

107TH CONGRESS  
1ST SESSION

# H. R. 2526

To make permanent the moratorium enacted by the Internet Tax Freedom Act; and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2001

Mr. GOODLATTE (for himself, Mr. BOUCHER, and Mr. COX) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To make permanent the moratorium enacted by the Internet Tax Freedom Act; and for other purposes.

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 “Internet Tax Fairness  
5 Act of 2001”.

6 **SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREE-**

7 **DOM ACT MORATORIUM.**

8 (a) PERMANENT EXTENSION; INTERNET ACCESS  
9 TAXES.—Section 1101 of the Internet Tax Freedom Act  
10 (47 U.S.C. 151 note) is amended—

1 (1) by striking “taxes during the period begin-  
2 ning on October 1, 1998, and ending 3 years after  
3 the date of the enactment of this Act—” and insert-  
4 ing “taxes after September 30, 1998.”;

5 (2) by striking paragraph (1) of subsection (a)  
6 and inserting the following:

7 “(1) Taxes on Internet access.”,

8 (3) by striking “multiple” in paragraph (2) of  
9 subsection (a) and inserting “Multiple”;

10 (4) by striking subsection (d); and

11 (5) by redesignating subsections (e) and (f) as  
12 subsections (d) and (e), respectively.

13 (b) CONFORMING AMENDMENT.—Section 1104(10)  
14 of the Internet Tax Freedom Act (47 U.S.C. 151 note)  
15 is amended by striking “unless” and all that follows  
16 through “1998”.

17 **SEC. 3. JURISDICTIONAL STANDARDS FOR THE IMPOSI-**  
18 **TION OF STATE AND LOCAL BUSINESS ACTIV-**  
19 **ITY TAXES ON INTERSTATE COMMERCE.**

20 Title I of the Act entitled “An Act relating to the  
21 power of the States to impose net income taxes on income  
22 derived from interstate commerce, and authorizing studies  
23 by congressional committees of matters pertaining there-  
24 to”, approved on September 14, 1959 (Public Law 86–  
25 272; 15 U.S.C. 381 et seq.), is amended to read as follows:

1           **“TITLE I—JURISDICTIONAL**  
2                                   **STANDARDS**

3   **“SEC. 101. IMPOSITION OF STATE AND LOCAL BUSINESS AC-**  
4                                   **TIVITY TAXES ON INTERSTATE COMMERCE.**

5           “(a) IN GENERAL.—No State or subdivision thereof  
6 shall have power to impose, for any taxable year ending  
7 after the date of enactment of this title, a business activity  
8 tax on any person relating to such person’s activities that  
9 affect interstate commerce, unless such person has a sub-  
10 stantial physical presence in such State or subdivision. A  
11 substantial physical presence is not established if the only  
12 business activities within such State or subdivision by or  
13 on behalf of such person during such taxable year are any  
14 or all of the following:

15                   “(1) The solicitation of orders or contracts by  
16 such person or such person’s representative in such  
17 State or subdivision for sales of tangible or intan-  
18 gible personal property or services, which orders or  
19 contracts are approved or rejected outside the State,  
20 or subdivision and, if approved, are fulfilled by ship-  
21 ment or delivery of such property from a point out-  
22 side the State or subdivision or by the performance  
23 of such services outside the State or subdivision.

24                   “(2) The solicitation of orders or contracts by  
25 such person or such person’s representative in such

1 State or subdivision in the name of or for the benefit  
2 of a prospective customer of such person, if orders  
3 or contracts by such customer to such person to en-  
4 able such customer to fill orders or contracts result-  
5 ing from such solicitation are orders or contracts de-  
6 scribed in paragraph (1).

7 “(3) The presence or use of intangible personal  
8 property in such State or subdivision, including pat-  
9 ents, copyrights, trademarks, logos, securities, con-  
10 tracts, licenses and permits issued by any govern-  
11 mental agency or authority authorizing the holder to  
12 conduct any business activity, money, deposits,  
13 loans, electronic or digital signals, and web pages,  
14 whether or not subject to licenses, franchises, or  
15 other agreements.

