INTERNET TAX FREEDOM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 442, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 442) to establish 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 exaction that would interfere with the free flow of commerce via the Internet, and for other purposes.

The Senate resumed consideration of the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent it be in order for an amendment to be offered by Senator GRAHAM of Florida with a time of 30 minutes, 20 minutes on the side of the Senator from Florida, 10 minutes from the side managed by me.

Mr. GRAHAM. I would not object, but I add that there be no second-degree amendments.

The PRESIDING OFFICER. Without objection, so ordered.

AMENDMENT NO. 3729

(Purpose: To require a supermajority of both Houses to extend the moratorium)

Mr. GRAHAM. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 3729.

The amendment is as follows:

On page 176, between lines 15 and 16, insert:

(c) POINT OF ORDER.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report if such bill, resolution, amendment, or conference report would extend the moratorium under subsection (a). This point of order may only be waived or suspended by a vote of three-fifths of the Members, duly chosen and sworn.

Mr. GRAHAM. Mr. President, as the amendment clearly states, its purpose is to establish to the extent possible under our rules that the moratorium, whatever this body decides its initial length will be, will be that length and that we will not fall into a situation of a ''fluid'' moratorium, with efforts each year made to extend it further and further. This amendment does not go to the issue of what the length of the initial moratorium shall be.

The bill before the Senate today, which is the product of the Senate Finance Committee, provides for a 2-year moratorium. There are amendments filed which would extend that up to 5 or 6 years. There are no amendments filed which would reduce the period of the moratorium. So it is fair to suggest that we will be dealing with the moratorium of at least 2 years, possibly longer. The purpose of this amendment is to assure to the extent possible that once we have made that decision, that will be the decision.

The underlying premise of this bill is an unusual one for the U.S. Congress—not unique, but rarely used. That is, we are about to consider legislation which would preempt every State and every local government in this country, for a period of time, from exercising their otherwise legal powers relative to taxation on Internet access and transactions which are undertaken through the use of the Internet. While it is perfectly appropriate for Congress to decide that the Federal Government should not tax Internet access or Internet transactions, I am concerned we will face a proposal that tells States and local governments that they shall be denied the right to tax these transactions.

The argument which I find to have some merit is that it is appropriate we have a ''pause,'' a period in which we can determine what is the appropriate means of taxing this new technology, and that during that pause there should be a prohibition on State and local governments imposing taxes on Internet access or Internet transactions. What I am concerned about is that that pause does not become a permanent slumber, an elongated sleep in which there is a prohibition on State and local government's ability to exercise what is their basic right under our constitutional allocation of responsibilities to raise those revenues necessary to support necessary government programs.

The Federal Government has on many occasions passed legislation which conditions the receipt of Federal funds. For instance, in the highway bills we have frequently required the States to undertake a certain set of actions, such as setting a speed limit or imposing the requirement of seatbelts or motorcycle helmets or some other item which the Federal Government felt was of sufficient import, that the ability of the State to receive its otherwise due allocation of Federal funds would be conditioned upon their adopting that policy. But in those cases, the States have a choice. If a State believes the Federal requirement is so onerous or so misguided that they will reject it, they can do so and accept the consequences of some reduction in their Federal funds.

What we are deciding here today is that the States do not have such an option. There will be a prohibition for the period of the moratorium on the State's ability to exercise their policy relative to the taxation of Internet access or Internet transactions.

What concerns me about this policy is its potential to ''morph'' from being a temporary pause to being a permanent prohibition. What are some of the risks that are involved in this? One of those risks is the unknown, the unknown potential of this new rapidly developing technology having implications to State and local governments which are beyond our current ability to comprehend.

As an example, there is an emerging technology—it is not new, it is in place but will probably become more prevalent—which is known as Internet telephony which is essentially where the Internet system substitutes for the normal local or long distance telephone lines as a means of transmitting telephone services. This system, which is currently in use on a limited basis, has the potential of being a very major competitor with the traditional ways in which telephone service has been delivered.

Probe Research, a telecommunications and data networking market research system, forecasts that the demand for Internet telephony will make these services add up to a $6.3 billion market by the year 2002. That is just some 3 years from now. At that point, according to Probe Research, Internet telephone and fax traffic will account for nearly 10 percent of total long distance traffic, a very significant high-growth industry.

