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107TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 107–240

INTERNET TAX NONDISCRIMINATION ACT

OCTOBER 16, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1552]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1552) to extend the moratorium enacted by the Internet Tax Freedom Act through 2006, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Tax Nondiscrimination Act".

99–006

SEC. 2. EXTENSION OF INTERNET TAX FREEDOM ACT MORATORIUM.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking "3 years after the date of the enactment of this Act" and inserting "on November 1, 2003".

Amend the title so as to read:

A bill to extend the moratorium enacted by the Internet Tax Freedom Act through November 1, 2003; and for other purposes.

PURPOSE AND SUMMARY

H.R. 1552, the "Internet Tax Nondiscrimination Act," preserves and promotes the commercial potential of the Internet by protecting electronic commerce from discriminatory State and local taxes. H.R. 1552, as amended, accomplishes this purpose by extending for an additional 2 years the moratorium on multiple and discriminatory taxes on electronic commerce created by the Internet Tax Freedom Act of 1998.[1] It also maintains for 2 years the authority of States to collect Internet access taxes only if these taxes were generally imposed and collected before October 1, 1998.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

The Scope of Electronic Commerce

The Internet and information technology (IT) industries comprise an increasingly vital component of U.S. economic health. According to the U.S. Department of Commerce, IT industries (which include the Internet) accounted for 35 percent of real U.S. economic growth in the year 2000.[2] Internet retail[3] sales continue to accelerate at an impressive rate. In the first quarter of 2001, e-commerce retail sales reached $7.5 billion.[4] While some forecasts estimate Internet retail sales might soon reach $300 billion,[5] these claims have yet to materialize. For example, during the first quarter of 2000, online retail sales represented less than 1 percent of overall retail sales.[6] Moreover, recent weakness in the retail and technology sectors led to a decline in online retail sales during the second quarter of this year.[7]

Taxing Status of the Internet

Contrary to the widespread impression that the Internet is a tax-free haven, electronic commercial transactions are subject to various State and local taxes. Telecommunications channels such as telephone lines, wireless transmissions, cable, and satellites are subject to taxation. Electronic merchants are required to pay State and local income, licensing, franchise, business activity and other direct taxes. In addition, physically-present electronic merchants

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[1] Pub. L. No. 105–277, 112 Stat. 261 (1998) (codified at 47 U.S.C. 151 (2000)).

[2] "Digital Economy 2000," U.S. DEP'T OF COMMERCE, text available at: <http://www.esa.doc.gov/de2k2.html> "Emerging Digital Economy II," U.S. DEP'T OF COMMERCE (June 1999) at 4.

[3] Retail sales include the sale of tangible goods, not services.

[4] "Retail E-Commerce Sales In First Quarter 2001 Were $7.0 Billion, Up 33.4 Percent From First Quarter 2000, Census Bureau Reports." U.S. DEP'T OF COMMERCE Press Release, May 16, 2001, available at *http://www.census.gov/mrts/www/current.html.*

[5] Clayton W. Shan, *Taxation of Global E-Commerce on the Internet: The Underlying Issues and Proposed Plans,* 9 MINN. J. GLOBAL TRADE 233, 235 (2000).

[6] *Supra* note 4.

[7] *Id.*

are required to collect and remit applicable sales and use taxes for all intrastate transactions. In short, online transactions are subject to nearly all taxes imposed on traditional, brick and mortar enterprises. The only substantive difference between the tax treatment of online and traditional retailers is a State's authority to require nonresident electronic merchants to collect and remit sales and use taxes.[8] While State and local governments have continually sought to expand their ability to tax nonresident businesses, constitutional limitations on State and local taxing authority have made it considerably more difficult for them to do so.

Constitutional Limitations On State Taxing Authority

While State and local governments may tax most transactions occurring within their taxing jurisdictions, this authority is not unlimited. More specifically, the Constitution has been interpreted to constrain State power to compel nonresident, remote sellers to collect and remit State sales and use taxes.

Dormant Commerce Clause

The Commerce Clause of the Constitution authorizes Congress to "regulate Commerce with foreign Nations, and among the several States."[9] While the Commerce Clause establishes a predicate for congressional commercial regulation, the Supreme Court has also interpreted the Commerce Clause to create a "negative" limitation on State power to regulate in areas that might adversely affect interstate commerce. This limitation on State power is referred to as the "Dormant Commerce Clause."[10] Because State and local taxes might unduly burden the course of interstate commerce, the Supreme Court has placed constitutional constraints on State and local taxing authority.

The fullest legal explanation of Dormant Commerce Clause limitations on State taxing authority is *Quill Corp. v. North Dakota.*[11] *Quill* concerned North Dakota's attempt to require an out-of-State mail order catalog retailer to collect and pay a use tax on goods purchased for use within the State. Quill Corp., a Delaware corporation, grossed more than $1 million a year in mail order catalog sales to North Dakota residents, but lacked a physical presence in the State. When North Dakota moved to compel Quill Corp. to collect and remit use taxes, Quill claimed the tax was unconstitutional. The Supreme Court concluded North Dakota's efforts to compel a remote seller to collect and remit use taxes to that State without a physical presence or other "substantial [taxing] nexus"

[8] A sales tax is a percentage-based "consumption tax" collected at the point of sale by the seller and remitted to the appropriate taxing authorities. *ADVISORY COMMISSION ON ELECTRONIC COMMERCE*, Report to Congress, April 3, 2000, at 19. Currently, approximately 7,500 taxing jurisdictions throughout the United States collect sales taxes. *Id.* A use tax is a sales tax that is collectible by the seller where the purchaser is domiciled in a different State. BLACK'S LAW DICTIONARY 1543 (6th Ed. 1990). Use taxes are imposed on personal tangible property purchased out of State, but used or consumed in the taxing State. As a result of the administrative difficulties associated with collecting use taxes from individual consumers, most States require remote sellers to collect and remit these taxes. *See Advisory Commission Report* at 19.

[9] U.S. CONST. art. I, § 8, cl. 2.

[10] RONALD ROTUNDA, MODERN CONSTITUTIONAL LAW 135 (5th ed. 1998); *See also Pike v. Bruce Church, Inc.* 397 U.S. 137 (1978) and *Healy v. Beer Institute,* 91 U.S. 324 (1989).

[11] 504 U.S. 298 (1992).

violated the Commerce Clause.[12] By conditioning State authority to collect use taxes on a remote seller is physical presence in the taxing State, the Court maintained a previously enunciated use tax safe harbor for remote vendors "whose only connection with customers in the taxing State is by common carrier or United States mail."[13] While the Supreme Court has yet to specifically rule on the constitutionality of requiring nonresident, Internet merchants to collect and remit State and local use taxes, these enterprises are analogous to mail catalog companies to the extent they may lack a "substantial nexus" to justify the imposition of State and local taxes under the Commerce Clause. State and local efforts to require nonresident Internet retailers to collect and remit State use taxes would thus likely fail constitutional scrutiny.

Due Process Clause

The Fourteenth Amendment of the Constitution provides that no State shall "deprive any person of life, liberty or property without due process of law."[14] This provision has been interpreted to limit the power of a State government to assert taxing jurisdiction over parties who do not reside in the forum State. A State statute imposing a tax on sales by out-of-State retailers will withstand Due Process challenge if the taxing State demonstrates "some definite link, some minimum connection, between a State and the person, property or transaction it seeks to tax."[15] As long as the taxpayer "purposefully avails itself of the benefits of an economic market in the forum State, it may be subject to that State jurisdiction even if it has no physical presence in the State."[16]

The Supreme Court has yet to rule on the degree of connection a nonresident electronic merchant must have with a taxing State in order to satisfy the Due Process "minimum contacts" test. It is likely a nonresident retailer that seeks to sell merchandise through advertisement or other solicitation will be considered to have "purposefully availed" itself of the benefits of the taxing State's market for purposes of meeting the Due Process requirement set out in Quill. However, meeting this requirement would not necessarily validate the constitutionality of the tax since a corporation "may have the 'minimum contacts' with a taxing State as required by the Due Process Clause and still lack the 'substantial nexus' required by the Commerce Clause."[17]

State and Local Efforts to Tax Electronic Commerce

Sales and use taxes comprise a substantial portion of State tax revenues. Last year, State and local governments collected $181 billion in sales and use taxes, accounting for 25 percent of all state government revenue.[18] Based on an estimated $25 billion in Inter-

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[12] The *Quill* Court reiterated the four part test enunciated in *Complete Auto Transit Inc. v. Brady,* 430 U.S. 274 (1977), holding that State taxation survives Dormant Commerce Clause challenge if the tax: (1) is applied to an activity with a substantial nexus with the taxing State; (2) is fairly apportioned; (3) does not discriminate against interstate commerce and; (4) is fairly related to services provided by the State. *Quill,* 504 U.S. at 311.

[13] *National Bellas Hess, Inc. v. Dept. of Revenue of Illinois,* 386 U.S. 753 (1967).

[14] U.S. CONST. amend. XIV. § 1.

[15] *Quill* at 306 (quoting *Miller Bros. Co. v. Maryland,* 311 U.S. 457, 463 (1940)).

[16] *Id.* at 307.

[17] *Id.* at 313.

[18] "Summary of State and Local Tax Revenue," U.S. DEP'T OF COMMERCE, Bureau of the Census, Government and Finance Branch (Dec. 14, 1999); text available at: http://www.census.gov:80/govs/www/qtax00.html.

net retail sales in 2000, States claim to have lost an estimated $950 million in unpaid sales and use taxes.[19]

To stanch perceived future tax revenue losses,[20] some States have begun to consider novel theories for expanding their taxing authority over online sellers. Some State taxing officials have speculated that an Internet service provider (ISP), which connects consumers to the Internet, acts as an agent of online sellers and therefore creates "nexus" for electronic merchants "doing business" in the taxing State. The potential exposure of electronic merchants to a myriad of State and local taxing jurisdictions threatens the development and commercial viability of this increasingly important commercial medium.

THE FEDERAL LEGISLATIVE RESPONSE

Internet Tax Freedom Act

The Internet Tax Freedom Act of 1998 (ITFA) was enacted to help address some of the emerging challenges associated with electronic commerce. The ITFA had four major components: 1) a moratorium on new Federal Internet or Internet-access taxes; 2) a declaration that the Internet should be free of international tariffs and other trade barriers; 3) a 3-year prohibition on new taxes imposed on Internet access and on multiple or discriminatory taxes on Internet commerce; and 4) the establishment of a nineteen-member Advisory Commission on Electronic Commerce (ACEC) to study and submit a report to Congress on international, Federal, State, and local tax issues pertaining to the Internet.

PRINCIPLE TERMS AND DEFINITIONS CONTAINED IN THE ITFA

The ITFA established a 3-year prohibition on State and local assessment of "multiple" or "discriminatory" taxes on electronic commerce and barred States from collecting "Internet access" taxes unless these taxes were imposed and collected before its passage.

Section 1104(3) of the ITFA defines "electronic commerce" as "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer of delivery of property, goods, services or information . . . and includes the provision of Internet access." This definition encompasses the sale of goods and services online. Section 1104(2)(A) of the ITFA defines a "multiple tax" as "any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision . . . without a credit . . . for taxes paid in other jurisdictions."

For example, if State A imposes a tax on an online transaction that occurs between an Internet seller in State A and a consumer in State B, only one of these States would be permitted to collect taxes on the transaction unless a tax credit were provided. The ITFA ban on multiple taxes also prohibits more than one State from collecting taxes on an electronic transaction that might in-

[19] *Internet Sales Taxes,* N.Y.L.J., Mar. 9, 2000 at 6.

[20] The General Accounting Office has estimated that States and localities "lost" between $0.3 and $3.8 billion in sales tax revenue to the Internet in 2000 and stand to forfeit between $1.0 and $12.4 billion in uncollectible Internet-based sales taxes by 2003. *See Sales Taxes—Electronic Commerce Growth Presents Challenges: Revenue Losses Are Uncertain,* GAO/GGD/OCE-00, 165, June 2000.

volve more than two taxing jurisdictions. This situation might arise if an Internet server is located in a State different from that of the Internet retailer and customer.

Section 1104(2) of the ITFA defines a "discriminatory tax" as: (A) any tax imposed by a State or political subdivision on electronic commerce that—(i) is not generally imposed and legally collectible by such State or political subdivision on transactions involving similar property, goods, services or information accomplished through other means; (ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services or information accomplished through other means (unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period); (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or (iv) establishes a classification of Internet access service providers for purposes of establishing a higher tax rate than the tax rate generally applied to providers of similar information services delivered through other means.

Discriminatory taxes include taxes levied specifically on electronic transactions or taxes that single out electronic transactions for higher rates of taxation. For example, if State A collects a 5-percent sales tax on the sale of retail goods, State A could not impose a higher tax rate on retail goods sold online. This provision also prohibits States from imposing a tax collection requirement on persons or businesses who would not have to collect these taxes if they occurred in a similar, nonelectronic transaction. Thus, State A can not require a remote electronic seller to collect and remit sales taxes if other merchants selling similar goods are not required to do so. Finally, this section prohibits States from subjecting Internet service providers to a tax burden higher than that placed on information services delivered through other means (e.g. over a cable line).

The ITFA defines an "Internet access" service as one that "that enables users to access content information, electronic mail, or other services over the Internet."[21] An Internet access tax is one imposed "on the sale or use of Internet services,"[22] such as an Internet Service Provider (ISP). The ITFA bars the imposition of taxes on Internet access. Thus, States are barred from taxing a customer's monthly ISP (e.g., America Online) billing statement. However, Section 1101(a)(1) of the ITFA applies only to Internet access taxes that were not "generally imposed and actually enforced" prior to October 1, 1998. Hence, a number of States that collected these taxes before October 1, 1998 presently have authority to do so. These States are: Connecticut, Montana, New Mexico, Ohio, South Carolina, North Dakota, Tennessee, Texas, Washington, and Wisconsin.[23]

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

The following key findings received a majority (11) of the Commissioners' support:

[21] ITFA, § 1104 (5).
[22] *Id.*
[23] *See* H.R. REP. NO. 106–609, at 4–5.

