

113TH CONGRESS
1ST SESSION

H. R. 2309

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2013

Ms. LOFGREN (for herself, Mr. FRANKS of Arizona, Mr. ALEXANDER, Mr. AMODEI, Mrs. BACHMANN, Mr. BARLETTA, Mr. BARTON, Ms. BASS, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mrs. BLACKBURN, Mr. BOUSTANY, Mr. BRADY of Pennsylvania, Mr. BRADY of Texas, Mr. BROUN of Georgia, Ms. BROWN of Florida, Mr. BUCSHON, Mr. BUTTERFIELD, Mr. CALVERT, Mrs. CAPPS, Mr. CÁRDENAS, Mr. CARSON of Indiana, Mr. CARTER, Mr. CHABOT, Mr. CHAFFETZ, Mrs. CHRISTENSEN, Mr. COBLE, Mr. COFFMAN, Mr. COHEN, Mr. COLLINS of Georgia, Mr. CONAWAY, Mr. COSTA, Mr. COTTON, Mr. CRAWFORD, Mr. CRENSHAW, Mr. CULBERSON, Mr. CUELLAR, Mr. DENT, Mr. DOYLE, Ms. ESHOO, Mr. ENYART, Mr. FARENTHOLD, Mr. FLEMING, Mr. FLORES, Mr. FORBES, Mr. GARDNER, Mr. GARRETT, Mr. GERLACH, Mr. GINGREY of Georgia, Mr. GOSAR, Mr. GRAYSON, Mr. GENE GREEN of Texas, Mr. GRIFFIN of Arkansas, Mr. GRIJALVA, Mr. GRIMM, Mr. GUTIERREZ, Mr. HALL, Mr. HANNA, Mr. HARPER, Mr. HASTINGS of Florida, Mr. HASTINGS of Washington, Mr. HECK of Nevada, Mr. HOLDING, Mr. HOLT, Mr. HONDA, Mr. HUIZENGA of Michigan, Mr. HULTGREN, Mr. ISRAEL, Mr. ISSA, Ms. JACKSON LEE, Ms. JENKINS, Mr. JOHNSON of Ohio, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JONES, Mr. JORDAN, Mr. KELLY of Pennsylvania, Mr. KING of New York, Mr. KINZINGER of Illinois, Mr. KLINE, Mr. LABRADOR, Mr. CLAY, Mr. LANCE, Mr. LATTA, Mr. LONG, Mrs. CAROLYN B. MALONEY of New York, Mr. MARINO, Mr. MATHESON, Ms. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCOLLUM, Mrs. McMORRIS RODGERS, Mr. MCNERNEY, Mr. MEEHAN, Mr. MEEKS, Mr. NUGENT, Mr. OLSON, Mr. OWENS, Mr. PALLONE, Mr. PEARCE, Mr. PITTS, Mr. POE of Texas, Mr. POLIS, Mr. RADEL, Mr. REED, Mr. REICHERT, Mr. ROGERS of Michigan, Mr. ROKITA, Ms. ROSLEHTINEN, Mr. ROSS, Ms. ROYBAL-ALLARD, Mr. ROYCE, Mr. RUIZ, Mr. RUNYAN, Mr. RYAN of Ohio, Mr. SALMON, Ms. LORETTA SANCHEZ of California, Mr. SCALISE, Mr. SCHRADER, Mr. SENSENBRENNER, Mr. SESSIONS, Ms. SEWELL of Alabama, Mr. SHIMKUS, Mr. SIMPSON, Ms. SINEMA, Mr. SMITH of Nebraska, Mr. SMITH of Texas, Mr. STIVERS, Mr. STOCKMAN, Mr. SWALWELL of California, Mr. TAKANO, Mr. THOMPSON

of Mississippi, Mr. THORNBERRY, Mr. TIBERI, Mr. TONKO, Mr. VARGAS, Mr. VEASEY, Mr. WALBERG, Mr. WEBER of Texas, Mr. WEBSTER of Florida, Mr. WESTMORELAND, Mr. WITTMAN, Mr. WHITFIELD, Ms. WILSON of Florida, Mr. WILSON of South Carolina, Mr. YODER, Mr. MASSIE, Mr. GRAVES of Missouri, Ms. CLARKE, Mr. DESANTIS, and Mr. COLE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

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 “Wireless Tax Fairness
 5 Act of 2013”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) It is appropriate to exercise congressional
 9 enforcement authority under section 5 of the 14th
 10 Amendment to the Constitution of the United States
 11 and Congress’ plenary power under article I, section
 12 8, clause 3 of the Constitution of the United States
 13 (commonly known as the “commerce clause”) in
 14 order to ensure that States and political subdivisions
 15 thereof do not discriminate against providers and
 16 consumers of mobile services by imposing new selec-

1 tive and excessive taxes and other burdens on such
2 providers and consumers.