What does this mean for State and local government? Telecommunications services and cable services are significant sources of revenue for State and local government. The Finance Committee bill, in fact, recognizes this by specifically preserving the Federal Government's taxing authority over many of these areas and preserving the taxing authority of State and local government for access to telephone and cable services.

Unfortunately, the bill is vague regarding the treatment of such new technologies as Internet telephony. While it specifically protects Federal revenue, it does not clarify that the moratorium does not apply to State and local governments with respect to Internet telephony. I use this example because it is one that is before the Senate, an example that the implications of allowing a specified moratorium to become a longer-term prohibition could have implications on State and local governments and on the fairness in the marketplace between competing forms of commercial transaction, telecommunications, and other aspects of our economy that will be affected that are beyond our ability to currently estimate.

A second risk is that this moratorium will become ingrained into the law. We have had multiple examples of where laws that were originally passed as temporary moratoriums, or as a temporary benefit, have become de facto permanent. In fact, before this session is over, we may be considering what is referred to as an extender law, which is to add additional months or years to a variety of tax benefits which were initially adopted to have a specified time to limited life. But once in place, once they have developed a political constituency, they have become, for all intents and purposes, permanent provisions in our Tax Code.

I am concerned that the same development of a political constituency that has gotten used to the fact that they didn't have to pay any tax for access, and particularly any tax on Internet transactions, will develop here and

there and will be tremendous political pressure at the conclusion of this moratorium, whenever that might be, for its extension.

Next, the potential of a long-term moratorium merging into prohibition would create an imbalance on the commercial playing field. I could foresee what is happening in a limited form becoming more prevalent as retail stores begin to open a back office Internet sales shop in order to be able to participate in tax-free Internet sales. So what today is a relatively limited application has the potential of becoming a much larger threat to fairness and parity in the commercial marketplace and to a fundamental source of revenue for State and local government.

Finally, the potential of the specified moratorium being extended would delay or obviate the accomplishment of the very objective of having the moratorium in the first place, which is to direct a commission, representative of the various stakeholders in this issue, to sort out the conflicting theories and practices and give us a recommendation for some uniform, fair, nondiscriminatory Federal, State, and local policies, as it relates to the use of the Internet as a form of commerce.

So for all of those reasons, Mr. President, I am concerned, and I think our Members should be concerned, about the prospect of the moratorium, whatever length we finally decide is appropriate, becoming a permanent prohibition on the use of State governments and of their inherent powers relative to the Internet.

Finally, Mr. President, I think the period of time that is in the Senate finance bill and the period of time that is proposed in various amendments should be plenty to accomplish the objective of this study. We have had a number of recent commissions that have been given a specific time to accomplish their task.

Two or three years ago, the Congress established an Internal Revenue Reform Commission. It gave that commission 18 months to look at an agency as complex as the IRS. That commission actually completed its work in 15 months, made its report, and this year Congress used that report as the basis of probably the most sweeping reforms of the Internal Revenue Service in a generation.

Last year, we established a Medicare Commission to look at one of the most complicated, one of the most expensive, one of the most sensitive programs that the Federal Government operates, the program that finances the health care of some 35 million of our older citizens. We gave that commission 18 months in order to issue its report.

So I suggest that the 2 years that are in the Finance Committee recommendation are ample to carry out a much more focused study of the tax implications of the Internet and that we should take this step by adopting the amendment that I proposed to assure that this moratorium will not morph into a permanent prohibition.

Mr. President, the fundamental issue here is the issue that underlies this legislation, and that is the desire to have parity, equality, on the commercial playing field among all forms of sales, whether they be the Main Street seller or the remote seller or the cyberspace seller; second, to assure that the Federal Government will not unduly intrude into the areas of historic responsibility for State and local government. It is appropriate for us to attempt to establish some standards for uniformity of treatment and predictability of treatment. It is not appropriate for the Federal Government to preempt State and local governments from their ability to exercise what they think is appropriate tax policy for their citizens.

So the amendment would provide that once the moratorium has been completed, whatever its length, it would require a three-fifths vote of each House to extend that moratorium for a further period.