Sales and Use Taxes

- For a period of 5 years, extend the current moratorium barring multiple and discriminatory taxation of e-commerce and prohibit taxation of sales of digitized goods and products and their non-digitized counterparts.
- Clarify which factors would not, in and of themselves, establish a seller's physical presence in a State for purposes of determining whether a seller has sufficient nexus with that State to impose tax collection obligations.

Internet Access

- Make permanent the current moratorium on any transaction taxes on the sale of Internet access, *including taxes that were grandfathered under the ITFA.*

Taxation of Telecommunications Services and Providers

- Eliminate the 3% Federal excise tax on communications services (originally enacted to raise revenue to support the cost of the Spanish-American War, a bill to repeal this tax passed Congress but was vetoed by then-President Clinton).
- Eliminate excess tax burdens on telecommunications real, tangible, and intangible property.
- Afford similar taxing treatment of telecommunications infrastructure in States that exempt purchases of certain types of business equipment from sales and use taxes.
- Encourage State and local governments to work with and through the National Conference on Commissioners of Uniform State Laws (NCCUSL) in drafting a uniform telecommunications State and local excise tax act, within 3 years, that would require States to follow one of two simplified tax structure models.

Last Congress, the House of Representatives overwhelmingly approved H.R. 3709, the Internet Nondiscrimination Act. H.R. 3709 would have abolished all Internet access taxes and extended the ban on multiple or discriminatory taxes on electronic commerce for 5 years. The bill did not receive a vote in the Senate.

HEARINGS

The Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary held 3 days of hearings on H.R. 1552 and related bills H.R. 1675, the Internet Tax Nondiscrimination Act, H.R. 1410, the Internet Tax Moratorium and Equity Act, and H.R. 2524, the Internet Tax Fairness Act of 2001.

On June 26, 2001 the Subcommittee held a hearing on H.R. 1552 and H.R. 1675, both titled the "Internet Tax Nondiscrimination Act." The hearing examined the importance of maintaining and enhancing the commercial potential of the Internet and emphasized the importance of moving swiftly to ensure the Internet is not singled out for unfair, discriminatory taxation. Testimony was received from the following witnesses: Virginia Governor and Chairman of the Advisory Commission on Electronic Commerce James Gilmore; Rep. Christopher Cox (R-CA); Robert Comfort, Vice President for Tax and Tax Policy, Amazon.com; and Michigan Governor

John Engler, on behalf of the National Governors Association. Additional information was submitted by the Internet Tax Fairness Coalition and by Frank Julian, Operating Vice President of Federated Department Stores, Inc.

The Subcommittee on Commercial and Administrative Law held a hearing on H.R. 1410, the "Internet Tax Moratorium and Equity Act" on July 18, 2001. The hearing focused on the importance of extending the Internet tax moratorium and examined claims that the current taxing environment favors nontraditional retailers. The following witnesses testified: Rep. Ernest Istook (R-OK); Grover Norquist, President of Americans for Tax Reform and Member of the Advisory Commission on Electronic Commerce; Frank Julian, Operating Vice President and Tax Counsel, Federated Department Stores, Inc., on behalf of the Direct Marketing Association and the Internet Tax Fairness Coalition; and Jon W. Abolins, Chief Tax Counsel and Vice President for Tax and Government Affairs, TAXWARE International, Inc.

Finally, on September 11, 2001, the Subcommittee held a hearing on H.R. 2526, the "Internet Tax Fairness Act of 2001". Written testimony was received by the following witnesses: Arthur Rosen, Chairman, Coalition for Rational and Fair Taxation; Stanley Sokul, Member, Advisory Commission on Electronic Commerce, on behalf of the Internet Tax Fairness Coalition and the Direct Marketing Association; Fred Montgomery, Director, State and Local Tax, Sara Lee Corporation, on behalf of the Committee on State Taxation; and June Summers Haas, Commissioner of Revenue, State of Michigan. The events of September 11th, which included terrorist attacks upon New York City and Washington, D.C., necessitated the early adjournment of the hearing.

COMMITTEE CONSIDERATION

On August 2, 2001, the Subcommittee on Commercial and Administrative Law met in open session and ordered favorably reported the bill H.R. 1552 by voice vote, a quorum being present. On October 10, 2001, the Judiciary Committee met in open session and ordered favorably reported the bill H.R. 1552, with amendment, by voice vote, a quorum being present.

VOTES OF THE COMMITTEE

1. An amendment offered by Mr. Bachus, Mr. Watt, and Mr. Delahunt to extend the ITFA moratorium on multiple or discriminatory and new Internet access taxes until June 30, 2002. Defeated 12 to 19.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Bryant	X		
Mr. Chabot		X	
Mr. Barr		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Jenkins	X		
Mr. Cannon		X	
Mr. Graham			
Mr. Bachus	X		
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Conyers			
Mr. Frank	X		
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren		X	
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan		X	
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	12	19	

2. An amendment offered by Mr. Bachus, Mr. Watt, and Mr. Delahunt to extend the ITFA moratorium on multiple or discriminatory and new Internet access taxes until November 1, 2003. Passed 19–15.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Gekas		X	
Mr. Coble	X		
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Bryant	X		
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins	X		
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus	X		
Mr. Hostettler			
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart	X		
Mr. Flake		X	
Mr. Pence		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman	X		
Mr. Boucher		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren		X	
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman			
Total	19	15	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Performance Goals and Objectives

The moratorium in certain taxes on electronic commerce expires on October 21st of this year. If Congress fails to extend this limited protection, electronic commerce will be exposed to a multiplicity of discriminatory and potentially fatal State and local taxes. H.R. 1552, as amended, maintains the ITFA prohibition on multiple or discriminatory taxes for an additional 2 years and preserves the authority of States to collect existing taxes on Internet access.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 169, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1552, the Internet Tax Nondiscrimination Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for Federal costs), who can be reached at 226–2860, and Theresa Gullo (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1552—Internet Tax Nondiscrimination Act.

H.R. 1552 would extend a moratorium on certain state and local taxation of on-line services and electronic commerce through November 1, 2003. Under current law, the moratorium is set to expire on October 21, 2001.

CBO estimates that enacting H.R. 1552 would have no impact on the Federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

By extending the prohibition on collecting certain types of state and local taxes, H.R. 1552 would impose an intergovernmental mandate as defined in Unfunded Mandates Reform Act (UMRA). The bill, however, would allow states that are currently collecting a sales tax on Internet access to continue doing so. Based on information from the Multistate Tax Commission and the Federation of Tax Administrators, CBO believes enacting this bill would not affect state and local revenues currently being collected. Thus, CBO estimates that the cost of complying with the mandate would not be significant and would not exceed the threshold established in the act ($56 million in 2001, adjusted annually for inflation). The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Ken Johnson (for Federal costs), who can be reached at 226–2860, and Theresa Gullo (for the State and local impact), who can be reached at 225–3220. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 2 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Section 1 titles the bill the "Internet Tax Nondiscrimination Act".

Section 2. Section 2 amends the Internet Tax Freedom Act (47 U.S. C. 151 note) to extend the moratorium on multiple or discriminatory State and local taxes on electronic commerce until November 1, 2003. This section also preserves until November 1, 2003, the authority of States to collect Internet access taxes if they were generally imposed and collected before October 1, 1998.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNET TAX FREEDOM ACT

TITLE XI—MORATORIUM ON CERTAIN TAXES

SEC. 1100. SHORT TITLE.

This title may be cited as the "Internet Tax Freedom Act".

SEC. 1101. MORATORIUM.

(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending [3 years after the date of the enactment of this Act] *on November 1, 2003*—

(1) * * *

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, OCTOBER 10, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 2:35 p.m., in Room 2141 Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The next item on the agenda is consideration of H.R. 1552, the Internet Tax Nondiscrimination Act. The Chair recognizes the gentleman from Georgia, Mr. Barr, Chairman of the Subcommittee on Commercial and Administrative Law.

Mr. BARR. Mr. Chairman, the Subcommittee on Commercial and Administrative Law reports favorably the bill H.R. 1552, and moves its favorable recommendation to the full House.

[The bill, H.R. 1552, follows:]

107TH CONGRESS
1ST SESSION

H. R. 1552

To extend the moratorium enacted by the Internet Tax Freedom Act through 2006, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2001

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

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A BILL

To extend the moratorium enacted by the Internet Tax Freedom Act through 2006, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Tax Nondiscrimination Act".

SEC. 2. EXTENSION OF INTERNET TAX FREEDOM ACT MORATORIUM.

(a) EXTENSION; INTERNET ACCESS TAXES.—Section 1101 of the Internet Tax Freedom Act (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 enactment of this Act—" in subsection
4 (a) and inserting "taxes:";
5 (2) by striking paragraph (1) of subsection (a)
6 and inserting the following:
7 "(1) Taxes on Internet access.";
8 (3) by inserting before "multiple" in paragraph
9 (2) of subsection (a) the following: "During the pe-
10 riod beginning on October 1, 1998, and ending on
11 December 31, 2006,";
12 (4) by striking subsection (d); and
13 (5) by redesignating subsections (e) and (f) as
14 subsections (d) and (e), respectively.
15 (b) CONFORMING AMENDMENT.—Section 1104(10)
16 of Internet Tax Freedom Act (47 U.S.C. 151 note) is
17 amended by striking "services unless such tax was gen-
18 erally imposed and actually enforced prior to October 1,
19 1998." and inserting "services.".

○

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any time, and the Chair recognizes the gentleman from Georgia, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman. I appreciate the Chair and the Committee's indulgence on bringing up this bill, which is extremely timely for two reasons: one, because the current morato-

rium on Internet taxes expires on October 21st; and, secondly, we have an opportunity today to send to the full House a bill that will assist our economy by continuing to prohibit additional and discriminatory taxes at a time when our Nation can ill afford such taxation.

In a few short years, Mr. Chairman, the Internet has revolutionized commerce in a manner few could have foreseen. Businesses have utilized the commercial potential of the Internet to reach out to customers in a digital national marketplace. These commercial opportunities have leveled the playing field by allowing small businesses to avail themselves of a national market once reserved to a handful of major corporations.

In 1998 Congress passed the Internet Tax Freedom Act. Contrary to popular misconceptions, this legislation does not exempt Internet retailers from collecting and remitting sales taxes. Rather, it only limits State authority to impose new taxes on Internet access, and it protects Internet commerce from multiple or discriminatory taxes.

This limited protection expires on October 21st, a short 11 days from today. Failure to renew this protection gives States and localities free rein to impose crippling and potentially fatal taxes on Internet commerce.

Since passage of the Internet Tax Freedom Act, on-line commerce has seen steady growth rates, but predictions the Internet would quickly dominate all retail sales have failed to materialize. In fact, Internet sales comprised less than 1 percent of total retail sales in FY 2000, and actually declined during the second quarter of this year. Recent weakness in the technology sector only underlines the vulnerability of this medium.

The Subcommittee on Commercial and Administrative Law conducted a number of hearings into this issue. On June 26th we held a hearing on H.R. 1552 and H.R. 1675, two bills introduced by Representative Cox that would preserve the taxing stability of the Internet by extending the moratorium.

On July 18th the Subcommittee held a hearing on legislation introduced by Representative Istook that would renew the moratorium while authorizing States to collect taxes on remote sellers.

Finally, on September 11th the Committee scheduled a hearing on H.R. 2524, legislation introduced by Representative Goodlatte that permanently extends the Internet tax moratorium while clarifying the nexus standards for the collection of business activity taxes on multi-State enterprises.

The current myriad of State and local taxing jurisdictions imposes considerable administrative costs on multi-State businesses. Many States have been working to simplify their tax systems in order to collect taxes on nonresident businesses. While some have sought congressional intervention to facilitate this effort, not all knowledge emanates from Washington, and I believe elected representatives at the State and local level are better suited to resolve this question.

The Senate has been involved in ongoing discussions concerning the congressional role in this debate. While halting progress has been made, the time to act is quickly running out.

The bill we consider today extends the moratorium on discriminatory taxes created by the Internet Tax Freedom Act for an addi-

tional 5 years. It also permanently bans all taxes on Internet access. In so doing, the bill reflects the majority recommendations of the bipartisan Advisory Commission on Electronic Commerce, and helps to narrow the digital divide separating on-line and off-line worlds of commerce.

Last year, the House overwhelmingly passed an extension of the moratorium, but it did not receive a vote in the other body. This year there is no time to delay, and I urge this Committee's full support for H.R. 1552. I yield back.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I strike the requisite number of words to commend my friend, Mr. Barr, and his Subcommittee for this good work, with only one relatively small reservation, and that is on the 5-year extension itself.

The problem with a period this long, it would really create the risk that so many will become dependent on the current system that it will be very difficult to ever really revisit this issue, even after the end of 5 years, going into the year 2006. And what about the continuing hemorrhaging, the loss of financial taxes that would be coming to States and localities. Many of them, one-half of their revenues come from sales tax. And so this is a serious problem, and I have got a lot of detail to back that up, but I think everyone knows and agrees with it.

The question here for me this afternoon is whether it would be more appropriate to find a shorter period of time. A number of Members on the Committee have been working on this issue, and I am happy to support the work product that they will shortly offer.

Notice that the National Governors Association is not happy with the 5-year extension. Notice that organized labor, AFL-CIO, NEA, AFT, AFSCME, is not satisfied with the 5-year extension; notice that the business organizations, the National Retail Federation, Home Depot, K-Mart, Wal-Mart, Sears.

So that we have, to me, this one number here to resolve and I think we can be on our way. I hope that there is a mood in the Committee this afternoon to find a way to cure this problem that I respectfully raise.

I thank you, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, all Members' opening statements may be placed in the record at this point.

