

AMENDMENT NO. _____ Calendar No. _____

Purpose: To foster innovation and technological advancement in the development of the Internet and electronic commerce, and to assist the States in simplifying their sales and use taxes.

IN THE SENATE OF THE UNITED STATES—107th Cong., 1st Sess.

H.R. 1552

To extend the moratorium enacted by the Internet Tax Freedom Act through November 1, 2003, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. ENZI (for himself, Mr. DORGAN, Mrs. HUTCHISON, Mr. GRAHAM, Mr. VOINOVICH, Mr. BREAUX, Mr. HUTCHINSON, and Mr. CARPER)

Viz:

1 Strike all after the first word and insert the following:

2 **1. SHORT TITLE.**

3 This Act may be cited as the “Internet Tax Morato-
4 rium and Equity Act”.

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

1 (1) The moratorium of the Internet Tax Free-
2 dom Act on new taxes on Internet access and on
3 multiple and discriminatory taxes on electronic com-
4 merce should be extended.

5 (2) States should be encouraged to simplify
6 their sales and use tax systems.

7 (3) As a matter of economic policy and basic
8 fairness, similar sales transactions should be treated
9 equally, without regard to the manner in which sales
10 are transacted, whether in person, through the
11 mails, over the telephone, on the Internet, or by
12 other means.

13 (4) Congress may facilitate such equal taxation
14 consistent with the United States Supreme Court's
15 decision in *Quill Corp. v. North Dakota*.

16 (5) States that adequately simplify their tax
17 systems should be authorized to correct the present
18 inequities in taxation through requiring sellers to
19 collect taxes on sales of goods or services delivered
20 in-state, without regard to the location of the seller.

21 (6) The States have experience, expertise, and
22 a vital interest in the collection of sales and use
23 taxes, and thus should take the lead in developing
24 and implementing sales and use tax collection sys-
25 tems that are fair, efficient, and non-discriminatory

1 in their application and that will simplify the process
2 for both sellers and buyers.

3 (7) Online consumer privacy is of paramount
4 importance to the growth of electronic commerce
5 and must be protected.

6 **SEC. 3. EXTENSION OF INTERNET TAX FREEDOM ACT MOR-**
7 **ATORIUM.**

8 Section 1101(a) of the Internet Tax Freedom Act (47
9 U.S.C. 151 note) is amended to read as follows:

10 “(a) MORATORIUM.—No State or political subdivision
11 thereof shall impose—

12 “(1) any taxes on Internet access during the
13 period beginning after September 30, 1998, unless
14 such a tax was generally imposed and actually en-
15 forced prior to October 1, 1998; and

16 “(2) multiple or discriminatory taxes on elec-
17 tronic commerce during the period beginning on Oc-
18 tober 1, 1998, and ending on December 31, 2005.”.

19 **SEC. 4. INTERNET TAX FREEDOM ACT DEFINITIONS.**

20 (a) INTERNET ACCESS SERVICES.—Section 1104 of
21 the Internet Tax Freedom Act (47 U.S.C. 151 note) is
22 amended by adding at the end the following new para-
23 graph:

24 “(11) INTERNET ACCESS SERVICES.—The term
25 ‘Internet access services’ means services that com-

1 bine computer processing, information storage, pro-
2 tocol conversion, and routing with transmission to
3 enable users to access Internet content and services.
4 Such term does not include receipt of such content
5 or services.”.

6 (b) **EFFECTIVE DATE.**—The amendment made by
7 this section shall take effect as if included in the enact-
8 ment of the Internet Tax Freedom Act.

9 **SEC. 5. STREAMLINED SALES AND USE TAX SYSTEM.**

10 (a) **DEVELOPMENT OF STREAMLINED SYSTEM.**—It is
11 the sense of Congress that States and localities should
12 work together to develop a streamlined sales and use tax
13 system that addresses the following in the context of re-
14 mote sales:

15 (1) A centralized, one-stop, multi-state report-
16 ing, submission, and payment system for sellers.

17 (2) Uniform definitions for goods or services,
18 the sale of which may, by State action, be included
19 in the tax base.

20 (3) Uniform rules for attributing transactions
21 to particular taxing jurisdictions.

22 (4) Uniform procedures for—

23 (A) the treatment of purchasers exempt
24 from sales and use taxes; and

1 (B) relief from liability for sellers that rely
2 on such State procedures.

3 (5) Uniform procedures for the certification of
4 software that sellers rely on to determine sales and
5 use tax rates and taxability.

6 (6) A uniform format for tax returns and re-
7 mittance forms.

8 (7) Consistent electronic filing and remittance
9 methods.

10 (8) State administration of all State and local
11 sales and use taxes.