I reserve the remainder of my time.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

PRIVILEGE OF THE FLOOR

Mr. MCCAIN. On behalf of Senator MACK, I ask unanimous consent that Elaine Petty and Nancy Segerdahl, legislative fellows in Senator MACK's office, be granted floor privileges during the week of October 5 for consideration of S. 1868, the International Religious Freedom Act of 1998.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. GRAHAM. Mr. President, I ask unanimous consent that Mary Jo Catalano and Heather Landesman of my staff be granted floor privileges for the pendency of S. 442.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I urge my colleagues to oppose this amendment. It circumvents the legislative process by requiring a supermajority to extend the tax moratorium in the Internet Tax Freedom Act, it would bind the hands of future Congresses, and it would start setting a rather dangerous precedent.

Mr. President, the Senate has a supermajority mandate that applies to all legislation; it is called a filibuster. Requiring three-fifths of Congress to agree to adopt any future actions in this matter is unnecessary, when all legislation considered and passed by the Senate must essentially meet the test created by the filibuster.

This legislation before us, the Internet Tax Freedom Act, is an excellent example of the proper manner in which legislation makes its way to the Senate for full consideration and a final vote. This legislation has been fully considered by the Commerce Committee, referred to the Finance Committee, and Senator WYDEN and I have worked hard to address the concerns some Members have expressed.

S. 442 is before the Senate now, not because any extraordinary measures have been taken, but because the bill has undergone the legislative process as it was meant to function. This legislation is before the Senate today because the majority of Senators support it and a filibuster would have been defeated. There is no reason to institute a supermajority for future actions on this issue, as Congress is fully capable of addressing this issue under existing processes and procedures.

I yield to the Senator from Oregon such time as he may consume.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I strongly urge my colleagues to oppose this amendment. I think we are making substantial progress on this legislation. I believe that in a few minutes Senator MCCAIN and I are going to accept something like seven or eight amendments that have been offered in an effort to try to bring the parties together, and I would like to see us continue to work in this spirit.

Mr. President, and colleagues, I introduced the Internet Tax Freedom Act in March of 1997. Since then, this measure has been one of the most hotly debated measures in this Congress—debated in both the Senate and the House of Representatives. Through the course of this year and a half discussion, never once has this idea been suggested—not in the House nor in the Senate. And the fact of the matter is we are still having important negotiations in order to get at the issue of how long the moratorium ought to be. We are anxious to involve the Senator from Florida in that effort. It would seem to me that our job—just as we have tried to do with the seven or eight amendments which Chairman MCCAIN and I are going to accept in a few minutes—is to continue to do our work in good faith. The Senator from Florida knows that I have gone to considerable lengths to be supportive of his position with respect to what would be studied by the commission in an effort to be responsive to his concerns.

I would like to see us continue those discussions, both with respect to what the commission will study and how long the moratorium ought to be. When we arrive at that point, I and others believe that the commission will do a thoughtful and responsible job. We think they are going to work in good faith. If at any point they indicate that they are unwilling to pursue their duties in that kind of fashion, the U.S. Senate can get back at it.

I think it is important that the Senate reject this amendment and let us continue in the kind of spirit that Chairman MCCAIN and I have shown with respect to the seven or eight amendments that are going to come up very shortly that we have agreed to accept, and let us get this bill on the President's desk.

The President of the United States is for this legislation, the majority leader of this body, TRENT LOTT, is for this legislation, and the minority leader, TOM DASCHLE, has said that he wants to see this bill enacted. I think it is important that we reject this amendment and move forward in good faith to work out the remaining issues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes 55 seconds. The Senator from Arizona has 4 minutes 52 seconds.

Mr. GRAHAM. Mr. President, I also add my name to the list in favor of the residual purpose of this legislation, which is a pause of sufficient length to allow a serious study of the implications of Internet technology to be a party in the commercial marketplace, and the role of State and local taxation, as well as international and Federal taxation on this new technology. The purpose of that latter point is to achieve stability, predictability and uniformity in a way in which Internet transactions and access is treated and to avoid there being a discriminatory set of policies that are contrary to the development of their important new technology. I believe the Senate Finance Committee bill achieved that proper balance with a 2-year moratorium.