Are there amendments to the bill?

Mr. BACHUS. Mr. Chairman, I would like to offer an amendment.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. BACHUS. I would like to——

Mr. BARR. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. Well, opening statements you know traditionally have been with the Subcommittee Chair, and——

Mr. BACHUS. I have an amendment at the desk.

Chairman SENSENBRENNER. And the clerk will report the amendment.

Mr. BARR. I reserve a point of order.

Chairman SENSENBRENNER. A point of order is reserved.

The CLERK. Mr. Chairman, I have several. Which one?

Mr. BACHUS. Amendment No. 1.

Chairman SENSENBRENNER. The clerk will report Bachus 1.

The CLERK. Amendment to H.R. 1552 offered by Mr. Bachus, Mr. Watt, and Mr. Delahunt. Page 2, after line 11, insert the following and make such technical and conforming changes as may be appropriate.

[The amendment follows:]

Amendment to H.R. 1552

Offered by Bachus, Watt and Delahunt

Page 2, after line 11, insert the following and make such technical and conforming changes as may be appropriate:

1 (4) in subsection (b)—
2 (A) by inserting "(1)" before "Except";
3 and
4 (B) by adding at the end the following:
5 "(2) STREAMLINED SALES AND USE TAX SYS-
6 TEM.—
7 "(A) DEVELOPMENT OF STREAMLINED
8 SYSTEM.—It is the sense of Congress that
9 States and localities should work together to de-
10 velop a streamlined sales and use tax system
11 that addresses the following in the context of
12 remote sales:
13 "(i) A centralized, one-stop, multistate
14 registration system for sellers.
15 "(ii) Uniform definitions for goods or
16 services, the sale of which may, by State
17 action, be included in the tax base.

1 "(iii) Uniform rules for attributing
2 transactions to particular taxing jurisdic-
3 tions.
4 "(iv) Uniform procedures for—
5 "(I) the treatment of purchasers
6 exempt from sales and use taxes; and
7 "(II) relief from liability for sell-
8 ers that rely on such State proce-
9 dures.
10 "(v) Uniform procedures for the cer-
11 tification of software that sellers rely on to
12 determine sales and use tax rates and tax-
13 ability.
14 "(vi) A uniform format for tax re-
15 turns and remittance forms.
16 "(vii) Consistent electronic filing and
17 remittance methods.
18 "(viii) State administration of all
19 State and local sales and use taxes.
20 "(ix) Uniform audit procedures, in-
21 cluding a provision giving a seller the op-
22 tion to be subject to no more than a single
23 audit per year using those procedures; ex-
24 cept that if the seller does not comply with
25 the procedures to elect a single audit, any

1 State can conduct an audit using those
2 procedures.
3 "(x) Reasonable compensation for tax
4 collection by sellers.
5 "(xi) Exemption from use tax collec-
6 tion requirements for remote sellers falling
7 below a de minimis threshold of
8 $5,000,000 in gross annual sales.
9 "(xii) Appropriate protections for con-
10 sumer privacy.
11 "(xiii) Such other features that the
12 States deem warranted to promote sim-
13 plicity, uniformity, neutrality, efficiency,
14 and fairness.
15 "(B) NO UNDUE BURDEN.—Congress finds
16 that, if adopted, the system described in para-
17 graph (2) will not place an undue burden on
18 interstate commerce or burden the growth of
19 electronic commerce and related technologies in
20 any material way.
21 "(C) STUDY.—It is the sense of Congress
22 that a joint, comprehensive study should be
23 commissioned by State and local governments
24 and the business community to determine the
25 cost to all sellers of collecting and remitting

1 State and local sales and use taxes on sales
2 made by sellers under the law as in effect on
3 the date of enactment of this Act and under the
4 system described in subparagraph (A) to assist
5 in determining what constitutes reasonable
6 compensation.
7 "(3) INTERSTATE SALES AND USE TAX COM-
8 PACT.—
9 "(A) AUTHORIZATION AND CONSENT.—In
10 general, the States are authorized to enter into
11 an Interstate Sales and Use Tax Compact. Sub-
12 ject to subsection (c), Congress consents to
13 their entry into that Compact. The Compact
14 shall describe a uniform, streamlined sales and
15 use tax system consistent with paragraph (2)(a)
16 and shall provide that States joining the Com-
17 pact must adopt that system.
18 "(B) EXPIRATION.—The authorization and
19 consent in paragraph (A) shall expire if the
20 Compact has not been formed before January
21 1, 2006.
22 "(C) CONGRESSIONAL CONSENT TO COM-
23 PACT; WITHDRAWAL OF COMPACT.—
24 "(i) ADOPTING STATES TO TRANS-
25 MIT.—Upon the 25th State becoming a

1 signatory to the Compact, the adopting
2 States shall transmit a copy of the Com-
3 pact to Congress for consent.
4 "(ii) CONGRESSIONAL ACTION.—Con-
5 gress shall consent to the Compact within
6 365 days (computed in accordance with
7 section 154 of the Trade Act of 1974 (19
8 U.S.C. 2194)) after the adopting States
9 transmit the Compact to Congress or such
10 compact shall be deemed to be withdrawn
11 after the 365-day period (as so computed).
12 "(4) AUTHORIZATION TO REQUIRE COLLECTION
13 OF USE TAXES.—
14 "(A) STATES THAT ADOPT THE SYSTEM
15 MAY REQUIRE COLLECTION.—Upon the 25th
16 State becoming a signatory to the Compact and
17 after Congress consents to the Compact pursu-
18 ant to section 4, any State that has adopted the
19 system described in the Compact is authorized,
20 notwithstanding any other provision of law, to
21 require all sellers not qualifying for the de mini-
22 mis exception to collect and remit sales and use
23 taxes on remote sales to purchasers located in
24 such State.

1 "(B) STATES THAT DO NOT ADOPT THE
2 SYSTEM MAY NOT REQUIRE COLLECTION.—Sub-
3 paragraph (A) does not extend to any State
4 that does not adopt the system described in the
5 Compact.
6 "(5) NO EFFECT ON NEXUS.—
7 "(A) IN GENERAL.—No obligation im-
8 posed by virtue of authority granted by para-
9 graph (3)(A) shall be considered in determining
10 whether a seller has a nexus with any State for
11 any other tax purpose. Nothing in this Act per-
12 mits or prohibits a State—
13 "(i) to license or regulate any person;
14 "(ii) to require any person to qualify
15 to transact intrastate business; or
16 "(iii) to subject any person to State
17 taxes not related to the sale of goods or
18 services.
19 "(b) STATE THAT DOES NOT ADOPT THE
20 SYSTEM.—A State that does not adopt the sys-
21 tem described in paragraph (4)(A) may not re-
22 quire a seller who does not have taxable nexus
23 with that State to collect or remit use tax on
24 remote sales in that State.

1 "(6) LIMITATION.—In general, nothing in this
2 Act shall be construed as subjecting sellers to fran-
3 chise taxes, income taxes, or licensing requirements
4 of a State or political subdivision thereof, nor shall
5 anything in this Act be construed as affecting the
6 application of such taxes or requirements or enlarg-
7 ing or reducing the authority of any State or polit-
8 ical subdivision to impose such taxes or require-
9 ments.
10 "(7) DEFINITIONS.—In this subsection:
11 "(A) STATE.—The term "State" means
12 any State of the United States of America and
13 includes the District of Columbia.
14 "(B) GOODS OR SERVICES.—The term
15 "goods or services" includes tangible and intan-
16 gible personal property and services.
17 "(C) REMOTE SALE.—The term "remote
18 sale" means a sale in interstate commerce of
19 goods or services attributed, under the rules es-
20 tablished pursuant to paragraph (2)(A)(iii), to
21 a particular taxing jurisdiction that could not,
22 except for the authority granted by this Act, re-
23 quire that the seller of such goods or services
24 collect and remit sales or use taxes on such
25 sale.

1 "(4) LOCUS OF REMOTE SALE.—The term
2 "particular taxing jurisdiction", when used with
3 respect to the location of a remote sale, means
4 a remote sale of goods or services attributed,
5 under the rules established pursuant to para-
6 graph (2)(A)(iii), to a particular taxing jurisdic-
7 tion.

Mr. BACHUS. Mr. Chairman, I make a motion that——

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read and open for amendment at any point, subject to the reservation of the point of order by the gentleman from Georgia. The gentleman from Alabama is recognized for 5 minutes.

Mr. BACHUS. Thank you. Mr. Chairman, right now as a practical matter States and local governments cannot collect sales taxes on e-commerce transactions. Now, these are taxes that the people of that State or that city or that county have voted to impose. They have imposed them on themselves. The taxes are to be paid by people of the States that imposed it, by the cities that imposed it, or by the counties that imposed it. But, as a practical matter, they cannot collect this tax.

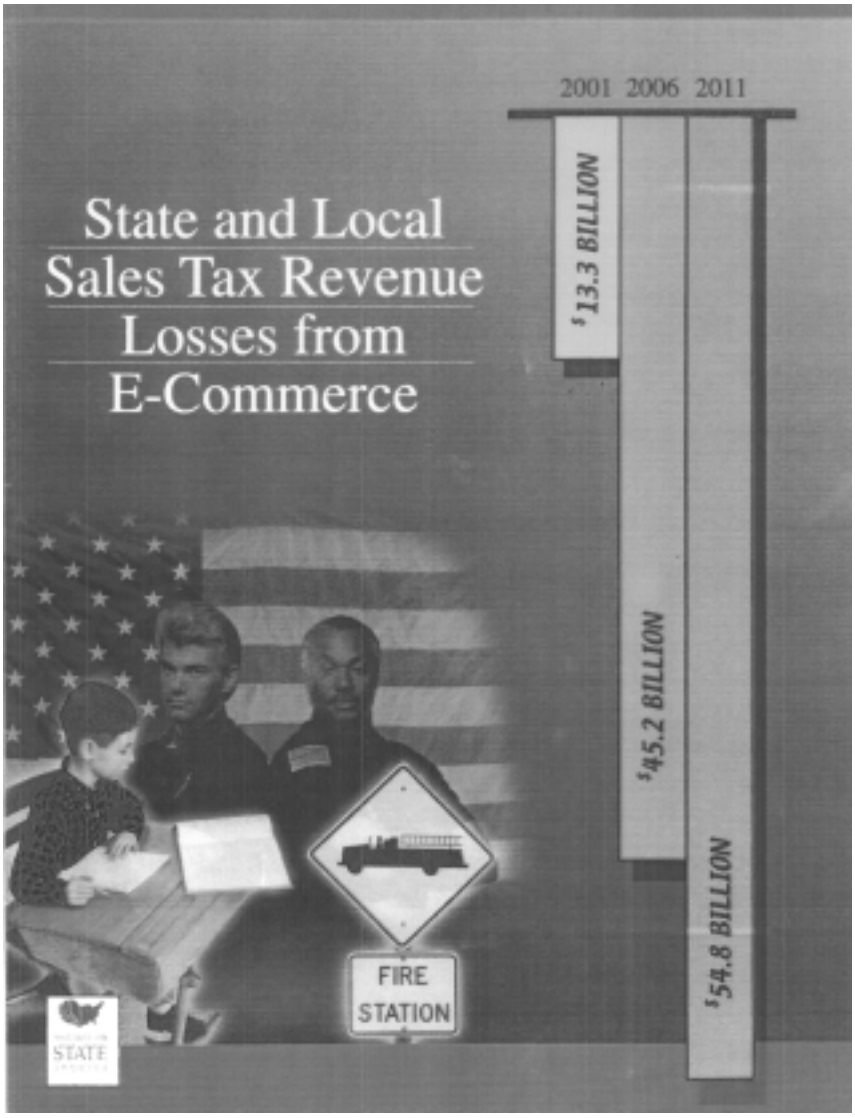
The current system is not fair because retailers who sell exclusively over the Internet have a substantial advantage over those who do business in brick-and-mortar stores. The result of the States, the counties and the localities being unable to collect these taxes is the loss of billions of dollars for the States.

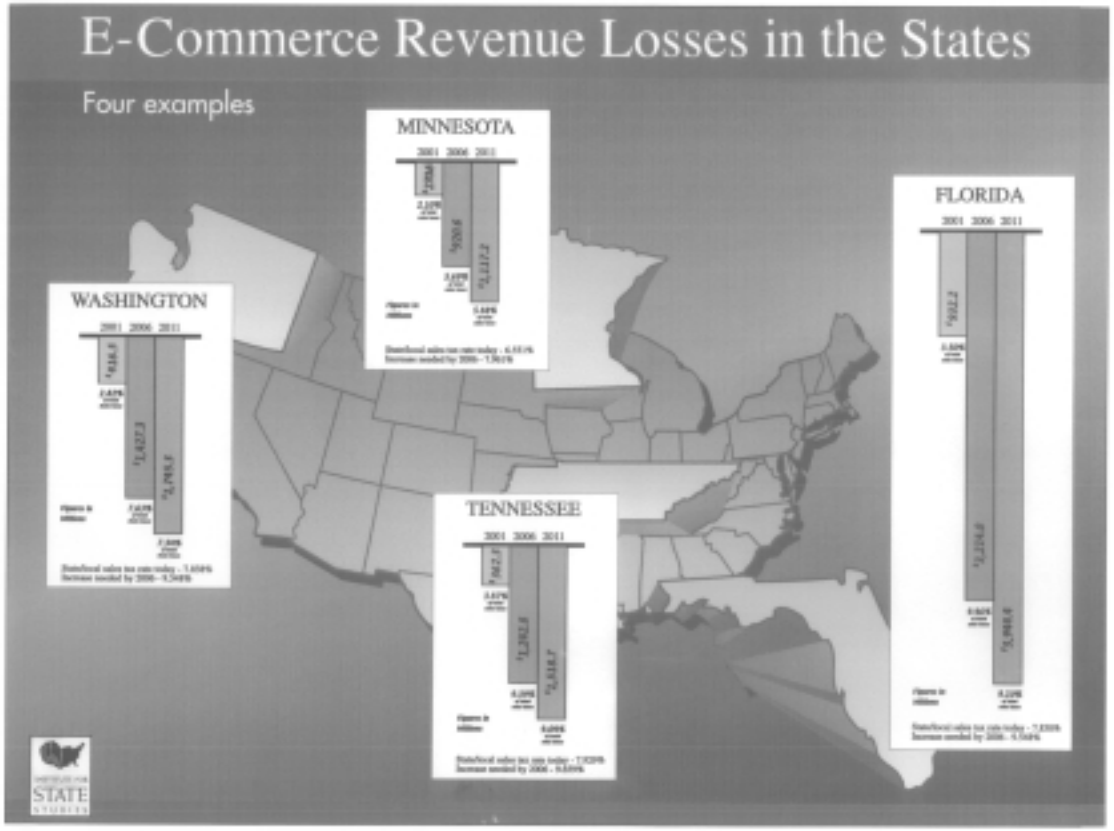
In fact, Mr. Chairman, what we are talking about here when we talk about the collection of sales tax or the inability to collect these taxes, we are talking about the very taxes that support law enforcement, fire protection, the public schools, and there is inability to collect those taxes. Last week, 1 week from today, 1 week ago there were new figures released, and they show that State and local governments will lose $13.3 billion in revenue this year.