16 “(4) The use of the Internet to create or main-  
17 tain a World Wide Web site accessible by persons in  
18 such State or subdivision.

19 “(5) The use of an Internet service provider,  
20 on-line service provider, internetwork communication  
21 service provider, or other Internet access service pro-  
22 vider, or World Wide Web hosting services to main-  
23 tain or take and process orders via a web page or  
24 site on a computer that is physically located in such  
25 State or subdivision.

1           “(6) The use of any service provider for trans-  
2 mission of communications, whether by cable, sat-  
3 ellite, radio, telecommunications, or other similar  
4 system.

5           “(7) The leasing or owning of substantial prop-  
6 erty in such State or subdivision for less than 30  
7 days. Property in such State or subdivision for pur-  
8 poses of being assembled, manufactured, processed,  
9 or tested by a person or persons within such State  
10 or subdivision for the benefit of the owner or lessee,  
11 or used to furnish a service by a person or persons  
12 within such State or subdivision to the owner or les-  
13 see, shall be disregarded in determining whether  
14 such 30-day limit has been exceeded.

15           “(8) The assigning of employees, representa-  
16 tives, or agents in such State or subdivision for less  
17 than 30 days. Presence of employees, representatives  
18 or agents for purposes directly relating to the pur-  
19 chasing goods or services, gathering news and cov-  
20 ering events, meeting with government officials, at-  
21 tending conferences, seminars and similar functions,  
22 and participating in charitable activities shall be dis-  
23 regarded in determining whether such 30-day limit  
24 has been exceeded.

1           “(9) The affiliation with another person located  
2           in the State or subdivision, unless—

3                   “(A) the other person located in the State  
4                   or subdivision is the person’s agent under the  
5                   terms and conditions of subsection (d); and

6                   “(B) the activity of the other person in the  
7                   State or subdivision constitutes substantial  
8                   physical presence under this subsection and is  
9                   performed to establish, enhance, or maintain  
10                  the market in the State or subdivision for the  
11                  person.

12                  “(10) The use of an unaffiliated representative  
13                  or independent contractor in such State or subdivi-  
14                  sion for the purpose of performing warranty or re-  
15                  pair services with respect to tangible or intangible  
16                  personal property sold by a person located outside  
17                  the State or subdivision.

18                  “(b) DOMESTIC CORPORATIONS; PERSONS DOMI-  
19                  CILED IN OR RESIDENTS OF A STATE.—The provisions  
20                  of subsection (a) shall not apply to the imposition of a  
21                  business activity tax by any State or subdivision thereof  
22                  with respect to—

23                          “(1) any corporation which is incorporated  
24                          under the laws of such State; or

1           “(2) any individual who, under the laws of such  
2           State, is domiciled in, or a resident of, such State.

3           “(c) SALES OR SOLICITATION OF ORDERS OR CON-  
4           TRACTS FOR SALES BY INDEPENDENT CONTRACTORS.—  
5           For purposes of subsection (a), a person shall not be con-  
6           sidered to have engaged in business activities within a  
7           State or subdivision thereof during any taxable year mere-  
8           ly by reason of sales of tangible or intangible personal  
9           property or services in such State or subdivision, or the  
10          solicitation of orders or contracts for such sales in such  
11          State or subdivision, on behalf of such person by one or  
12          more independent contractors, or by reason of the mainte-  
13          nance of an office in such State or subdivision by one or  
14          more independent contractors whose activities on behalf  
15          of such person in such State or subdivision consist solely  
16          of making such sales, or soliciting orders or contracts for  
17          such sales.

18          “(d) ATTRIBUTION OF ACTIVITIES AND PRES-  
19          ENCE.—For purposes of this section, the substantial phys-  
20          ical presence of any person shall not be attributed to any  
21          other person absent the establishment of an actual agency  
22          relationship between such persons that—

23                 “(1) results from the consent by both persons  
24                 that one person act on behalf and subject to the con-  
25                 trol of the other; and

1           “(2) relates to the activities of the person with-  
2           in the State or subdivision thereof.