What I am concerned about and what this amendment goes to is for that brief pause not to become a permanent prohibition. For the reasons that I have already cited—the rapidly changing nature of this technology and its application, the potential for a constituency to develop that would convert temporary into permanent, the basic unfairness of having some forms of commerce subject to tax while others are given the benefit of a moratorium, the inappropriateness of the Federal Government preempting appropriate State and local judgments for protracted periods of time—all have led me to suggest that we should add to the 2-year moratorium, as it is currently written, an additional protection, and that is at the end of that moratorium, if there is a proposal to extend further, that it would take a 60-vote margin and an equivalent percentage of votes in the House of Representatives in order to do so.

That would give us some assurance that the objectives that are stated will be achieved, but that this will not become the camel's nose in the tent where eventually the whole body of the camel will be inside the tent. We would be in the position of a permanent prohibition on legal and appropriate policy decisions that have and should be made at the State and local level for the purposes of maintaining not only fair treatment in the marketplace but also the essential resources necessary for State and local governments to carry out their responsibilities in public safety, education and other critical areas.

Mr. President, I urge the adoption of this amendment, which I consider to be wholly consistent with the objectives of this legislation as stated by its sponsors.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I ask unanimous consent that the vote take place at 5 o'clock.

The PRESIDING OFFICER. Does the Senator from Florida yield back time?

Mr. GRAHAM. How much time do I have remaining?

The PRESIDING OFFICER. Two minutes 42 seconds.

Mr. GRAHAM. Mr. President, I reserve the remainder of my time.

Mr. MCCAIN. I withdraw my unanimous consent request. I yield such time to the Senator from New Hampshire as he may consume.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I rise to support the position of the chairman of the committee on this issue in opposition to the Senator from Florida.

The proposal which the Senator from Florida is suggesting goes really to the essence of this debate, which is whether or not 30,000 municipalities and State agencies across this country are going to have the right to essentially assess taxes in an arbitrary way on one of the most dynamic vehicles of commerce that has never come forward in the experience of the world. The chaos which those 30,000 municipalities and State agencies would create should they be able to assess that type of taxation on the Internet would be overwhelming. It might totally defeat what has been one of the great engines of economic activity and prosperity which our Nation has enjoyed over the last few years.

It is not a unique situation. We can go all the way back to John Marshall to determine that the Congress has the right to make the decision on the issue of policy relative to taxation in commerce. It was, of course, Chief Justice Marshall who determined that when a ferry was crossing a river between two States that that ferry could not be taxed by the local State if it was going to interfere with interstate commerce.

This concept has carried through our jurisprudence since that time—that the Federal Government reserves the unique right to determine the taxation of commerce.

There is no reason why we should arbitrarily handicap ourselves by creating a supermajority within our own institution to exercise that right, which is what the Senator from Florida is proposing.

Let's continue the policies which have done us so well in the area of tax policy for the last 200 years, which is a majority of the Congress to make a decision as to what tax policy shall be in international trade. Let's not create some artificial barrier for us to jump over as an institution as we try to deal with what is a tremendous real ferry that may be created by having 30,000 municipalities and State agencies across the country assess taxes against the Internet.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM. Mr. President, I yield 2 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I may not need the entire 2 minutes, but I rise in support of the amendment offered by the Senator from Florida.

This issue is relatively simple. The whole purpose of a moratorium is to take kind of a time-out and establish a commission and review a series of these issues. But all of us here know how difficult it is going to be when this moratorium, whatever it is, is to expire. We will have people coming here saying this needs to be a perpetual thing; we will continue the moratorium year after year after year. I want this piece of legislation with its moratorium to represent that time-out; to give this country time to make the right decisions. But at that point I want the decisions to be made, and I want the moratorium to be gone. That is what the Senator from Florida is saying. It is a very important amendment.

I hope my colleagues will support this amendment so that we will comply with what I think the true spirit of this legislation really is—a time-out for thoughtful decisions to be made and then business as usual. We don't want permanent preemption of the State's tax base. That is what will happen if we don't decide now that this moratorium will be—whatever it is. I hope it is 3 years.

Mr. GREGG. Will the Senator yield?

Mr. DORGAN. If I have time, I am happy to yield. Of course.

Mr. GREGG. Wouldn't the business as usual be that the majority would take action rather than having a supermajority take place?

Mr. DORGAN. The Senator misunderstood my business-as-usual comment. I was talking about the business as usual allowing a State to describe its own tax base in a fair and thoughtful manner. My fear is that this moratorium will continue forever, unless it becomes what we think it should become—a time-out to make decisions, and then move on.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 2 minutes 5 seconds.