Now, when I testified before this Committee about 4 months ago, I used a figure of $9 billion, and another Member of this Committee actually, in response to my testimony that State and local governments would lose $9 billion, said that he thought the figure would be substantially less than that. Well, now we have pretty much the final estimates, and not only was it not lower than $9 billion, it was higher. It was $13.3 billion. So instead of a smaller problem than we thought 4 months ago, and it was said that I was exaggerating the problem, in fact it was a bigger problem than I claimed it to be.

And what I am doing, I am passing out to the Members, because I think each and every Member ought to take a look at what this is costing your State, and we are passing those out right now. This was released on October the 2nd, what it cost your State, 2001.

[The material referred to follows:]

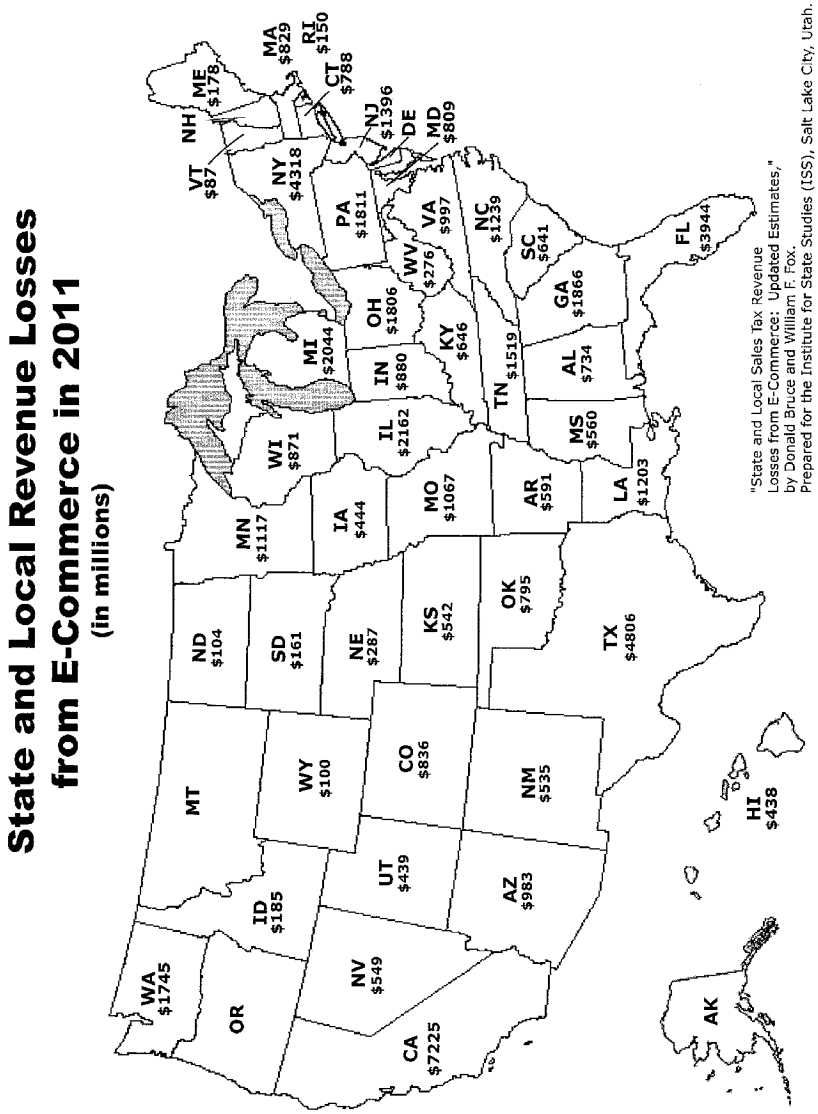



E-Commerce Revenue Losses in the States
Four examples
MINNESOTA
2001 2006 2011
WASHINGTON
2001 2006 2011
TENNESSEE
2001 2006 2011
FLORIDA
2001 2006 2011
STATE

Projected State and Local Revenue Losses From E-Commerce Activity

(Figures in millions)

State	2001	2006	2011
Alaska	$177.4	$604.3	$734.4
Arkansas	$143.8	$488.0	$590.9
Arizona	$231.1	$799.2	$982.5
California	$1,750.0	$5,952.0	$7,225.0
Colorado	$200.7	$686.4	$836.2
Connecticut	$190.5	$648.9	$788.2
District of Columbia	$36.7	$123.1	$147.7
Florida	$932.2	$3,214.0	$3,944.4
Georgia	$439.0	$1,517.8	$1,865.6
Hawaii	$105.1	$359.2	$438.3
Iowa	$111.8	$372.3	$443.7
Idaho	$44.4	$151.5	$184.6
Illinois	$532.9	$1,795.3	$2,161.7
Indiana	$215.5	$728.5	$879.8
Kansas	$134.4	$451.5	$542.2
Kentucky	$158.7	$535.5	$645.8
Louisiana	$302.6	$1,008.1	$1,202.5
Massachusetts	$200.6	$683.0	$828.6
Maryland	$194.4	$664.3	$809.2
Maine	$43.1	$146.4	$177.5
Michigan	$502.9	$1,696.2	$2,043.6
Minnesota	$270.6	$920.6	$1,117.2
Missouri	$261.6	$884.1	$1,066.7
Mississippi	$136.5	$462.8	$560.0
North Carolina	$293.4	$1,010.9	$1,239.4
North Dakota	$26.4	$87.6	$103.9
Nebraska	$70.9	$238.7	$287.3
New Jersey	$337.8	$1,150.0	$1,396.1
New Mexico	$129.1	$440.2	$535.4
Nevada	$126.3	$441.7	$549.0
New York	$1,052.9	$3,569.2	$4,318.4
Ohio	$446.7	$1,502.2	$1,805.9
Oklahoma	$202.8	$670.6	$794.5
Pennsylvania	$446.4	$1,503.4	$1,811.0
Rhode Island	$36.8	$124.5	$150.4
South Carolina	$153.4	$525.0	$640.5
South Dakota	$39.4	$133.4	$161.3
Tennessee	$362.3	$1,242.8	$1,518.7
Texas	$1,162.1	$3,957.0	$4,805.6
Utah	$104.5	$359.0	$439.2
Virginia	$238.5	$817.0	$997.2
Vermont	$21.0	$71.7	$87.2
Washington	$416.5	$1,427.3	$1,745.3
Wisconsin	$213.5	$721.5	$871.0
West Virginia	$70.1	$232.4	$276.2
Wyoming	$26.1	$85.2	$100.0
TOTAL	$13,293.1	$45,203.3	$54,849.5



Mr. BACHUS. Now, these were taxes that were not available for public schools. These were taxes that were not available for law enforcement, were not available for police protection, were not available for road projects, for bridges, were not available to your local cities and counties and State.

Is it any wonder, Mr. Chairman, that several of our States have gone into proration over the past few months? And if they are in proration now, think of, with the economic downturn, what we are going to be facing. Without some ability to States to collect a simplified tax, you are going to see teachers laid off, you are going to see governmental services cut.

What my amendment does is extends the current moratorium on Internet access taxes, but it establishes an approval mechanism for an interstate compact. Your State and mine will be able to collect sales taxes that are due when we in Congress exercise our exclusive constitutional right to approve an interstate compact between the States to adopt a simplified tax system.

The States need direction and encouragement in order to craft a uniform sales tax simplification system. The amendment includes a one-stop, multi-State registration system for sellers, uniform rules on what may be taxed, uniform tax forms and audit procedures, reasonable compensation for tax collection by sellers, and protections for consumer privacy.

I can go into specifics, but I think my 5 minutes is about out. I sense——

Chairman SENSENBRENNER. And the time of the gentleman has just expired.

Does the gentleman from Georgia persist in his point of order?

Mr. BARR. I do, based on germaneness, Mr. Chairman.

Mr. DELAHUNT. Mr. Chairman, on the point of order.

Chairman SENSENBRENNER. The gentleman from Massachusetts, on the point of order and not on the merits of the amendment.

Mr. DELAHUNT. Well, if that is the case, Mr. Chairman——

Mr. BACHUS. I am prepared to argue germaneness if I had some time.

Chairman SENSENBRENNER. The Chair controls the time on the point of order, but the Chair will also request that those who wish to speak on the point of order, speak on the point of order rather than on the bill and the amendment.

Mr. BACHUS. I would like to speak on the point of order.

Chairman SENSENBRENNER. The gentleman from Alabama is recognized to speak on the point of order, which is germaneness.

Mr. BACHUS. Mr. Chairman, Mr. Barr has ruled that my amendment is nongermane, and by ruling my amendment nongermane, what we are doing is, this Committee is going to unnecessarily delay the establishment of a uniform, streamlined sales tax system——

Chairman SENSENBRENNER. Would the gentleman please restrict his comments to why this is germane or not germane, rather than what the effect of a ruling one way or the other will be.

Mr. BACHUS. Well, yes. It, the amendment is crafted where if the compact—well, I think it is germane because Congress can simply——

Mr. DELAHUNT. Would the gentleman yield?

Mr. BACHUS [continuing]. By voting yes or no. That is one.

Chairman SENSENBRENNER. Does the gentleman from Massachusetts wish to speak to the point of order?

Mr. DELAHUNT. I do, Mr. Chairman. The amendment is germane because it was the purpose of the moratorium in the first place to provide sufficient time for Congress, the States, local governments, the business community, and all the stakeholders interested in this issue, to develop a simplified, efficient, fair and technology-neutral system for taxation of sales in goods and services, and the amendment does exactly that. It assures that similar sales transactions are treated in a similar fashion, without regard to the medium by

which the sales are transacted. It prohibits a two-tiered system of the business community here in this country.

Many States have used that time——

Chairman SENSENBRENNER. Would the gentleman kindly advise the Chair on whether this amendment is germane or not, not what the amendment does. I think that the gentleman from Alabama has very well explained what the amendment does.

Mr. DELAHUNT. Well, Mr. Chairman, I think again, for the reasons that I just articulated, and I am sure that were presented by my friend from Alabama, it is germane.

Chairman SENSENBRENNER. The Chair is prepared to rule.

The amendment offered by the gentleman from Alabama pertains to State simplification of remote sales taxes, and for other purposes. The underlying bill is drafted with specificity, and pertains to Internet access taxes as defined by section 1104(5) of the Internet Tax Freedom Act, and multiple and discriminatory taxes on electronic commerce, which is defined by section 1104(2)(a) of the ITFA.

Because the underlying proposition is fundamentally separate and distinct from the amendment offered by the gentleman from Alabama, the amendment fails the fundamental purpose and subject matter tests of the germaneness rule found in Clause 7 of rule XVI. Therefore, the point of order is sustained.

Now, let the Chair state that the way this bill is drafted, about the only germane amendments will relate to the dates that are contained in the bill—longer, shorter, and the same—and the Chair is placing folks on notice that amendments that relate to other subjects and introduce extraneous material, if a proper point of order is made, will probably be ruled out of order as well.

Mr. BACHUS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from——

Mr. FRANK. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman from Massachusetts is recognized for 5 minutes.

Mr. FRANK. Mr. Chairman, I was contemplating one other amendment, but it might be out of order on the grounds that it is not the appropriate procedure. I was going to move to strike the number, and instead of H.R. 1552, I was going to move that it be H.R. 22, in honor of the Catch 22 which many of us now confront. [Laughter.]

On the one hand, we are told that we have to extend the moratorium because there is not in place the system which would allow for the effective collection of State sales taxes. This is interesting. The gentleman from Georgia correctly pointed out that it is a misconception that sales taxes are not now to be collected in many circumstances by the Internet retailer.

But I would point out that the reason we have such a misconception is that most of the retailers don't collect it and don't remit it, and most of the people don't pay it. And so the problem is that while the theoretical obligation is there, the reality is that people are not paying those taxes in many instances.

Now, what we, many of us, want to do is instead of having a simple moratorium, we agree that there should not be sales taxes or other kinds of service taxes that single out the Internet, but we do believe that States ought to be able to get together and have an

effective collection mechanism. As long as legislation is not allowed to come up which does that, we have this dilemma.

Because when we say we don't want to simply extend the moratorium, we are told, "Well, you have to. Otherwise, the wrong kind of taxation will be imposed." But when we then say, "Okay, let's put legislation forward that will allow the correct taxation methods, the bills are drafted so they are not germane."

So I agree, the Chairman is correct, this bill is drafted so that no words will be germane. Only numbers will be germane: one, six, a half. I understand that. But the effect of drafting the bill in that restrictive a fashion and bringing up only this bill, is to foreclose the opportunity many of us would like to have had to have debated the substance, to have brought forward the kind of thoughtful approach that the gentleman from Alabama had brought forward.