3           “(e) DEFINITIONS.—For purposes of this title:

4           “(1) BUSINESS ACTIVITY TAX.—The term ‘busi-  
5           ness activity tax’ means a tax imposed on, or meas-  
6           ured by, net income, a business license tax, a busi-  
7           ness and occupation tax, a franchise tax, a single  
8           business tax or a capital stock tax, or any similar  
9           tax or fee imposed by a State or subdivision thereof  
10          on a business for the right to do business within the  
11          State or subdivision or which is measured by the  
12          amount of such business or related activity.

13          “(2) INDEPENDENT CONTRACTOR.—The term  
14          ‘independent contractor’ means a commission agent,  
15          broker, or other independent contractor who is en-  
16          gaged in selling, or soliciting orders or contracts for  
17          the sale of, tangible or intangible personal property  
18          or services for more than one principal and who  
19          holds himself or herself out as such in the regular  
20          course of his or her business activities.

21          “(3) INTERNET.—The term ‘Internet’ means  
22          collectively the myriad of computer and tele-  
23          communications facilities, including equipment and  
24          operating software, which comprise the inter-  
25          connected world-wide network of networks that em-

1       ploy the Transmission Control Protocol/Internet  
2       Protocol, or any predecessor or successor protocols  
3       to such Protocol.

4               “(4) INTERNET ACCESS.—The term ‘Internet  
5       access’ means a service that enables users to access  
6       content, information, electronic mail, or other serv-  
7       ices offered over the Internet, and may also include  
8       access to proprietary content, information, and other  
9       services as a part of a package of services offered to  
10       users.

11               “(5) REPRESENTATIVE.—The term ‘representa-  
12       tive’ does not include an independent contractor.

13               “(6) SOLICITATION OF ORDERS OR CON-  
14       TRACTS.—The term ‘solicitation of orders or con-  
15       tracts’ includes activities normally ancillary to such  
16       solicitation.

17               “(7) STATE.—The term ‘State’ means any of  
18       the several States, the District of Columbia, or any  
19       territory or possession of the United States.

20               “(8) WORLD WIDE WEB.—The term ‘World  
21       Wide Web’ means a computer server-based file ar-  
22       chive accessible, over the Internet, using a hypertext  
23       transfer protocol, file transfer protocol, or other  
24       similar protocols.

1       “(f) APPLICATION OF SECTION.—This section shall  
2 not be construed to limit, in any way, constitutional re-  
3 strictions otherwise existing on State or local taxing au-  
4 thority.

5       **“SEC. 102. ASSESSMENT OF BUSINESS ACTIVITY TAXES.**

6       “(a) LIMITATIONS.—No State or subdivision thereof  
7 shall have power to assess after the date of enactment of  
8 this title any business activity tax which was imposed by  
9 such State or subdivision for any taxable year ending on  
10 or before such date, on or measured by the business activ-  
11 ity within such State that affect interstate commerce, if  
12 the imposition of such tax for a taxable year ending after  
13 such date is prohibited by section 101.

14       “(b) COLLECTIONS.—The provisions of subsection  
15 (a) shall not be construed—

16               “(1) to invalidate the collection on or before the  
17 date of enactment of this title of any business activ-  
18 ity tax imposed for a taxable year ending on or be-  
19 fore such date; or

20               “(2) to prohibit the collection after such date of  
21 any business activity tax which was assessed on or  
22 before such date for a taxable year ending on or be-  
23 fore such date.

1 **“SEC. 103. TERMINATION OF SUBSTANTIAL PHYSICAL PRES-**  
2 **ENCE.**

3 “If a State or subdivision thereof has imposed a busi-  
4 ness activity tax on a person as described in section 101,  
5 and the person so obligated no longer has a substantial  
6 physical presence in that State or subdivision, the obliga-  
7 tion to pay a business activity tax applies only for the pe-  
8 riod in which the person has a substantial physical pres-  
9 ence.

10 **“SEC. 104. SEPARABILITY.**

11 “If any provision of this title or the application of  
12 such provision to any person or circumstance is held in-  
13 valid, the remainder of this title or the application of such  
14 provision to persons or circumstances other than those to  
15 which it is held invalid, shall not be affected thereby.”.

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