Mr. MCCAIN. I yield the remainder of my time.

The PRESIDING OFFICER. Does the Senator yield the remainder of his time, 29 seconds?

Mr. GRAHAM. I yield the remainder of my time.

Mr. MCCAIN. Mr. President, I move to table the Graham amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arizona. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from New York (Mr. MOYNIHAN), are necessarily absent.

The result was announced—yeas 83, nays 15, as follows:

[Rollcall Vote No. 299 Leg.]

YEAS—83

Abraham	Feingold	McConnell
Akaka	Feinstein	Mikulski
Allard	Frist	Moseley-Braun
Ashcroft	Gramm	Murkowski
Baucus	Grams	Murray
Bennett	Grassley	Nickles
Biden	Gregg	Reed
Bingaman	Hagel	Reid
Bond	Harkin	Robb
Boxer	Hatch	Roberts
Brownback	Helms	Rockefeller
Bryan	Hutchinson	Roth
Burns	Hutchison	Santorum
Cambell	Inouye	Sarbanes
Chafee	Jeffords	Sessions
Coats	Johnson	Shelby
Cochran	Kempthorne	Smith (NH)
Collins	Kerrey	Smith (OR)
Coverdell	Kerry	Snowe
Craig	Kohl	Specter
D'Amato	Kyl	Stevens
Daschle	Lautenberg	Thomas
DeWine	Leahy	Thompson
Dodd	Lieberman	Thurmond
Domenici	Lott	Torricelli
Durbin	Lugar	Warner
Enzi	Mack	Wyden
Faircloth	McCain	

NAYS—15

Breaux	Dorgan	Inhofe
Bumpers	Ford	Kennedy
Byrd	Gorton	Landrieu
Cleland	Graham	Levin
Conrad	Hollings	Wellstone

NOT VOTING—2

Glenn	Moynihan

The motion to lay on the table the amendment (No. 3729) was agreed to.

Mr. MCCAIN. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCAIN. Mr. President, I ask unanimous consent there now be a period of morning business, with Senators permitted to speak up to 5 minutes each until 6:30 p.m.

Mr. BUMPERS. I object.

Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH of Oregon). Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I ask unanimous consent the Senate now move to a Bumper's amendment, with 10 minutes equally divided on either side, followed by a rollcall vote if the Senator from Arkansas wants it; I will make a motion to table; following that, that the Senate then go into morning business, with Senators permitted to speak up to 5 minutes each until 6:30 p.m.

Mr. BUMPERS. I add to that, no second-degree amendments be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3742

(Purpose: To require persons selling tangible personal property via the Internet to disclose to purchasers that they may be subject to State and local sales and use taxes on the purchases)

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS], for himself, and Mr. GRAHAM, proposes an amendment numbered 3742.

Mr. BUMPERS. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new title:

TITLE —CONSUMER PROTECTION TAX DISCLOSURE

SEC. . DISCLOSURE REQUIREMENT.

(a) DISCLOSURE REQUIREMENT.—Any person selling tangible personal property via the Internet who—

(1) delivers such property, or causes such property to be delivered, to a person in another State, and

(2) does not collect and remit all applicable State and local sales taxes pertaining to the sale and use of such property.

shall prominently display the notice described in subsection (b) on every other form available to a purchaser or prospective purchaser.

(b) DISCLOSURE NOTICE.—The notice described in this subsection is as follows:

''NOTICE REGARDING TAXES: You may be required by your State or local government to pay sales or use tax on this purchase. Such taxes are imposed in most States. Failure to pay such taxes could result in civil or criminal penalties. For information on your tax obligations, contact your State taxation department.''

(c) REGULATORY AUTHORITY.—The Secretary of Commerce shall issue and enforce such regulations as are necessary to ensure compliance with this section, including regulations as to what constitutes prominently displaying a notice.

SEC. . PENALTIES.

Any person who willfully fails to include any notice under section ____ shall be fined not more than $100 for each such failure.

SEC. . DEFINITIONS.