And that is why, as I said, we have this kind of a Catch 22. And I believe when people said, "Oh, we must extend this moratorium," in fact it is only when we confront people with the potential that this moratorium will end at some point, only then will we get the cooperation we need so that an effective and fair system of sales tax collection, administered by the States and requested by the Governors, can be put in place.

Chairman SENSENBRENNER. Are there further germane amendments?

Mr. BACHUS. Mr. Chairman, I have a germane amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. BARR. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. And the gentleman from Georgia reserves a point of order.

Mr. BACHUS. Thank you. Mr. Chairman, it is Amendment 106, and I ask that it be passed out.

Chairman SENSENBRENNER. The clerk will report amendment 106.

The CLERK. Amendment to H.R. 1552 offered by Mr. Bachus, Mr. Watt, and Mr. Delahunt.

[The amendment follows:]

Amendment to H.R. 1552

Offered by Mr. Bachus
Mr. Watt and Mr. Delahunt

Beginning on page 1, strike line 6 and all that follows through line 19 on page 2, and insert the following:

1 **SEC. 2. EXTENSION OF INTERNET TAX FREEDOM ACT MOR-**
2 **ATORIUM.**
3 Section 1101(a) of the Internet Tax Freedom Act (47
4 U.S.C. 151 note) is amended by striking "3 years after
5 the date of the enactment of this Act" and inserting "on
6 June 30, 2002".

Mr. BACHUS. Mr. Chairman, I move that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from Alabama is recognized for 5 minutes, subject to the point of order reserved.

Mr. BACHUS. Mr. Chairman, because this Committee either will not or cannot address—and I say will not or is not willing to address the sales tax issue in conjunction with an extension of the moratorium, and in fact the underlying legislation, as Mr. Frank said, was drafted so that we could not consider a comprehensive approach, I am offering an amendment which simply shortens the moratorium to 8 months. Under this amendment, the Internet Tax Freedom Act would be extended until June 30, 2001.

This amendment is in line with a Senate bill which has bipartisan support, which was introduced by Senators Dorgan, Breaux, and Kay Bailey Hutchinson. They support this bill because they believe the Senate will be able to establish the guidelines for a uniform, streamlined sales tax system within that timetable. Once those guidelines are complete, we can couple them with the moratorium and create a truly level playing field.

Mr. Chairman, I would say in connection with this, the difference between my extension and the one proposed in this bill is also that I discovered, by reading their legislation, that the original 1998 bill placed a moratorium on both types of taxes and grandfathered those 11 States that already have existing taxes in place.

This new legislation as it has come before us today, not as it came before us 4 months ago, places a 5-year moratorium on mul-

tiple and discriminatory tax and also a permanent ban on access taxes, but it ends the grandfathering of States with access taxes. So a vote on this would immediate end existing taxes in the following States: Connecticut, Hawaii, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, Washington, and Wisconsin.

So if we extend this moratorium as it is now drafted, if we don't make an amendment to it, you will end some of the collection of taxes in those 11 States, reducing State tax revenue in those States. You are voting to do that. These were taxes that the people of those States overwhelmingly voted in their legislatures and are presently collecting them. Something I don't think we need to do.

And Mr. Barr said one thing in arguing for his extension of the moratorium. He said the States should do this on their own and not rely on us. Well, these States have done that. They have passed these taxes. They have imposed them on their own people. And what he is asking you to do is, in 11 cases, to repeal through an act of Congress those taxes, and in the other 39 States, make it impossible for those States to collect existing sales taxes.

And what he is now calling on and saying is a matter for the States is in direct contradiction to what our own Supreme Court said in the Quill case when they said, on pages 18 and 19, it is an issue that is one that Congress may be better qualified to resolve and one that it has the ultimate power to resolve and must resolve. So when he says the States must resolve it, the Supreme Court has said it is Congress which is not only better qualified to resolve it but the one which has the ultimate power to resolve it. And he as well as I, and I hope most every Member of this Committee, knows that the States cannot do this without congressional approval.

So with that, I offer my amendment to square it with the Senate, because I think they have chosen a wise course.

Chairman SENSENBRENNER. Does the gentleman from Georgia persist in his point of order?

Mr. DELAHUNT. Mr. Chairman?

Mr. BARR. I do not, but I move to strike the last word, and I will——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes. The reservation is withdrawn.

Mr. BARR. Thank you. Mr. Chairman, this is, as usual at some point in the consideration of every bill, we have an amendment that is proposed to be a moderate modification of a bill but actually guts a bill, and that is what this amendment would do. It would extend the Internet access tax until June 30, 2002, which according to most calculations is only a number of months away.

I would remind all of our colleagues that, contrary to the implication of the proponent of this amendment, the bill before us today mirrors the very extensive, very deliberative work over many months of a 19-member Advisory Commission on Electronic Commerce. And while we have different groups that line up on different sides of this bill, the fact of the matter is that our bill goes no further than the recommendations of that advisory commission which was comprised of very learned individuals from all over the country, from various organizations, including as its chairman the Governor of the Commonwealth of Virginia. So this bill hardly is an

effort to sneak under the radar screen or go around State Governors.

It is a very simple bill. It simply protects Internet commerce against taxation. Not sales tax, but access and multiple or discriminatory taxes. That is all it does. And to say that the access tax moratorium should be extended only a number of months does absolutely nothing to solve the problem.

So if anybody is truly interested in solving the problem, whether it is by way of simplification—and I would remind all Members that there is nothing in this bill or in the ruling on germaneness that prevents any Member from introducing a piece of legislation, as some already have, to address the simplification issue, and have the will of this body and of the full House work on that legislation. This legislation today and the Chairman's ruling earlier does nothing to prohibit that.

This is a very limited piece of legislation. But to adopt this amendment, which would free up the Internet for access taxation within a few months from now, I don't think is the direction that a majority of the people of this country and their representatives really want to be going. And I yield back.

Chairman SENSENBRENNER. The Chair will announce that there will be a closed briefing for Members on the House floor today at 4 p.m. with the following Administration officials: The Honorable Peter Rodman, Assistant Secretary of Defense for International Security Affairs; Major General Pete Ozman, Joint Chiefs Operation Directive; Colonel Jeff Burton, Joint Chiefs Intelligence Directive. This is a classified briefing, I guess pursuant to the presidential memo, and the Chair will announce that we intend to stay in session here until we finish this bill.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts, Mr. Delahunt, seek recognition?

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I also ask that the exhibits and the charts that I have given to the clerk be distributed, if they haven't already.

I would encourage my colleagues to join with the gentleman from Alabama in support of this amendment, and I suspect that many of us would support a longer moratorium if it were coupled with simplification legislation along the lines of the amendment previously offered by the gentleman, providing guidelines to the States. But without such legislation, I believe a long-term extension will be counterproductive.

When we enacted the moratorium, it was with the express understanding that the purpose was to give Congress and the States additional time to develop a simplified, efficient, fair system for taxation of sales of goods and services, in light of the Quill case. Now Congress has allowed the moratorium to run out without providing meaningful guidance to the States, and we are being asked to provide still more time. Time for whom? One keeps hearing that it is the States that need more time. They are moving expeditiously.

But it is not just the States, it is Congress itself. It is time for Congress to exercise our authority to provide guidance to the

States as to how they should proceed in this very important matter to the States. Our failure to do so is taking a serious toll on businesses and essential public services across the country. The magnitude of the problem is illustrated by the charts to the left of the dais and the ones that we have made copies of and have distributed them through the clerk.

The first chart shows that this year State and local governments are projected to lose $13.3 billion in anticipated sales tax revenues on Internet sales. Unless there is a system that enables State and local governments to collect taxes on their sales to in-State residents, these annual losses from on-line sales will grow to $45.2 billion by the year 2006 and $54.8 billion by 2011, with total losses coming to $440 billion over the 10-year period.

Now, the second chart shows what this means to some individual States. Tennessee, for example, will lose $362 million this year, and by 2011 its losses will grow to $1.5 billion. Florida, which relies on the sales tax for some 57 percent of its annual revenues, will lose $932 million this year, with its losses quadrupling to $3.9 billion just 10 years from now. I invite my colleagues to examine the charts to see how your State will fare.

Now, what do these kind of losses mean in real terms? It means that the States will face the difficult choice of raising other taxes, probably the property tax, or curtailing basic services such as police, fire, and education. Last week it was reported that Florida is already facing a budget shortfall of $3 billion, and Governor Bush has asked the legislature to postpone a scheduled tax cut of $120 million.

That is why a 5-year extension without simplification is opposed by every leading State and local government organization and by 44 State Governors, Republicans and Democrats alike, including Governor Levitt of Utah, Sundquist of Tennessee, Thompson of Wisconsin, Ryan of Illinois, Engler of Michigan, Taft of Ohio, and our new Chief of Homeland Security, former Governor Ridge of Pennsylvania.

No one wants to see the moratorium run out. The Bachus amendment would assure that this doesn't happen. But if we pass a long-term extension of the moratorium now, we will be removing the key incentive for Congress to address the real problem here. And when put into the context of what is happening with our economy that was already slowing down, the question of the inability of the States to collect from out-of-State sellers for purchases made by in-State residents will compound our problem, and the States will face a real fiscal, economic crisis.

I yield back my time.

Mr. GOODLATTE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Goodlatte, seek recognition?

Mr. GOODLATTE. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, the gentleman's amendment is designed for one purpose and one purpose only, and that is to force the Committee to do what the Chair has correctly already ruled to be nongermane. And 8 months from now when we are back here again, and offering another extension

of this moratorium, the gentleman's amendment will again be nongermane.

The reason is that these are two separate issues, and no matter how much the gentleman or the gentleman from Massachusetts may say about it, there is a lot of work the States need to do before it is appropriate for the Congress to take up this issue, and that work will not be accomplished in 8 months.

The fact of the matter is that the States, about 45 of which have sales taxes, are attempting to collect taxes on individuals that are outside of the State's jurisdiction. That creates enormous problems for anybody doing business in multiple jurisdictions, particularly small businesses.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. GOODLATTE. I would be happy to yield to the Chairman.

Chairman SENSENBRENNER. I think what is missing from this debate is, practically every State that has a sales tax also has a use tax, and the use tax falls on the consumer of the goods who buys goods from out-of-State and brings them into their own State of residence. Very few States aggressively collect use taxes, even though they are on the books. It is probably the most ignored tax on the books.

We would not be debating this issue here today if the States collected the use taxes that they already have levied, because that obligation does belong on the consumer. So I guess my question as we are debating this is, why should we bail lax State use tax enforcement out by getting rid of the moratorium on Internet taxes? And I answered that question no, and that is why I support the bill that was introduced by Mr. Cox of California.

Mr. GOODLATTE. I thank the Chair. I agree 100 percent with the Chairman. That point is exactly correct.

Even taking it from the perspective, though, of the gentleman from Alabama or the gentleman from Massachusetts, there are 4,000 different taxing jurisdictions in this country. We are not just talking about 45 State sales taxes because most States allow individual jurisdictions within the State to impose separate, additional, supplemental taxes.

In addition, every one of those States and every one of those local jurisdictions have a different definition of what is subject to that tax. In some States, a bag of potato chips is not taxed because it is considered a meal. In other States they don't make an exemption for the meal. In other States, the tax is applied because it is considered to be a snack. And in other States it is depending upon the size of the bag of potato chips.

Now, if you have a grocery store in one State, you can figure all of that out. But if you are attempting to do business by catalog—and let's remember, this is not just about the Internet, it involves all manner of catalog sales, and the issue is not new, it is not caused by the Internet, it has been in existence for dozens and dozens of years based upon catalog sales—if you are a small business person or even a large business attempting to do business on the Internet, to keep track of 4,000 different jurisdictions and hundreds if not thousands of different definitions of what is subject to a tax requires simplification.

Now, the States have spent a lot of time talking about this, but the States have not adopted a uniform resolution, a uniform State

law saying, "This is how we will collect this tax, this is the definition of what will be subject to the tax, and this is the uniform law, the percentage rate for all taxes collected, no matter where they are in the country."

Mr. WATT. Would the gentleman yield?

Mr. GOODLATTE. So to say that we are going to do this for 8 months and then expect that that will have been accomplished, it is not going to happen.

Secondly, every single State is looking to the Congress to pass the political buck here, because this is in effect a tax increase. And I know those who favor it are saying this is simply tax fairness because it applies in one area and not another, but there are a lot of other considerations that are not true for transactions that take place in a store relative to transactions that take place on-line or by catalog, like shipping and handling charges and so on.

Finally, when you talk about that disparity, what you are overlooking is the very basic, simple point that if you are going to impose these taxes on the Internet, you are going to harm the growth of an economy, an industry, that is already struggling. Why we would want to do that, I don't know. But we are going to get the blame because when somebody goes on-line to Amazon.com or some other location on the Internet and suddenly they have to pay a sales tax on a book that they bought, where the last time they bought a book, they didn't have to, the fact of the matter is, the difference will be that the Amazon——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. GOODLATTE. I would ask the Chairman for an additional 30 seconds.

Chairman SENSENBRENNER. Without objection, the gentleman is recognized for an additional 30 seconds.

Mr. GOODLATTE. The difference will be that Amazon.com and anybody else will say, "Well, the Congress made us do it." Now, if the Congress is going to eventually change these nexus rules that are imposed not by any statute of the Congress but by the Supreme Court, the States ought to first go do all of those things and then come and ask us to do it, and it is not going to happen in 8 months. So I would strongly oppose this amendment and urge the adoption of the bill.

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina, who has been very patient, seek recognition?