3 (2) In light of the history and pattern of dis-
4 crimatory taxation faced by providers and con-
5 sumers of mobile services, the prohibitions against
6 and remedies to correct discriminatory State and
7 local taxation in section 306 of the Railroad Revital-
8 ization and Regulatory Reform Act of 1976 (49
9 U.S.C. 11501) provide an appropriate analogy for
10 congressional action, and similar Federal legislative
11 measures are warranted that will prohibit imposing
12 new discriminatory taxes on providers and con-
13 sumers of mobile services and that will assure an ef-
14 fective, uniform remedy.

15 **SEC. 3. MORATORIUM.**

16 (a) IN GENERAL.—No State or local jurisdiction shall
17 impose a new discriminatory tax on or with respect to mo-
18 bile services, mobile service providers, or mobile service
19 property, during the 5-year period beginning on the date
20 of enactment of this Act.

21 (b) DEFINITIONS.—In this Act:

22 (1) MOBILE SERVICE.—The term “mobile serv-
23 ice” means commercial mobile radio service, as such
24 term is defined in section 20.3 of title 47, Code of
25 Federal Regulations, as in effect on the date of en-

1 actment of this Act, or any other service that is pri-
2 marily intended for receipt on, transmission from, or
3 use with a mobile telephone or other mobile device,
4 including but not limited to the receipt of a digital
5 good.

6 (2) MOBILE SERVICE PROPERTY.—The term
7 “mobile service property” means all property used
8 by a mobile service provider in connection with its
9 business of providing mobile services, whether real,
10 personal, tangible, or intangible (including goodwill,
11 licenses, customer lists, and other similar intangible
12 property associated with such business).

13 (3) MOBILE SERVICE PROVIDER.—The term
14 “mobile service provider” means any entity that sells
15 or provides mobile services, but only to the extent
16 that such entity sells or provides mobile services.

17 (4) NEW DISCRIMINATORY TAX.—The term
18 “new discriminatory tax” means a tax imposed by a
19 State or local jurisdiction that is imposed on or with
20 respect to, or is measured by, the charges, receipts,
21 or revenues from or value of—

22 (A) a mobile service and is not generally
23 imposed, or is generally imposed at a lower
24 rate, on or with respect to, or measured by, the
25 charges, receipts, or revenues from other serv-

1 ices or transactions involving tangible personal
2 property;

3 (B) a mobile service provider and is not
4 generally imposed, or is generally imposed at a
5 lower rate, on other persons that are engaged
6 in businesses other than the provision of mobile
7 services; or

8 (C) a mobile service property and is not
9 generally imposed, or is generally imposed at a
10 lower rate, on or with respect to, or measured
11 by the value of, other property that is devoted
12 to a commercial or industrial use and subject to
13 a property tax levy, except public utility prop-
14 erty owned by a public utility subject to rate of
15 return regulation by a State or Federal regu-
16 latory authority;

17 unless such tax was imposed and actually enforced
18 on mobile services, mobile service providers, or mo-
19 bile service property prior to the date of enactment
20 of this Act.

21 (5) STATE OR LOCAL JURISDICTION.—The term
22 “State or local jurisdiction” means any of the sev-
23 eral States, the District of Columbia, any territory
24 or possession of the United States, a political sub-
25 division of any State, territory, or possession, or any

1 governmental entity or person acting on behalf of
2 such State, territory, possession, or subdivision that
3 has the authority to assess, impose, levy, or collect
4 taxes or fees.

5 (6) TAX.—

6 (A) IN GENERAL.—The term “tax” means
7 a charge imposed by a governmental entity for
8 the purpose of generating revenues for govern-
9 mental purposes, and excludes a fee imposed on
10 a particular entity or class of entities for a spe-
11 cific privilege, service, or benefit conferred ex-
12 clusively on such entity or class of entities.

13 (B) EXCLUSION.—The term “tax” does
14 not include any fee or charge—

15 (i) used to preserve and advance Fed-
16 eral universal service or similar State pro-
17 grams authorized by section 254 of the
18 Communications Act of 1934 (47 U.S.C.
19 254);

20 (ii) specifically dedicated by a State or
21 local jurisdiction for the support of E-911
22 communications systems; or

23 (iii) used to preserve and advance
24 Federal telecommunications relay services
25 or State programs implementing this Fed-

1 eral mandate pursuant to title IV of the
2 Americans with Disabilities Act of 1990
3 (Public Law 101–336; 104 Stat. 327) and
4 codified in section 225 of the Communica-
5 tions Act of 1934 (47 U.S.C. 225).