For purposes of this title—

(1) the term ''use tax'' means a tax imposed on or incident to the use, storage, consumption, distribution, or other use within a State or local jurisdiction or other area of a State, of tangible personal property,

(2) the term ''local sales tax'' means a sales tax imposed in a local jurisdiction or area of a State and includes, but is not limited to—

(A) a sales tax or in-lieu fee imposed in a local jurisdiction or area of a State by the State on behalf of such jurisdiction or area, and

(B) a sales tax imposed by a local jurisdiction or other State-authorized entity pursuant to the authority of State law, local law, or both,

(3) the term ''person'' means an individual, a trust, estate, partnership, society, association, company (including a limited liability company), or corporation, whether or not acting in a fiduciary or representative capacity, and any combination thereof,

(4) the term ''sales tax'' means a tax, including use tax, that is—

(A) imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property as may be defined or specified under the laws imposing such tax, and

(B) measured by the amount of the sale price, cost, charge, or other value of or for such property, and

(5) the term ''State'' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

SEC. . EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this Act. In no event shall this Act apply to any sale occurring before such effective date.

Mr. BUMPERS. Mr. President, this is a very simple amendment. Forty-five States have sales and use taxes on sales of merchandise coming into their State from another State. The problem is, they can't collect it because the people who are buying the merchandise don't know that there is a sales tax on the goods coming in. I think Maine collects about $1 million, and that is probably as much as any State collects.

People are always getting rude surprises. All of a sudden somebody knocks on the door and they say, ''We saw where you just bought $50,000 worth of furniture from North Carolina. You owe sales tax.'' They say, ''The ad said no sales tax.'' ''I don't care what the ad says. There is a North Carolina sales tax on merchandise brought in from out of State.''

My amendment says on Internet sales, if you sell into a State, you must notify people with a short notice that simply says, ''This merchandise may be subject to a sales or use tax in your State.'' You could be subject to a civil penalty or a criminal penalty—something like 100 bucks. If you want to check, you should check with your local revenue department to determine whether or not your State has a tax.

I want every Member in this body to ask this question: Why would you vote against this when your legislature has specifically provided that sale of goods from across the State lines are taxable? If you say they are not taxable, you are flying right into the face of the will of the people in your State who said they should be.

All I am saying, people should not be misled and should be told that when

they buy this merchandise it may be subject to a sales or use tax. It is just that simple. Why wouldn't you? If your State is one of the 45 States that have a tax, why would you not want a company selling goods on the Internet—not mail-order houses on the Internet—why would you not want to tell the customer he may be subject to it, instead of him getting a rude surprise and some auditor knocking on his door?

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Thank you, Mr. President.

I strongly oppose this amendment. This amendment specifically singles out those who sell goods over the Internet for discrimination. It applies to one class of people and that is those who sell goods on the Internet. The amendment would impose on those sellers of goods on the Internet a new requirement that would not be imposed on someone who sells goods over the phone or someone who mails the goods when they get a check.

Now, let's picture the kind of person who is going to be hurt by this amendment. My State, the State of the Presiding Officer of the Senate, has 100,000 home-based businesses. These are some of the most exciting businesses in the country coming up with new products. They are small. They are entrepreneurial. If this amendment passes, those 100,000 home-based businesses in Oregon—and there are thousands and thousands of other home-based businesses across the country in States that we all represent—they, and only they, will be subject to this new requirement.

This amendment seeks to do what the Internet tax freedom bill seeks to prevent. Our legislation is about technological neutrality. We should treat the Internet like we treat everything else. It shouldn't get a preference. It shouldn't be discriminated against. But if you read section (a) of this amendment, you will see that it applies requirements to one class of people, and one class of people only. Those are individuals who sell goods over the Internet.

This is discriminatory. This does what our legislation seeks to prevent. Those who vote for the amendment, in my view, in this Senator's view, are fostering the kind of policy that is going to lead to selective and discriminatory activity against those who sell goods through the World Wide Web.

I yield back my time, Mr. President.

Mr. BUMPERS. Mr. President, I ask unanimous consent that my amendment be expanded to include mail-order catalog sales.

The PRESIDING OFFICER. Is there an objection?

Mr. GREGG. I object.

Mr. BUMPERS. The reason there is an objection is because the Senator from New Hampshire and the Senator from Oregon do not come from the 45 States that have sales taxes.