12 (9) Uniform audit procedures, including a pro-
13 vision giving a seller the option to be subject to no
14 more than a single audit per year using those proce-
15 dures; except that if the seller does not comply with
16 the procedures to elect a single audit, any State can
17 conduct an audit using those procedures.

18 (10) Reasonable compensation for tax collection
19 by sellers.

20 (11) Exemption from use tax collection require-
21 ments for remote sellers falling below a de minimis
22 threshold of \$5,000,000 in gross annual sales.

23 (12) Appropriate protections for consumer pri-
24 vacy.

1 (13) Uniform enforcement criteria and a pro-
2 cess for ensuring compliance by those States that
3 adopt the streamlined sales and use tax system.

4 (14) A process for resolving conflicts of law
5 among States in the interpretation or application of
6 statutory or regulatory provisions implementing the
7 system.

8 (15) Such other features that the States deem
9 warranted to promote simplicity, uniformity, neu-
10 trality, efficiency, and fairness.

11 (b) STUDY.—It is the sense of Congress that a joint,
12 comprehensive study should be commissioned by State and
13 local governments and the business community to deter-
14 mine the cost to all sellers of collecting and remitting
15 State and local sales and use taxes on sales made by sell-
16 ers under the law as in effect on the date of enactment
17 of this Act and under the system described in subsection
18 (a) to assist in determining what constitutes reasonable
19 compensation.

20 **SEC. 6. INTERSTATE SALES AND USE TAX COMPACT.**

21 (a) AUTHORIZATION.—In general, the States are au-
22 thorized to enter into an Interstate Sales and Use Tax
23 Compact. The Compact shall describe a uniform, stream-
24 lined sales and use tax system consistent with section 5(a),

1 and shall provide that States joining the Compact must
2 adopt that system.

3 (b) EXPIRATION.—The authorization in subsection
4 (a) shall expire if the Compact has not been formed before
5 January 1, 2005.

6 (c) CONGRESSIONAL APPROVAL OF COMPACT.—

7 (1) ADOPTING STATES TO TRANSMIT.—Upon
8 the 20th State becoming a signatory to the Com-
9 pact, the adopting States shall transmit a copy of
10 the Compact to Congress.

11 (2) CONGRESSIONAL ACTION.—

12 (A) IN GENERAL.—If a joint resolution de-
13 scribed in subparagraph (B) is enacted into law
14 within 120 calendar days, excluding congres-
15 sional recess period days, of Congress receiving
16 the Compact under paragraph (1), then sections
17 7 and 8 shall apply to the adopting States, and
18 any other State that subsequently adopts the
19 Compact.

20 (B) JOINT RESOLUTION.—A joint resolu-
21 tion described in this subparagraph is a joint
22 resolution of the two Houses of Congress, the
23 matter after the resolving clause of which is as
24 follows: “That Congress—

1 the extent that they are inconsistent
2 therewith, and

3 (II) with full recognition of the
4 constitutional right of either House to
5 change the rules (so far as they relate
6 to the procedure of that House) at
7 any time, in the same manner and to
8 the same extent as in the case of any
9 other rule of that House.

10 (ii) APPLICABLE PROCEDURAL PROVI-
11 SIONS.—Except as otherwise provided in
12 this paragraph, the procedures set forth in
13 section 152 (other than subsection (a)
14 thereof) of the Trade Act of 1974 (19
15 U.S.C. 2192) shall apply to the joint reso-
16 lution described in subparagraph (B) by
17 substituting the “Committee on the Judici-
18 ary” for the “Committee on Ways and
19 Means” and the “Committee on Com-
20 merce, Science, and Transportation” for
21 the “Committee on Finance” in sub-
22 sections (b) and (f)(1)(A)(i) thereof.

23 (iii) INTRODUCTION OF JOINT RESO-
24 LUTION AFTER COMPACT RECEIVED.—
25 Until Congress receives the Compact de-

1 scribed in paragraph (1), it shall not be in
2 order in either House to introduce the
3 joint resolution described in subparagraph
4 (B).

5 (iv) CONSIDERATION OF JOINT RESO-
6 LUTION.—No amendment to the joint reso-
7 lution described in subparagraph (B) shall
8 be in order in either the House of Rep-
9 resentatives or the Senate, and no motion
10 to suspend the application of this clause
11 shall be in order in either House. Within
12 120 calendar days, excluding congressional
13 recess period days, after the date on which
14 a joint resolution described in subpara-
15 graph (B) is introduced in either House,
16 that House shall proceed to a final vote on
17 the joint resolution without intervening ac-
18 tion. If either House approves the resolu-
19 tion, it shall be placed on the calendar in
20 the other House, which shall proceed im-
21 mediately to a final vote on the joint reso-
22 lution without intervening action.