Mr. WATT. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I actually agree with Mr. Goodlatte that this can't be done, the simplification, the coming up with a system can't be done in 8 months. But I am going to vote for this amendment, and the reason I am going to vote for it is because every effort that we have made in the Subcommittee and now in the full Committee to put in this bill incentives for the States to simplify and come up with a system for doing this that can then be submitted to Congress for us to at on, not passing the buck, not imposing on us an obligation to act on it, but with more than half of the States and local governments having bought into the system, every effort that we have made to put that in front of this body and the Subcommittee has

been beaten back by germaneness, by "We can't do this, we can't do that." And the only way we are ever going to get all of this dealt with is to keep the pressure on everybody to deal with it.

Now, I absolutely agree with Mr. Goodlatte that the States are not going to be able to complete this process in an 8-month time period, but we have talked about 2 years, we have talked about 5 years, coupled with some language that would keep the pressure on States to work on these issues. And when you start talking about trying to put language in the bill that would keep the pressure on the States to streamline the system and work on these issues, then all of a sudden you run into a roadblock.

So don't come to me, telling me that the problem is lack of consistency and lack of simplification and lack of having a system out of one side of your mouth, and then telling me out of the other side of your mouth, "We are not going to put anything in this bill that incentivizes coming up with that system." I have made every concession that I could try to make to every side in this, to just get some language that encourages the States to do it, and people are, they are off on this 5-year tangent, 10-year tangent, 2-year tangent, 8-year tangent.

Then we have this rhetoric about, "Well, we can't do this because the States haven't come up with a system." Well, give them a chance. And if we give them a chance and give them a reasonable time frame to do it, then that is what this—both of those things should be in this bill. And that is exactly what I have been saying from day one.

So we can engage in all this rhetorical stuff, we can confront each other on whether the magic number is 8 months or 1 year or 2 years or 5 years, but the reason we keep having this debate is because you won't allow the real issue to be inserted in the bill that encourages and drives the States to do this.

Now, I think the reasonable thing to do, and I am going to conclude with this, is to put a 2-year window on this thing and put some language in this bill that requires the States, at least incentivizes the States to use that 2 years to get to a uniform, well-thought-out, simplified system so that local government's don't get cheated, State governments don't get cheated, and the Internet does not get dealt with unfairly.

Mr. DELAHUNT. Will the gentleman yield?

Mr. WATT. And until we can come together in this Committee around that notion——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. COBLE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina, Mr. Coble, seek recognition.

Mr. COBLE. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. Mr. Chairman, I too, not unlike my friend from North Carolina, agree with the gentleman from Virginia when he says that the 8-month time frame is probably too restrictive. I disagree, however, with my friend from Virginia when he declares that this proposal amounts to a tax increase. We are in disagreement there.

Now, Mr. Bachus, when we involve ourselves with hypothetical questions, sometimes hypothetical questions can be troublesome. Nonetheless, I want to put a hypothetical question to you if you would be willing to answer it.

In the event, I say to the gentleman from Alabama, that your present proposal of 8 months fails to survive, do you anticipate that there may be a forthcoming amendment that would strike 3 years and insert therefor a period of 2 years?

Mr. BACHUS. I intend to offer such an amendment, but I am hopeful that my amendment for 8 months will prevail.

Mr. COBLE. Reclaiming my time, I realize that, but I wanted to just sort of get the—I didn't mean for you to tip your mitt or the cards in your hand, but I wanted to know where you are thinking now. And I think you asked of me to yield some time to you, Mr. Bachus, which I will do.

Mr. BACHUS. Yes, thank you. You know, just by listening to the various speakers that have opposed this amendment, you have seen some differences of opinion. For instance, Mr. Chairman, you state that the use tax is not a realistic way to collect taxes.

Chairman SENSENBRENNER. No, that is not what I said.

That the States ought to collect their use taxes rather than having us do their job for them.

Mr. BACHUS. That they should, but then Mr. Goodlatte in his statement basically acknowledged that people don't pay it now, nor do they want to pay it, and if they have to start paying it, they are going to be mad at the Congress for making them pay it. Because he said when they buy something from AOL, which happens to be a Virginia company and they are buying them by the hundreds of millions, that when they have to pay the use tax, they are going to be mad. That is an acknowledgement by him that they are not paying them.

And I would agree that it is fairly unenforceable because in fact the States don't know who is purchasing what over the Internet. They don't even have the information of who owes the tax. They can't get that information. It requires someone who the government has no knowledge of what they owe in taxes or what they have earned or what they purchased, to voluntarily submit that tax.

Now, can you imagine all of a sudden if the government had no way of keeping up with anyone's income, but they just asked for the American people to voluntarily send in income taxes? I mean, that is basically what we are saying. How many, what do you think would be the chances, if the government had no way of knowing what you made, no way of finding out what you made, but voluntarily asked you to send in 20 percent of your income? Can you imagine what the compliance would be?

But there are Members of this Committee that are actually saying that is a problem for the States, the fact that they can't do that. They are saying the States ought to be able to do something about it, knowing very well if the Federal taxes were set up that way, they would never be collected either.

One thing that Mr. Barr did not say in response, he didn't dispute what I said, that basically his proposal is going to end existing taxes in 11 States. He didn't deny that. I named those States, and those States, every one of those States, when we end those taxes,

that is going to be a loss of revenue from those taxes, and every one of those State legislatures is going to face a difficult choice.

They are going to, each of those 11 States will have to decide to do one of two things. They will either have to raise sales, income, or property tax rates to compensate for that loss, or they will have to cut services for education or public safety, or they will have to do a combination of both. Those 11 States will have to vote to raise taxes and cut services. And basically, again, he says that is something he is prepared to let them do. I am not prepared to do that.

The other thing I would say is that the gentleman from Virginia, although he spoke in opposition to my amendment, he did not dispute what I said, and that is that when I was here 4 months ago and said the States could lose up to $4 billion, that he said he felt that was an exaggeration, and in fact it was $13 billion.

Chairman SENSENBRENNER. The time of the gentleman has expired. May the Chair suggest that we vote on the 8-month amendment of Mr. Bachus, and if that gets voted down, the Chair will recognize Mr. Bachus for his 2-year amendment.

The question is on the amendment offered by the gentleman from Alabama, Mr. Bachus. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it, and——

Mr. BACHUS. Mr. Chairman, I ask for a roll call.

Chairman SENSENBRENNER. A roll call is requested and will be ordered. Those in favor of the Bachus amendment will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no.

Mr. Gekas?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no.

Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Mr. Bryant?

Mr. BRYANT. Aye.

The CLERK. Mr. Bryant, aye.

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no.

Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye.
Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.
Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye.
Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no.
Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.
Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.

The CLERK. Ms. Waters, aye.
Mr. Meehan?
Mr. MEEHAN. No.
The CLERK. Mr. Meehan, no.
Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye.
Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members who wish to cast or change their votes? The gentleman from Pennsylvania.
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no.
Chairman SENSENBRENNER. Anybody else wish to case or change their vote?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are 12 ayes and 19 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Mr. BACHUS. Mr. Chairman?
Chairman SENSENBRENNER. For what purpose does the gentleman from Alabama seek recognition?
Mr. BACHUS. Mr. Chairman, I have an amendment, Amendment No. 107.
Chairman SENSENBRENNER. The Clerk will report the amendment.
The CLERK. Amendment to H.R. 1552 offered by Mr. Bachus, Mr. Watt, and Mr. Delahunt.
[The amendment follows:]

Amendment to H.R. 1552

O ffered by Mr. Bachus,

Mr. Watt and Mr. Delahunt

Beginning on page 1, strike line 6 and all that follows through line 19 on page 2, and insert the following:

1 **SEC. 2. EXTENSION OF INTERNET TAX FREEDOM ACT MOR-**
2 **ATORIUM.**
3 Section 1101(a) of the Internet Tax Freedom Act (47
4 U.S.C. 151 note) is amended by striking "3 years after
5 the date of the enactment of this Act" and inserting "on
6 November 1, 2003".

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from Alabama will be recognized for a quick 5 minutes.

Mr. BACHUS. Thank you, Mr. Chairman. First I would like to point out, and I should have pointed out this in the argument on the last one although it may not have changed any votes, but Mr. Barr spoke of the findings of the bipartisan Committee, and what he was referring to is the Internet Advisory Commission. But I would correct Mr. Barr, and I think he would agree with me, in fact they made no findings. They were not able to statutorily make any findings because they could not get the agreed number of people.

Mr. BARR. Does the gentleman yield?

Mr. BACHUS. Well, no. I will just simply say that, for the record, I don't know what you are going to say, but I will tell you for the record that it——

Mr. BARR. I would correct the gentleman.

Mr. BACHUS [continuing]. Required a two-thirds vote, and the findings that you said, they did not make findings because they could not get the requisite number to do that, so those were not findings. They were a majority report. They were a report of 10 of the 19.

What this amendment does is, it extends the Internet Tax Freedom Act by a little over 2 years to November the 1st, 2003. I am offering this amendment because 5 years is simply too long to let the sales tax problem linger. I am going to again refer you to the year 2006, and show you what it is going to cost your State if we

continue to not address this problem which the Supreme Court asked us to address several years ago.

By passing this amendment as it now stands, we will be basically sending a message to the States, "Don't bother. We don't care about your plight." Mr. Chairman, the States have worked too hard, they have made too much progress for us to send them home now. Already, 20 States have passed enabling legislation allowing them to enter into compact negotiations. They have made tremendous progress. Let's reward, not deter, that progress.

When we passed the Internet Tax Freedom Act of 1998, we were only willing to institute a 3-year moratorium. We said that was long enough. Why would we now move to extend that 5 years more for a total of 8 years, when the States and the Senate are going close to a resolution of the matter? Make no mistake about it a 5-year moratorium would merely push off resolution of this issue. I hope we will, at the very least, honor the democracy of those States today, the governments of those States which legally passed those taxes, and pass this 2-year extension.

With that, Mr. Chairman, I yield back this short time.

Mr. FRANK. Mr. Chairman?

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts, Mr. Frank, seek recognition?

Mr. FRANK. Mr. Chairman, I move to strike the requisite number of words——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK [continuing]. And I strongly support the amendment of the gentleman from Alabama. We should be clear here. We all are internally. Let's be as clear externally.

Here is the issue: Do we favor cooperating with the States and allowing them effectively to collect existing sales taxes on Internet purchases, or do we want to maintain the status quo in which the collection of those legally owed taxes is a practical impossibility?

The gentleman from Virginia was quite right. If we were in fact to collaborate in a system which allows taxes that are already due and legally levied to be in fact collected, some people would be angry because they would decide that we had imposed on them a new tax. No clearer argument could be given as to the noncollection.

The gentleman from Wisconsin correctly pointed out that the States do have use taxes, and of course in this situation where we are talking not about large pieces of machinery, not about very unique, very obvious purchases, but about millions of retail purchases, we hope. I mean, one of the things I suppose those of us who have been against those indefinite moratorium ought to be glad about is that we didn't pass it 2 years ago, because we would have been blamed for the downturn in Internet commerce.

But, given the volume of the commerce, the number and type of items, a use tax would clearly be wholly impractical. An effort to enforce a use tax on widespread retail purchases of this sort would probably be oppressive, and would certainly eat up in collection costs much of what you would get. It would become a very inefficient tax.

That is why the most efficient way to collect these kinds of transaction taxes is at point of sale.

Now we are told that, oh, the poor Internet companies, it is so complicated, it is so complicated to try and deal with these different jurisdictions. Now, we agree that there should be some simplification, but the notion that the avatars of the new economy, the people who have brought to use technological advance previously unthought of in human history, can't keep track of these sales taxes, belies their own arguments.

First they are the technological geniuses of the year, are transforming our lives by the magical qualities of the Internet. Next thing you know, they are the poor corner grocer trying to add these things up with a black pencil on a brown paper bag. "Oh, gee, that's Mississippi. That's, what is it, California. Where is California? Is that a State? I'm not sure." I mean, how did the brightest people in the world with the best equipment in the world suddenly become so retarded that they can't collect these taxes? Of course they could.

It's not automatic and easy. That's why we—what we are saying is we want to cooperate with the people in the State governments. And what we are saying is—and let's also be clear, the strategy on the other side is very simple. This is not a moratorium. It's a more and more and more-atorium, because it will never die. This is eternal life, this moratorium. It will be 5 years. Then it will be 8 years. Then it will be 13 years, throw in a leap year. It'll never end. And the Internet people are very happy because, as the gentleman from Virginia honestly acknowledged, nobody's collecting those taxes now and nobody practically can.

States have got very important problems. We now have situations right now when the States, through no fault of their own, find theirselves with increased security needs and decreased revenues. If in fact the Internet proceeds the way people hope it will, the competition between retail at Internet and retail in situ in the States will increase and the revenue drain will increase. No one is saying it is easy, but to say that the technical problem of collecting sales taxes if everybody cooperates is somehow beyond the capacity of the greatest work of the human mind, this Internet, simply isn't plausible.

So I just would close, Mr. Chairman, by saying it's very clear what we're talking about. On the one hand are those who think that this country is best served and the economy is best served—I think we ought to be explicit—they think it's best if in fact Internet retail sales are tax free, because that's what they are now in all practical purpose, and that's what people hope they should be, and they say, "Hey, you're better off that way, and why should the Internet people pay sales tax? They don't use the roads. They don't have fires. So they shouldn't really have to contribute to the States."

On the other hand are those of us who say that the States do very important work and that we ought to be cooperative with them in devising a system that will allow taxes to be collected on retail sales over the Internet. The gentleman from Alabama's amendment is now the best chance we have to make that matter point, so I hope it's agreed to.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from—gentlewoman from California, Ms. Lofgren, seek recognition?

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I oppose the amendment and have a couple of observations that I hope will be useful. First, it is important for us to eliminate tax on access to the Internet as well as taxes that burden Internet sales more than brick and mortar sales, discriminatory taxes, and that's what the underlying bill does. Every society that has taxed Internet access has helped to damp down the use of the Internet to the detriment of economic growth and that is not a place where we should be.

