com/?q=MTdiYzhIMDY1ODFkOTc3OTdmMmQ1MjE0ZWE3ZmY2NTE=>).

<sup>6</sup> Press Release, Paulson and Gutierrez Call for Permanent Moratorium on Internet Taxes, Sept. 26, 2007 (available at <http://treasury.gov/press/releases/hp577.htm>).

bama, Florida, Illinois,<sup>7</sup> Minnesota,<sup>8</sup> New Hampshire,<sup>9</sup> Pennsylvania,<sup>10</sup> Washington,<sup>11</sup> and Missouri<sup>12</sup>) *continue* to tax the Internet backbone, despite Congress' clear admonitions to the contrary. Second, even if there are problems with the Act, making the Internet tax moratorium permanent would not prevent future Congresses from addressing those concerns. The sheer number of carve-outs in the current moratorium is a testament to the fact that the States' tax collectors have no shortage of allies in Congress.

More importantly, putting sunsets in the moratorium raises the specter that some future Congress will allow it to expire. This is not some theoretical concern; it has already happened twice. In 2001, when Congress extended the moratorium for an additional two years, it allowed the law to lapse for 1 month. And in 2004, despite the fact that the House approved a permanent extension before the moratorium expired, the Senate did not act until almost 14 months after the law had already lapsed.

What happens if the moratorium is allowed to lapse, or to expire completely? Millions of U.S. citizens in thousands of taxing jurisdictions around the country could face an increase in their Internet access bills. These taxes, such as generally imposed telecommunications and sales taxes, would go into effect regardless of whether the states passed any new taxes on Internet access. According to testimony before the Subcommittee on Commercial and Administrative Law, state and local sales and telecommunications tax rates average 13.5%, marking a significant increase in a consumer's bill for Internet access. Furthermore, some states, such as Montana, have "springing" Internet access taxes that will go into effect as soon as the moratorium expires.<sup>13</sup>

Even supporters of sunsets, such as Mr. Watt, indicated at the mark-up that they will likely support an extension of the moratorium the next time it comes up for review. Which begs the question: when is it going to be a good time to allow states and localities to tax the Internet? When is it going to be a good idea to make Internet access more expensive for the American consumer? When is it going to be a good idea to allow states to tax a purchase of a book on Amazon.com at a higher rate than they tax the purchase of the same book on Main Street? Supporters of sunsets have no answers for these questions.

This begs a second question: why, despite the support of 242 Members, the business community, and consumer groups does H.R. 3678 not contain a permanent extension? The short answer is that Chairman Conyers does not want it and he is willing to twist the arms of Committee Members to ensure that it does not pass.

<sup>7</sup> Illinois Department of Revenue FY 2006-09 (March 2006).

<sup>8</sup> Minnesota Revenue, 2006 Sales and Use Tax Law Changes at 4 (July 2006).

<sup>9</sup> New Hampshire Department of Revenue Administration, TECHNICAL INFORMATION RELEASE, TIR 2006-001 (January 18, 2006).

<sup>10</sup> Sales Tax Bulletin 2005-03, Pennsylvania Department of Revenue (September 30, 2005) (available at [http://www.revenue.state.pa.us/revenue/cwp/view.asp?A=318&QUESTION\\_ID=251653](http://www.revenue.state.pa.us/revenue/cwp/view.asp?A=318&QUESTION_ID=251653)).

<sup>11</sup> Washington State Department of Revenue, Excise Tax Authority, 2029.04.245 (Feb. 24, 2006).

<sup>12</sup> Letter Ruling No. LR3375, Missouri Department of Revenue, October 12, 2006.

<sup>13</sup> MONT. ADMIN. R. 42.31.507 (2007) ("Imposition of the retail telecommunication excise tax shall not be applied to internet revenue that may be included in the sales price, until the federal moratorium has been lifted.")

Of the 242 Members that have co-sponsored permanence, 21 are Members of the House Judiciary Committee. This represents a majority of the Committee. These 21 Members include six Democrats: Mr. Boucher, Ms. Lofgren, Ms. Jackson Lee, Mr. Wexler, Mr. Cohen, and Mr. Davis. However, when Mr. Goodlatte offered an amendment at the markup that would have extended the moratorium permanently, only Ms. Lofgren joined with the Committee's Republicans to support permanence. The amendment was defeated by a vote of 15 ayes to 21 nays.

After the amendment on permanence failed, the real fun began. Mr. Goodlatte offered an amendment that would extend the moratorium for eight years and that would allow the grandfather exemption to expire in four years. This amendment passed by a vote of 20 ayes to 18 nays, with Ms. Lofgren, Ms. Sanchez, and Mr. Davis joining all of the Committee Republicans in support of the measure.

Clearly displeased with the outcome of the vote, Chairman Conyers pursued a two-tiered strategy to ensure that it was reversed. He first introduced an amendment that provided that notwithstanding Section 2 of the bill, which now contained the eight year extension, the Internet tax moratorium would only be extended by 4 1/2 years. While Chairman Conyers slowly read the amendment, his staff worked on the three Democrats that voted in favor of the eight year extension. They were finally able to convince Mr. Davis to offer a motion to reconsider the vote, which passed by a straight party line vote of 21 ayes to 16 nays. Following the motion to reconsider, the eight year extension was defeated by a vote of 17 ayes to 22 nays, with only Ms. Lofgren joining the Committee Republicans in support of the measure. Mr. Goodlatte then offered an amendment to extend the moratorium by six years, which also failed by a vote of 16 ayes to 21 nays.

Why did the Committee Democrats defeat these amendments? Why did five Democratic co-sponsors of a permanent moratorium vote against permanence at the Committee? Why did two Democratic Members that voted for an eight year extension at one point turn around and vote against the same eight year extension moments later? American consumers and businesses will have to guess, because none of those Members offered an explanation. What is clear is that consumers and businesses are worse off than they would have been had the amendments passed - or, in the case of the eight year extension, stayed passed.

Despite these heavy-handed tactics, we support the underlying legislation because any extension of the Internet Tax Freedom Act is better than no extension. We will continue to insist that the Majority allow the House to consider a permanent extension when this bill goes to the Floor. If that happens, we hope that the tactics that prevailed on five of the Committee's Members will not work on the other 83 Democratic co-sponsors of permanence. The American people deserve much better.

This markup confirms President Ronald Reagan's observation that "Republicans believe every day is the Fourth of July, but the Democrats believe every day is April 15th."

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