6 (c) RULES OF CONSTRUCTION.—

7 (1) DETERMINATION.—For purposes of sub-
8 section (b)(4), all taxes, tax rates, exemptions, de-
9 ductions, credits, incentives, exclusions, and other
10 similar factors shall be taken into account in deter-
11 mining whether a tax is a new discriminatory tax.

12 (2) APPLICATION OF PRINCIPLES.—Except as
13 otherwise provided in this Act, in determining
14 whether a tax on mobile service property is a new
15 discriminatory tax for purposes of subsection
16 (b)(4)(C), principles similar to those set forth in sec-
17 tion 306 of the Railroad Revitalization and Regu-
18 latory Reform Act of 1976 (49 U.S.C. 11501) shall
19 apply.

20 (3) EXCLUSIONS.—Notwithstanding any other
21 provision of this Act—

22 (A) the term “generally imposed” as used
23 in subsection (b)(4) shall not apply to any tax
24 imposed only on—

25 (i) specific services;

1 (ii) specific industries or business seg-
2 ments; or

3 (iii) specific types of property; and

4 (B) the term “new discriminatory tax”
5 shall not include a new tax or the modification
6 of an existing tax that either—

7 (i)(I) replaces one or more taxes that
8 had been imposed on mobile services, mo-
9 bile service providers, or mobile service
10 property; and

11 (II) is designed so that, based on in-
12 formation available at the time of the en-
13 actment of such new tax or such modifica-
14 tion, the amount of tax revenues generated
15 thereby with respect to such mobile serv-
16 ices, mobile service providers, or mobile
17 service property is reasonably expected to
18 not exceed the amount of tax revenues that
19 would have been generated by the respec-
20 tive replaced tax or taxes with respect to
21 such mobile services, mobile service pro-
22 viders, or mobile service property; or

23 (ii) is a local jurisdiction tax that may
24 not be imposed without voter approval,
25 provides for at least 90 days’ prior notice

1 to mobile service providers, and is required
2 by law to be collected from mobile service
3 customers.

4 **SEC. 4. ENFORCEMENT.**

5 Notwithstanding any provision of section 1341 of title
6 28, United States Code, or the constitution or laws of any
7 State, the district courts of the United States shall have
8 jurisdiction, without regard to amount in controversy or
9 citizenship of the parties, to grant such mandatory or pro-
10 hibitive injunctive relief, interim equitable relief, and de-
11 claratory judgments as may be necessary to prevent, re-
12 strain, or terminate any acts in violation of this Act.

13 (1) JURISDICTION.—Such jurisdiction shall not
14 be exclusive of the jurisdiction which any Federal or
15 State court may have in the absence of this section.

16 (2) BURDEN OF PROOF.—The burden of proof
17 in any proceeding brought under this Act shall be
18 upon the party seeking relief and shall be by a pre-
19 ponderance of the evidence on all issues of fact.

20 (3) RELIEF.—In granting relief against a tax
21 which is discriminatory or excessive under this Act
22 with respect to tax rate or amount only, the court
23 shall prevent, restrain, or terminate the imposition,
24 levy, or collection of not more than the discrimina-

1 tory or excessive portion of the tax as determined by
2 the court.

3 **SEC. 5. GAO STUDY.**

4 (a) **STUDY.**—The Comptroller General of the United
5 States shall conduct a study, throughout the 5-year period
6 beginning on the date of the enactment of this Act, to
7 determine—

8 (1) how, and the extent to which, taxes imposed
9 by local and State jurisdictions on mobile services,
10 mobile service providers, or mobile property, impact
11 the costs consumers pay for mobile services; and

12 (2) the extent to which the moratorium on dis-
13 criminatory mobile services taxes established in this
14 Act has any impact on the costs consumers pay for
15 mobile services.

16 (b) **REPORT.**—Not later than 6 years after the date
17 of the enactment of this Act, the Comptroller General shall
18 submit, to the Committee on the Judiciary of the House
19 of Representatives and the Committee on the Judiciary
20 of the Senate, a report containing the results of the study
21 required under subsection (a) and shall include in such
22 report recommendations for any changes to laws and regu-
23 lations relating to such results.

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