They are opposed to this because their State is not one of the 45 States that do have a sales or use tax. Secondly, the unanimous consent agreement limits amendments to relevant amendments. If you put mail-order catalog sales in, it is not relevant. That is the reason I confined it to the Internet and asked consent to extend it. That is the reason they objected. They don't have to face a legislature or people back home who passed a sales or use tax on Internet sales coming in from out of State, because their States don't have a sales or use tax. My State does have that use tax, and we would like to collect it. Your revenue departments and your Governors would like to collect it, too.

All I am saying is, Internet sales simply ought to state a simple thing—that the goods you are buying could be subject to a use or sales tax in your State; if you want to know whether it does or not, contact your local revenue department. What is wrong with that? Who can oppose that? The taxes have already been passed by the legislature. It is just that they can't collect it unless they stand at the border and intercept every piece of merchandise that comes through the mail or on the highway. They can't do it.

So all I am saying is, if these 45 States have seen fit to levy taxes on out-of-State sales to make the playing field a little more level with the main street merchants, we ought to give them such help as we can. I am saying they ought to at least advise these people that these purchases might be subject to a use or sales tax.

Mr. President, I am prepared to yield back the remainder of my time if everybody else is, and we will go to a vote.

Mr. GREGG. Mr. President, I move to table the amendment of the Senator from Arkansas and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Arkansas. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from New York (Mr. MOYNIHAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 71, nays 27, as follows:

[Rollcall Vote No. 300 Leg.]

YEAS—71

Abraham	Biden	Burns
Akaka	Bingaman	Campbell
Allard	Bond	Chafee
Ashcroft	Boxer	Coats
Baucus	Brownback	Cochran
Collins	Hutchison	Reid
Coverdell	Jeffords	Robb
Craig	Kempthorne	Roberts
D'Amato	Kerrey	Roth
DeWine	Kerry	Santorum
Dodd	Kohl	Sessions
Domenici	Kyl	Shelby
Enzi	Lautenberg	Smith (NH)
Faircloth	Leahy	Smith (OR)
Feinstein	Lieberman	Snowe
Frist	Lott	Specter
Gramm	Lugar	Stevens
Grams	Mack	Thomas
Grassley	McCain	Thompson
Gregg	McConnell	Thurmond
Hagel	Moseley-Braun	Torricelli
Hatch	Murkowski	Warner
Helms	Murray	Wyden
Hutchinson	Nickles	

NAYS—27

Bennett	Durbin	Johnson
Breaux	Feingold	Kennedy
Bryan	Ford	Landrieu
Bumpers	Gorton	Levin
Byrd	Graham	Mikulski
Cleland	Harkin	Reed
Conrad	Hollings	Rockefeller
Daschle	Inhofe	Sarbanes
Dorgan	Inouye	Wellstone

NOT VOTING—2

Glenn	Moynihan

The motion to lay on the table the amendment (No. 3742) was agreed to.

The PRESIDING OFFICER (Ms. SNOWE). The Senator from Arizona.

UNANIMOUS CONSENT AGREEMENT

Mr. MCCAIN. Madam President, I ask unanimous consent that the Senate remain on S. 442 for the purposes of offering a nonrelevant amendment that has been agreed to by both sides, that the amendment be immediately agreed to, and that the Senate return to morning business under the previous order, except that the time be until 7:30 instead of 6:30, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Madam President, reserving the right to object. I will not object. My understanding is the amendment that is to be offered has been cleared with the authorizing committee, and we have no problem with the amendment.

Mr. BYRD. Madam President, reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I have no intention of objecting. I merely want a little clarification on the time. Will that mean we have to wait until 7:30 and then may have a rollcall vote or so after that?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, it is my understanding that there will not be the likelihood of further votes, but we will have to clear that with the majority leader.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Madam President, who has the floor? The Senator from Arizona?

Mr. MCCAIN. I yield the floor.

Mr. LOTT. We are trying to get final clearance on the antinepotism bill. We think there is a probability that we would not have to have a recorded

vote. But that is what we are trying to do right now; we are trying to make sure everybody is satisfied with that. If we could get that cleared, move it on a voice vote, then we would have no further recorded votes tonight. We are not able to announce it at this moment, but we believe within the next 5 or 10 minutes we will be able to make that clear.

I see the Senator from Vermont just came on the floor. He was one of the ones we were wanting to get some information from about the antinepotism bill, being able to take it up, and whether or not a recorded vote was going to be necessary on that.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I tell my friend from Mississippi, we discussed, last night, what we were trying to do, as he knows. The Senator from Arizona has been most helpful in trying to help this along, to get the antinepotism bill up, but also have the time to do the Fletcher nomination.