I would not also that whatever you believe about various projections of financial loss, they are not related to a couple of grandfathered jurisdictions who had taxes in place on access prior to the imposition of the moratorium. So I think it is important that we clear the decks, prevent access taxes and discriminatory taxes.

I've heard a lot about the need for simplification here today and to give incentives to the States and the like, and I'm not sure I agree with some of the comments that have been made because I think the States are highly incentivized to agree with each other or to simplify if that's what this Committee wants, because the real problem for sales tax is nexus, and the only entity that can solve the nexus problem for sales tax is the Federal Government. Now, we could do that without simplifying the sales tax, and as I think Mr. Frank said, clearly, there are software solutions that would allow for a multiplicity of tax rates, and that's not a hard thing to do, or we could try and simplify, but simplification has proven to be a goal that has not been achieved for a number of decades. This is not that different than catalog sales, which we've never managed to completely solve, and so whether or not we ask the States to come to agreement on whether food and medicine is taxed, whether services are taxes, I mean, people are in love with the way they devise their systems. How we deal with the multiplicity of local jurisdictions, for example, my own county that has voter approved sales taxes that have been bonded against for the next three decades, these are difficult questions. I do know that we don't have to postpone the elimination of the imposition of access tax while those more difficult problems get resolved.

So I would hope that we would reject this, note that whether we look for 5 years or 3 years, whatever solution is found, it can be brought back before this Congress and we can act. And I come from Silicon Valley. I hear from high-tech companies all the time, and very few of them suggest that sales on the Internet ought to be permanently tax free. In fact, most of the high-tech companies that I know in California are very concerned that States be adequately funded. They're very concerned that our educational systems are not up to snuff, that there needs to be more resources in education. So I don't—I think it's incorrect to believe that the high-tech sector is hostile on some kind of permanent basis about States getting sales tax.

I think the comment made that the use tax is basically uncollectible is correct, and so the answer really is, how are we

going to help States establish nexus so that the sales tax can be the vehicle for collecting whether or not we're going to force uniformity as a condition for our establishing that nexus, which is not legally or practically a requirement, but I know that we cannot probably get all of that done in the next 2 years, and that we should instead at least take the sensible measure to preclude access taxes permanently and the discriminatory taxes.

And I see Mr. Berman would like me to yield whatever few minutes I have, and I'd happily yield to Mr. Berman.

Chairman SENSENBRENNER. 5 second, 45 seconds.

Mr. BERMAN. I think I'll take my own time.

Ms. LOFGREN. All right And I yield back. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Georgia, Mr. Barr, seek recognition?

Mr. BARR. To strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. BARR. Mr. Chairman, I would urge all Members who are opposed to taxation to oppose this amendment. This is a pro-tax amendment. Only Washington, I suppose, Mr. Chairman, could somebody with a straight face look at a bill that extends a moratorium on taxation and say, "Aha, this is a tax bill that will increase taxes." But we're sort of used to that in Washington. Those arguments are made. This is a bill to simply, by statute, continue work that this Congress has already begun, to continue work that the Advisory Commission on Electronic Commerce has continued, and as the gentleman from Alabama correctly made my point for me, a majority of members of that commission have voted in favor of precisely what this legislation does, a majority of those members.

For those who argue, somehow I think the argument was made in here that if we pass this bill today it will force States to increase taxes. This is absolute nonsense, Mr. Chairman, and the history since 1998, when the initial moratorium was put into effect, of the States who have considered the matter of Internet taxation, they too are moving in the direction that this legislation seeks us to move, and that is to lower and not continue taxes on the Internet. Texas, Iowa, Washington, North Dakota, South Carolina, Connecticut, Colorado, Montana, Arizona, the District of Columbia, all 9 States since 1998, when the moratorium went into effect, have chosen to back away from Internet taxes. And there's a simple reason for that, they don't want to hamper the growth of the Internet and Internet commerce.

Now, if a majority of Members of this Congress want to do that, fine, but that is a vote, that is a pro-tax increase vote. Make no mistake about it. If you vote against this amendment and vote for the underlying legislation, that is a vote against additional taxation. It's that simple. And to, again, raise the specious argument that there is something in this legislation or any other legislation that prevents the States tomorrow, if they want to, from getting together, getting their acts together, and imposing taxes as they see fit and implementing mechanisms so that they can correctly identify and assess and collect those taxes. There is nothing in this legislation that would prevent that, nor is there anything in this legislation that would prevent the States from proposing to the Con-

gress a specific piece of legislation that would provide a compact. But there is a certain amount of important requisite work that the States themselves have to do, and that is where we would like to see this go. Let the States get their act together, if they so choose to do so. Let us not force something on them. We are simply saying that for the time being the moratorium on discriminatory and access taxes ought to continue without this artificially short deadline that the gentleman from Alabama is pursuing.

So I would urge all Members to go with the original legislation here and simply provide a reasonable period of time within which this matter, if it is going to be considered by the States, can be done, but there is nothing in this legislation that prevents them from doing that tomorrow if they so choose. I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Nadler, seek recognition?

Mr. NADLER. Strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, I think that we have to be blunt and direct when we're considering this. The basic underlying question—there are two separate questions here, which unfortunately get intermixed. One: should there be discriminatory taxes with respect to the Internet and direct access taxes? And I think most of us agree there should not be. Two, separate question: should the States be able to levy use taxes not only on brick and mortar transactions but also on Internet transactions? And I think many of us—I hope it's most—agree that the answer should be yes, because if the answer is no then two things happen. One, the Internet would not be on a level playing field. It would have a tax advantage over bricks and mortar competition, and I am all for the Internet expanding, indeed commerce expanding, but it should expand with exactly the same parameters because of an economic advantage, not a tax advantage over brick and mortar competitors, and if it can't expand, then it shouldn't. But of course, we all believe that it will, but in so doing, if it expands, and in so doing takes increasing shares of commerce out of the brick and mortar realm where those transactions are taxed and into the e-commerce realm, where they are not taxed, then it progressively destroys the tax base of State and local governments.

Now, some people may say that they're opposed to taxation. Well, if you're opposed to all taxation, anything that avoids taxation I suppose is good, but those of who think, especially with respect to State and local governments, that we want to protect our tax bases, those of us who think that the State and local governments should do as much as possible, the Federal Government perhaps less. Those people on the other side of the aisle should also have a concern with that because their argument is that that's—the government is closer to the people, is better, and therefore we shouldn't be destroying the ability of government closer to the people of State and local government to act at all, and leading to Federal pressure for Federal takeover later, should not approve that.

Now, we are told that it's up to the States to do this. Well, the fact is the States can't do this because the Supreme Court, in its various nexus decisions, made it clear that the States, as a practical matter, cannot enforce their use taxes. And we know they

haven't. So there are two solutions. One: Congress could change the nexus provision of the law and I would support that happening. And as the gentlelady from California said, there's no reason why, if we were to change the nexus provision of the law, the Internet companies couldn't use some very interesting software to be able to meet those provisions, even if it was 6,400 separate taxing provisions, or we could allow the States to have a simplification of their tax systems so that you don't use this fancy software, but with a simplified taxing system, we then change the nexus provisions of the law so that they can, using this simplified tax system, impose their use taxes.

Now, those two things have nothing to do specifically with the bill before us except for one practical political thing. We are not going to change the nexus provision of the law, nor are we going to change the nexus provisions of the law in connection with a simplification scheme if the e-commerce companies have gotten a permanent moratorium as they want. We're only going to do that if we have the political leverage to do it, and we're only going to have the political leverage to do it if you can't pass a permanent moratorium till you've taken care of the tax basis of the States.

And that's what this whole debate is all about, and I don't think we should beat around the bush. We must not pass too long a moratorium lest we eliminate the political leverage that will enable us either to change the nexus laws, or to recognize, change the nexus laws in combination with a tax simplification system, in either way to enable State and local governments to effectively——

Ms. LOFGREN. Would the gentleman yield?

Mr. NADLER. Just one moment—no. To effectively collect their use taxes both on an equal basis from e-commerce and from brick and mortar commerce. And if we believe in the economy working itself out and the economic decisions being made on economic bases and not on tax bases, we should follow that policy. If we believe in maintaining the State and local tax bases so that education and everything else that States do should be able to be done, we should follow that policy. Only if we have an ideological aversion, if we think no level of government should tax people, or if we think all these folks should be transferred to the Federal Government, should we have a lengthy extension of this moratorium, which is justified, but not without taking care of the—of the problems that will otherwise progressively destroy much of the tax bases of the States.

Chairman SENSENBRENNER. The gentleman's time has expired. For what purposes does the gentleman from Texas seek recognition?

Mr. SMITH. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, I oppose this amendment. Someone once said that the three greatest discoveries of humankind are fire, the wheel and the integrated circuit. Each of these discoveries ushered in a new era of human development and advancement, and although the integrated circuit is only 50 years old, it has changed the world. The integrated circuit and its offspring, the Internet, have played dominant roles in transforming our lives for the better. Even though America is seeing a dramatic increase in the number

of homes wired to the Internet, last month the Commerce Department released a report showing that e-commerce actually decreased in the last quarter of this year, the second quarter of this year. If we shorten the moratorium the e-commerce industry may be irreparably harmed.

Internet commerce is still relatively new and has yet to reach its full potential. The imposition of taxes would threaten the future growth of e-commerce, would discourage companies and consumers from using the Internet to conduct business, and would create regional and international barriers to global trade.

Mr. Chairman, on the other hand we need to recognize the legitimate concerns of States that want to have the option of taxing sales. The solution, however, is not to reduce the length of the moratorium, but to look for other ways to address these concerns. Failure to renew an extended moratorium will tell the high-tech sector of our economy that is open season for Internet taxes and send a message to State and local tax authorities that new, multiple and discriminatory Internet taxes may be imposed. It's vital that Congress act quickly to ensure Americans that government will not place burdens on the new fragile high-tech economy.

For that reason, Mr. Chairman, we ought to oppose the amendment, and I yield back the balance of—and I'll yield the remaining balance of my time to the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. I thank the gentleman for yielding, and I strongly second the gentleman's remarks. In response to the comments of the gentleman from Massachusetts earlier regarding how long this moratorium is going to go on, I hope that ultimately it goes on forever, because look at what we're talking about. We're talking about access charges. These are some of the most regressive types of taxes you can have, a 2 or $3 a month charge that someone might impose on your Internet service fees. Well, that keeps lower income people from getting access to the Internet more than anybody else. And then discriminatory taxes, taxes that a State or local government might attempt to apply only to the Internet and not to other forms of transaction. These are things that I think virtually everybody in this room agrees should be extended. So let's keep a focus on what the purpose of this moratorium is. It is to keep taxes off of the Internet that none of us want to see imposed there.

Now, the gentleman from New York said, well, the Congress has to act first on the imposition of sales taxes. I think it's quite the opposite. The States have got the political burden to come up with a simplified system. Nobody disagrees with that either. They have got to come up with a system. Now, do they need to come to Congress at some point in time and ask for a change in the nexus rules? Yes, the gentleman is correct about that. But we don't have to buy a pig in a poke. We don't have to go ahead and say, yes, we'll change the nexus rules, without seeing what it is that we're going to be approving.

And the last thing I would say is in response to the gentleman from Alabama, who apparently was referring to me with regard to the study that he has produced, yes, I challenge these figures considerably. I think this study is way off. $260 billion. $13 billion collected is a huge sum of money, and I think that is—yes, I think that's way off target. This study assumes, for example, that there

are very few business use taxes collected, and as the Chairman correctly noted earlier, the States have the opportunity to collect use taxes. When it comes to businesses I can assure you they do collect those use taxes, and so I think these figures are vastly overinflated.

Ms. LOFGREN. Would the gentleman yield? Would the gentleman yield?

Mr. GOODLATTE. I don't have the time, but let me just close by saying that $13 billion in sales tax lost assumes about $250 billion a year in sales on the Internet. That works out to nearly $4,000 for every family of four people in the country. There's absolutely no way that the average family in this country is spending $4,000 a year on transactions on the Internet, and I strongly dispute the merits of this study, which I believe is bought and paid for by those who support the gentleman's amendment?

Ms. LOFGREN. Would the gentleman yield?

Chairman SENSENBRENNER. For what purpose does the gentleman from California, Mr. Berman, seek recognition?

Mr. BERMAN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. BERMAN. I'd like to ask the gentleman from Virginia, his last comments had the opposite effect on me than they usually have. Usually his comments make me want to tend to support his position, but here, listening to his comments, I start going the other way, and so I want to understand. The base bill and the amendment, as I understand it, protect, legislate and protect, in the case of the amendment, a permanent ban on access taxes.

Mr. GOODLATTE. No, it's a 5-year.

Mr. BERMAN. The base bill is a moratorium on access taxes for 5 years.

Mr. GOODLATTE. I believe that's correct.

Mr. BERMAN. It extends the moratorium for 5 years, not permanently, all right.

Mr. GOODLATTE. That's correct.

Mr. BERMAN. The amendment takes the moratorium on access taxes and only extends it for 2 years.

Mr. GOODLATTE. That's correct.

Mr. BERMAN. Here's the bill I would like to support, and I'd be interested in either you or Ms. Lofgren's position since you are seeking to leave some things which have real meaning to me.

A bill which permanently bans the access tax, perhaps grandfathers the 7 remaining States in that still have it, but otherwise permanently bans it, extends the moratorium perhaps for 5 years. But if the States come back with a proposal that an adequate number of them that we could decide constitute a—you know, essentially a State position on what should be taxed, what the nexus is, how that will be worked out, that the moratorium then moves up to 1 year after the time of that submission, and that it encourages the States to get with it, but doesn't create what seems to me—the discrimination seems to me to be right now that because of the nexus problems, because of problems of what's covered, and because no one's going to collect a use tax, that discrimination is in favor of the——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. BERMAN. Yes, I'd be happy to yield.

