

In the Senate of the United States,

October 25, 2007.

Resolved, That the bill from the House of Representatives (H.R. 3678) entitled “An Act to amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

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

4 ***SEC. 2. MORATORIUM.***

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

7 *(1) in section 1101(a) by striking “2007” and*
8 *inserting “2014”, and*

9 *(2) in section 1104(a)(2)(A) by striking “2007”*
10 *and inserting “2014”.*

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

3 *Section 1104 of the Internet Tax Freedom Act (47*
4 *U.S.C. 151 note) is amended by adding at the end the fol-*
5 *lowing:*

6 “(c) *APPLICATION OF DEFINITION.—*

7 “(1) *IN GENERAL.—Effective as of November 1,*
8 *2003—*

9 “(A) *for purposes of subsection (a), the term*
10 *‘Internet access’ shall have the meaning given*
11 *such term by section 1104(5) of this Act, as en-*
12 *acted on October 21, 1998; and*

13 “(B) *for purposes of subsection (b), the term*
14 *‘Internet access’ shall have the meaning given*
15 *such term by section 1104(5) of this Act as en-*
16 *acted on October 21, 1998, and amended by sec-*
17 *tion 2(c) of the Internet Tax Nondiscrimination*
18 *Act (Public Law 108–435).*

19 “(2) *EXCEPTIONS.—Paragraph (1) shall not*
20 *apply until June 30, 2008, to a tax on Internet access*
21 *that is—*

22 “(A) *generally imposed and actually en-*
23 *forced on telecommunications service purchased,*
24 *used, or sold by a provider of Internet access, but*
25 *only if the appropriate administrative agency of*
26 *a State or political subdivision thereof issued a*

1 *public ruling prior to July 1, 2007, that applied*
2 *such tax to such service in a manner that is in-*
3 *consistent with paragraph (1); or*

4 “(B) *the subject of litigation instituted in a*
5 *judicial court of competent jurisdiction prior to*
6 *July 1, 2007, in which a State or political sub-*
7 *division is seeking to enforce, in a manner that*
8 *is inconsistent with paragraph (1), such tax on*
9 *telecommunications service purchased, used, or*
10 *sold by a provider of Internet access.*

11 “(3) *NO INFERENCE.—No inference of legislative*
12 *construction shall be drawn from this subsection or*
13 *the amendments to section 1105(5) made by the Inter-*
14 *net Tax Freedom Act Amendments Act of 2007 for*
15 *any period prior to June 30, 2008, with respect to*
16 *any tax subject to the exceptions described in sub-*
17 *paragraphs (A) and (B) of paragraph (2).”.*

18 **SEC. 4. DEFINITIONS.**

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

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

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

1 “(A) means a service that enables users to
2 connect to the Internet to access content, infor-
3 mation, or other services offered over the Inter-
4 net;

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

10 “(i) to provide such service; or

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

14 “(C) includes services that are incidental to
15 the provision of the service described in subpara-
16 graph (A) when furnished to users as part of
17 such service, such as a home page, electronic
18 mail and instant messaging (including voice-
19 and video-capable electronic mail and instant
20 messaging), video clips, and personal electronic
21 storage capacity;

22 “(D) does not include voice, audio or video
23 programming, or other products and services (ex-
24 cept services described in subparagraph (A), (B),
25 (C), or (E)) that utilize Internet protocol or any

1 *successor protocol and for which there is a*
2 *charge, regardless of whether such charge is sepa-*
3 *rately stated or aggregated with the charge for*
4 *services described in subparagraph (A), (B), (C),*
5 *or (E); and*

6 *“(E) includes a homepage, electronic mail*
7 *and instant messaging (including voice- and*
8 *video-capable electronic mail and instant mes-*
9 *saging), video clips, and personal electronic stor-*
10 *age capacity, that are provided independently or*
11 *not packaged with Internet access.”;*

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

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

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

25 *“(C) SPECIFIC EXCEPTION.—*

1 “(i) *SPECIFIED TAXES.*—*Effective No-*
2 *vember 1, 2007, the term ‘tax on Internet*
3 *access’ also does not include a State tax ex-*
4 *pressly levied on commercial activity, modi-*
5 *fied gross receipts, taxable margin, or gross*
6 *income of the business, by a State law spe-*
7 *cifically using one of the foregoing terms,*
8 *that—*

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

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

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

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

1 *nication services, Internet access, or*
2 *telecommunications.*

3 “(ii) *MODIFICATIONS.*—*Nothing in this*
4 *subparagraph shall be construed as a limi-*
5 *tation on a State’s ability to make modi-*
6 *fications to a tax covered by clause (i) of*
7 *this subparagraph after November 1, 2007,*
8 *as long as the modifications do not substan-*
9 *tially narrow the range of business activi-*
10 *ties on which the tax is imposed or other-*
11 *wise disqualify the tax under clause (i).*

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

18 **SEC. 5. CONFORMING AMENDMENTS.**

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

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

24 (2) *in subsection (b)(2)—*

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

1 (B) by striking “such services” and insert-
2 ing “such telecommunications”, and

3 (C) by inserting before the period at the end
4 the following: “or to otherwise enable users to ac-
5 cess content, information or other services offered
6 over the Internet”.

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

9 **SEC. 6. SUNSET OF GRANDFATHER PROVISIONS.**

10 Section 1104(a) of the *Internet Tax Freedom Act* is
11 amended by adding at the end thereof the following:

12 “(3) *EXCEPTION.*—*Paragraphs (1) and (2) shall*
13 *not apply to any State that has, more than 24*
14 *months prior to the date of enactment of this para-*
15 *graph, enacted legislation to repeal the State’s taxes*
16 *on Internet access or issued a rule or other proclama-*
17 *tion made by the appropriate agency of the State that*
18 *such State agency has decided to no longer apply such*
19 *tax to Internet access.”.*

20 **SEC. 7. EFFECTIVE DATE.**

21 *This Act, and the amendments made by this Act, shall*
22 *take effect on November 1, 2007, and shall apply with re-*
23 *spect to taxes in effect as of such date or thereafter enacted,*

- 1 *except as provided in section 1104 of the Internet Tax Free-*
- 2 *dom Act (47 U.S.C. 151 note).*

Attest:

Secretary.

110TH CONGRESS
1ST SESSION

H. R. 3678

AMENDMENT