What I understand the Senator from Mississippi and the Senator from Arizona want to do is to get something locked in so we can take care of both those.

There were some who wanted a rollcall vote on the nepotism bill. Is the distinguished leader saying it would be easier for his scheduling if there was not one? I came to this conversation late; I apologize.

Mr. LOTT. I believe it will be better from a scheduling standpoint; therefore, we can advise Members what they can expect for the remainder of the evening and we can get this legislation completed. Then we will be able to go to the Fletcher nomination tomorrow.

Mr. LEAHY. I ask my good friend, the distinguished leader—and we have been friends for a long time—do I detect a hint in that suggestion of being able to tell Members there may not be further votes if we voice vote the nepotism bill?

Mr. LOTT. That was very much an implied hint.

Mr. LEAHY. I think I can tell my friend from Mississippi we can overcome those who are requesting a rollcall vote on this side. But we do want a specific time for a vote on the Fletcher nomination, and I rely on the distinguished leader to work this to a time convenient for scheduling. It is, of course, with the understanding that there will be a time set down for a vote on Mr. Fletcher that we would be able to reach an agreement.

Mr. LOTT. That is my intent, and, as the Senator knows, I had made a commitment earlier we were going to do that. I will keep that commitment. It is my intent to have that vote tomorrow, or the next day at the latest. We will have a vote on that nomination.

I thank Senator KYL also for his effort. I say to all Members, if they will bear with us just another 5 or 10 minutes, we will be able to make it official that we won't have a recorded vote.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I withdraw my reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3743

(Purpose: To provide support for certain institutes and schools)

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. FRIST, for himself, Mr. THOMPSON, Mr. DEWINE, Mr. JEFFORDS, Mr. SMITH of Oregon and Mr. WYDEN proposes an amendment numbered 3743.

Mr. MCCAIN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. MCCAIN. Madam President, I ask unanimous consent to add Senator SMITH of Oregon and Senator WYDEN as original cosponsors of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, I ask unanimous consent that Senators GREGG and LIEBERMAN be considered original cosponsors of amendment No. 3722.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3743) was agreed to.

Mr. MCCAIN. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. MCCAIN. Madam President, according to the previous order, we are in a period for morning business.

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—S. 1892

Mr. LOTT. Madam President, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to Calendar No. 381, S. 1892, which is the antinepotism language with regard to judicial appointments, under the following limitations: No amendments in order to the bill, and debate limited on the bill to 15 minutes under the control of Senator KYL and 30 minutes under the control of Senator LEAHY or his designee.

I further ask unanimous consent that following the expiration or yielding back of any debate time, the bill be read the third time and the Senate proceed to a vote on passage, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. LOTT. Madam President, as in executive session, I ask unanimous consent that the majority leader shall, no later than the close of business Thursday, October 8, proceed to executive session for the consideration of Executive Calendar No. 619, the nomination of William Fletcher. I further ask consent there be 90 minutes equally divided between the proponents and opponents of the nomination. I further ask consent that following that debate time, the Senate proceed to a vote on the confirmation of the nomination and, immediately following that vote, Executive Calendar Nos. 803, 804, and 808—that is, H. Dean Buttram, to be U.S. District Judge for the Northern District of Alabama; Inge Johnson, also to be a U.S. District Judge for the Northern District of Alabama; and Robert Bruce King, to be a U.S. Circuit Judge for the Fourth Circuit of West Virginia—and that they be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

Mr. LEAHY. Reserving the right to object. Would the majority leader consider amending that to add that if he were to bring these up on Wednesday—I know the agreement says no later than Thursday—but if he were to bring it up on Wednesday, that would be notwithstanding the provisions of Rule XXII.

Mr. LOTT. I don't see any problem with that. I believe we probably should have asked that. I will amend it to include that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, to clarify, we will have not more than 45 minutes of debate on the anti-nepotism bill. There will not be a recorded vote on that, and then not later than Thursday—but hopefully Wednesday—we can move these judicial nominations—the three I mentioned, plus William Fletcher of the Ninth Circuit court. So we have had the last vote for the day, and we will have this debate and perhaps some other wrap-up business. But