1 **SEC. 7. AUTHORIZATION TO SIMPLIFY STATE USE-TAX**
2 **RATES THROUGH AVERAGING.**

3 (a) **IN GENERAL.**—Subject to the exceptions in sub-
4 sections (c) and (d), a State that adopts the Compact au-
5 thorized and approved under section 6 and that levies a
6 use tax shall impose a single, uniform State-wide use-tax
7 rate on all remote sales on which it assesses a use tax
8 for any calendar year for which the State meets the re-
9 quirements of subsection (b).

10 (b) **AVERAGING REQUIREMENT.**—A State meets the
11 requirements of this subsection for any calendar year in
12 which the single, uniform State-wide use-tax rate is in ef-
13 fect if such rate is no greater than the weighted average
14 of the sales tax rates actually imposed by the State and
15 its local jurisdictions during the 12-month period ending
16 on June 30 prior to such calendar year.

17 (c) **ANNUAL OPTION TO COLLECT ACTUAL TAX.**—
18 Notwithstanding subsection (a), a remote seller may elect
19 annually to collect the actual applicable State and local
20 use taxes on each sale made in the State.

21 (d) **ALTERNATIVE SYSTEM.**—A State that adopts the
22 uniform, streamlined sales and use tax system described
23 in the Compact authorized and approved under section 6
24 so that remote sellers can use information provided by the
25 State to identify the single applicable rate for each sale,
26 may require a remote seller to collect the actual applicable

1 State and local sales or use tax due on each sale made
2 in the State if the State provides such seller relief from
3 liability to the State for relying on such information pro-
4 vided by the State.

5 **SEC. 8. AUTHORIZATION TO REQUIRE COLLECTION OF USE**
6 **TAXES.**

7 (a) GRANT OF AUTHORITY.—

8 (1) STATES THAT ADOPT THE SYSTEM MAY RE-
9 QUIRE COLLECTION.—Any State that has adopted
10 the system described in the Compact authorized and
11 approved under section 6 is authorized, notwith-
12 standing any other provision of law, to require all
13 sellers not qualifying for the de minimis exception to
14 collect and remit sales and use taxes on remote sales
15 to purchasers located in such State.

16 (2) STATES THAT DO NOT ADOPT THE SYSTEM
17 MAY NOT REQUIRE COLLECTION.—Paragraph (1)
18 does not extend to any State that does not adopt the
19 system described in the Compact.

20 (b) NO EFFECT ON NEXUS, ETC.—No obligation im-
21 posed by virtue of authority granted by subsection (a)(1)
22 or denied by subsection (a)(2) shall be considered in deter-
23 mining whether a seller has a nexus with any State for
24 any other tax purpose. Except as provided in subsection
25 (a), nothing in this Act permits or prohibits a State—

1 (1) to license or regulate any person;

2 (2) to require any person to qualify to transact
3 intrastate business; or

4 (3) to subject any person to State taxes not re-
5 lated to the sale of goods or services.

6 **SEC. 9. NEXUS FOR STATE BUSINESS ACTIVITY TAXES.**

7 It is the sense of Congress that before the conclusion
8 of the 107th Congress, legislation should be enacted to
9 determine the appropriate factors to be considered in es-
10 tablishing whether nexus exists for State business activity
11 tax purposes.

12 **SEC. 10. LIMITATION.**

13 In general, nothing in this Act shall be construed as
14 subjecting sellers to franchise taxes, income taxes, or li-
15 censing requirements of a State or political subdivision
16 thereof, nor shall anything in this Act be construed as af-
17 fecting the application of such taxes or requirements or
18 enlarging or reducing the authority of any State or polit-
19 ical subdivision to impose such taxes or requirements.

20 **SEC. 11. DEFINITIONS.**

21 In this Act:

22 (1) STATE.—The term “State” means any
23 State of the United States of America and includes
24 the District of Columbia.

1 (2) GOODS OR SERVICES.—The term “goods or
2 services” includes tangible and intangible personal
3 property and services.

4 (3) REMOTE SALE.—The term “remote sale”
5 means a sale in interstate commerce of goods or
6 services attributed, under the rules established pur-
7 suant to section 5(a)(3), to a particular taxing juris-
8 diction that could not, except for the authority
9 granted by this Act, require that the seller of such
10 goods or services collect and remit sales or use taxes
11 on such sale.

12 (4) LOCUS OF REMOTE SALE.—The term “par-
13 ticular taxing jurisdiction”, when used with respect
14 to the location of a remote sale, means a remote sale
15 of goods or services attributed, under the rules es-
16 tablished pursuant to section 5(a)(3), to a particular
17 taxing jurisdiction.