Chairman SENSENBRENNER. I favor the bill as it has been reported from the Subcommittee. But that doesn't mean that these dates are in stone. One of the problems is that the States have known when the deadline was of October 21st, 2001, but they made no movement toward simplification, otherwise we would have been dealing with simplification here. Now if the States don't like this bill, if it should become law, you know, certainly they can come up with a solution on simplification and present it to us, and we could amend the dates that were in the law as a part of the simplification package. But, you know, I think the States, you know, thought that they would be able to beat an extension of the deadline and didn't do anything, and as a result we are here where we're at today.

Now, I certainly would be willing, with Mr. Barr and Mr. Conyers and other Members who are interested, you know, to work with the governors on this issue. But I think the notice should be, is that don't come up to the week before the next moratorium expires and then complain about an extension without doing anything about the simplification issue.

Mr. WATT. Would Mr. Berman yield?

Mr. BERMAN. May I just reclaim my time just to make—I understand the Chair's position, and it makes a lot of sense except for one thing, and that's the point Mr. Frank made. If we don't have an opportunity to create a dynamic which says, "All right, we'll give you 5 years, but if you do get it together and come forward with a provision—a proposal that meets all the tests for nexus and what's going to be covered and this tax simplification, you then can shorten that moratorium and end that discrimination because it seems to me the discrimination now exists."

Mr. WATT. Will the gentleman yield?

Mr. BERMAN. Well, let me just finish that point. That proposal's being ruled out of order. It's not in the base bill. We're not—so that makes me want to say I'm more attracted to the 3-year moratorium, because if that's the issue, if the proponents of the 5-year moratorium would provide this safety mechanism to make it shorter if the States come up with something, I'd say I'd go with 5 years, but without that opportunity, I'm more inclined to say 3 years.

Mr. WATT. The gentleman yield?

Mr. BERMAN. I'd be happy to, to both.

Mr. WATT. Let me say first that all the evidence that we took at the Subcommittee suggests that our Chairman of the full Committee is not correct. The States have made significant progress toward——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT. I ask unanimous consent for one additional minute.

Chairman SENSENBRENNER. Without objection.

Mr. WATT. And I ask the gentleman to continue to yield.

Mr. BERMAN. I'd yield, and hopefully get a chance to yield to Ms. Lofgren afterwards.

Mr. WATT. And so the States have made progress based on the evidence that we've heard at hearings at the Subcommittee, and second, exactly what the gentleman has suggested is what I have been trying to put on the table both at the Subcommittee level and at this level. And I'm not sure at all that it's going to be real ger-

mane, but we got to keep the pressure on States to do this, and I think it's in everybody's interest to do exactly that.

Mr. BERMAN. Mr. Chairman, I ask unanimous consent to have one additional minute to yield to Ms. Lofgren.

Chairman SENSENBRENNER. Without objection.

Ms. LOFGREN. I think we are getting confused here, if I may say so, because the issue of Internet access tax in a moratorium is being used as a club for the States, but the States—it's like the magazine that said, "Buy this magazine or we'll shoot this dog." We don't want them to tax Internet access, because when States and when governments did that, it was a downer for the economy. The States have every incentive in the world to work something out with us because they can legally tax sales right now. The problem is they have no nexus, and so in order for us to give them nexus, we've got to come to some meeting of the minds with them, and that's not—this access tax is the wrong stalking horse.

Mr. BERMAN. Just to reclaim my time, I'm now told that I was—my hunch was right and the earlier comment was wrong. This bill permanently bans access taxes.

Ms. LOFGREN. Which I think is right.

Mr. BERMAN. And I'm also told this amendment does not touch the permanent ban on access taxes. Is that wrong?

Ms. LOFGREN. I believe that is incorrect.

Mr. BACHUS. I believe that is wrong.

Mr. BERMAN. Well, half of us said it's wrong, and half of us said it's right.

Mr. BACHUS. No, the——

Mr. BERMAN. It is a question of facts.

Mr. BACHUS. No, it does extend the—it does extend the ban on access taxes.

Mr. BERMAN. It doesn't touch the ban on access taxes.

Mr. BACHUS. Well, okay, doesn't touch it or doesn't remove the ban.

Mr. BERMAN. So the amendment—no, it makes the ban permanent.

Ms. LOFGREN. No, the amendment does not.

Mr. BACHUS. It's a 5-year extension right now, and I've amended to make it a 2-year extension.

Mr. BERMAN. If I may reclaim my time, on the issue of access taxes to the Internet, I'm told it is a permanent ban, it's not a moratorium, it's not 5 years, it's permanent.

Chairman SENSENBRENNER. Can the gentleman from Georgia, who is the Chairman of the Subcommittee answer this question? The question is: is this a permanent ban on access taxes or not?

Mr. BARR. The bill itself is. The gentleman's amendment changes that. The gentleman's amendment would ban taxes on Internet access and multiple or discriminatory taxes only until November 1, 2003, so it does affect the underlying substantive legislation which would place a permanent ban.

Chairman SENSENBRENNER. The question is on the—the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I thank the gentleman. I rise to support the current amendment that's on the floor.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. Ladies and gentlemen, let's look at this from the point of view of the 50 governors. 46 of them have spoken with unusual clarity, and what the gentlemen from Alabama, from North Carolina, from Massachusetts, all they were seeking to do is to get us to do what the overwhelming majority of governors of the several States want, and what is it that they want? They want us to approve and bring forward, which is in the jurisdiction of this Committee, an interstate compact that would insist that the States would assess one uniform rate and one uniform taxing authority throughout the State.

Now, is that—is there anything so wrong with that? The only problem that the gentleman from Alabama experienced was a parliamentary ruling that prevented us from doing that all at once here today. Had that been accomplished, we would all be working off the same sheet of music really. But if this amendment is supported, I think we could bring a bipartisan—a group of membership from this Committee to the Rules Committee to make what the gentleman from Alabaman attempted to do, perfectly in order, and we could bring a bill to the floor that everybody would agree upon, mostly the governors from my State, from former Chairman Hyde's State, from the present Chairman's State, from most all of our States.

And so I'm asking that you consider that this would be a very appropriate way for us to begin coming together, and I urge the careful consideration of this amendment.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The question is——

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The Chair has been recognizing people who didn't talk on the first Bachus amendment because——

Ms. JACKSON LEE. And I did not.

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. There have been several points made in the ongoing discussion that I'd like to comment on and ask the gentleman from Alabama a question.

First of all, we are fortunate in this Committee to have Members of the Financial Services Committee along with the expertise in the Judiciary Committee. It is interesting, however, that we are turning this discussion into a discussion of economics. We know that preceding or over the last couple of quarters we have been entering into recession. Whether or not we can use this debate to talk about what industry is successful and what isn't, I don't think is appropriate. What I do think that we should be discussing is the fact that we have an unfairness here. We have an unfairness between the retail history and the Internet purchasing industry.

I'd like to associate myself with the remarks of Congressman Watt from North Carolina, because I think a 2-year moratorium, which I support—and I support the 8-month—would put the pressure on the States who well recognize that this is a resource of dollars that they can effectively utilize with an effective plan presented to Congress. I completely disagree with those who say that we will get nothing and they are taking advantage of the fact that they waited to the last minute.

I believe this 2-year moratorium with the language that could be added to this legislation of soliciting a plan from the governors would be an effective approach to what we're trying to do.

The other point that is disturbing to me is that what you want to do with the underlying legislation is to quash the rights of those States already in existence, already having the ability to do this, and I want to make sure from Mr. Bachus that this 2-year plan responds to the States and it grandfathers the other States in, which happens to be one of my States, the State that I represent, the State of Texas. I don't think that we can afford to allow this inequity to go forward any further and that's what the Judiciary Committee deals with, inequities. We have an inequity. And I happen to be an optimist. I think the Internet purchasing, the Internet utilization industry is going to grow. It has to grow. And the reason it's going to grow is because we're in an information technology century, and that means that people are going to be buying the new way, and the new way is to use the Internet. So I don't think we should be, in essence, predicting the downfall of the industry because we happen to be in a recession.

Let me say also that if you look at the recent events since September 11th, everybody is looking for money. This is not the Financial Services or the Ways and Means Committee, but the governors have put forward billions of dollars of an economic stimulus package. Are you now going to cut into resources of those who already exist? I think that's unfair as well. If you want to governors, 46, 50, to be able to provide you an implementation plan, the right thing to do is to require it in the legislation, but to have a situation where this is either banned permanently or a short term, where you're not willing to do the 2-year moratorium so that we can put a fix, I think is unfair as well. This is a Committee of equity. We need to do the equitable thing. I'd like to pass a 2-year amendment, and if we don't pass this, I'm going to offer a grandfather amendment because I'm unsure whether the States that are already involved in this are grandfathered by the underlying legislation.

I'd like to yield to the gentleman from Alabama, to tell me whether the 2-year amendment that you have on the table now includes the grandfathered States? The gentleman from Alabama, does your amendment include the States that are already have the provisions to do this?

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you Chairman Sensenbrenner and Ranking Member Conyers.

The legislation before us today, H.R. 1552, seeks to extend the current Internet tax moratorium, prohibiting states or political subdivisions from imposing taxes on transaction conducted over the Internet, through 2006. I do not support extending the moratorium through 2006 because it bars states from collecting much needed tax revenue.

Presently, ten states including Texas have taxes on Internet access charges. These states should be allowed to continue this practice. To this end, I do not support any measure which attempts to permanently bar states from collecting much needed tax revenue.

Under current law, there is a limited moratorium on state and local Internet access taxes as well as multiple and discriminatory taxes imposed on Internet transaction, subject to a grandfather on taxes of this nature imposed prior to 1998. The current moratorium is scheduled to expire on October 21, 2001, and was merely de-

signed as an interim device to allow a commission to study the problem of Internet taxation.

There is simply no reason to change the law at this time, particularly because many states across our nation already rely on these crucial revenue streams.

State and local government will loss a substantial amount of sales tax revenue and telecommunication tax revenue if we were to extend the moratorium on Internet taxation. If e-commerce continues to explode the high technology market, expert Forrester Research, Inc. projects U.S. sales over the Internet will be almost $350 billion by 2002. If state and local governments are prohibited from taxing this segment of their tax base, financing important state and local programs and services will become increasingly difficult.

State and local governments use the sales tax as a means to provide nearly one-quarter of all the tax revenues used to fund vital programs and services to their communities. It is estimated that state and local governments are presently losing approximately $5 billion in sales tax revenues from their inability to tax the majority of mail-order Internet sales.

According to the Center of Budget and Policy Priorities state and local governments could be losing an additional $10 billion annually by 2003 if Internet sales continue to be exempt from sales tax imposition. Loss of revenue of this magnitude will threaten the strong fiscal position of many states if economic conditions begin to deteriorate. The additional loss of Internet transaction tax revenues and the possibility of losing taxes on telephone services due to its incorporation into the Internet may accelerate depletion of many state surpluses without increased taxes in some other area or making significant reduction in expenditures.

The loss of revenue will also curtail the ability of states and localities to meet the demands for major improvements in education. The American people know that we need to improve the education in our primary and secondary schools.

This is vital to the future of our country and our children's ability to fill the demand for high-skilled, well-educated workers in the information age. Overhauling our state education systems will require significant investment. A permanent tax prohibition on Internet sales will deprive state and local governments of a great resource to fund desperately needed improvements in their education systems.

Enacting a five-year moratorium on state Internet taxation will benefit those with wealth and access to the Internet at the expense of low- and moderate-income individuals. Those who usually make purchases over the Internet are more affluent than those who do not. Considering the impact of the digital divide on our society many minorities and low-income people who do not purchase goods via the cyber world will pay a disproportionate share of state and local sales taxes.

The majority of low-income households lack the resources to purchase equipment to access the Internet, train on its usage, or lack the financial stability to have a credit card. Individuals with access to a computer and the Internet would avoid taxation on the purchase of a good or service that would be taxed if a person without this access purchased the same good or service from their neighborhood stores.

If we allow Internet transaction to be exempt from tax, state and local governments may likely increase their sales tax rates to make up for the shortfall in Internet tax revenue. The consequences of this would be devastating to low- and moderate-income persons who do not benefit from the tax free Internet environment. Moreover, those with access to the Internet will be further deterred from purchasing goods or services from retail establishments, thus increasing the tax burden of the less affluent.

The current moratorium on Internet taxation is about to expire. I am confident that states can adapt their sales tax systems to capture revenue on Internet transactions. Our states are making great strides to update their systems and equalize the tax burden for all segments of society.

We should not support a bill that champions the growth of an industry on the backs of hard working Americans who often do not directly benefit from the technological revolution. We must first address the digital divide in our country before we enact another measure of corporate welfare.

If we extend the present moratorium through 2006 there is a risk that we may never return to the issue of state taxation of the Internet again. We can not and must not take this risk. Thank you.

Mr. WATT. Yes, it includes the—it continues to grandfather them.

Ms. JACKSON LEE. Reclaiming my time, simply, Mr. Chairman, this amendment should pass, and I believe that we can't make choices that unfairly bias against those who have been trying to follow the law, and I would ask that we support the amendment.

Mr. SMITH [presiding]. The gentleman from Massachusetts, Mr. Delahunt, is recognized for 5 minutes.

Mr. DELAHUNT. I thank the Chairman. I think we've got to be really clear here. There is not a governor that I'm aware of that wants to tax access to the Internet. I don't think there's a governor that I'm aware of that is opposed to e-commerce. I'm unaware of a Member of Congress that wants to impose a tax on access to the Internet or does not want to support and encourage e-commerce, as long as it doesn't disadvantage the traditional brick and mortar stores that we ship in in our home communities.

But the gentleman from New York, Mr. Nadler, made the point. What we hear is all the States have to do is come together and sit down and they're not doing it. Well, they are doing it. They are actually investing considerable time and resources into developing a simplification system. I think it's referred to as the SST. Twenty States have already taken it upon themselves to pass enabling legislation which would allow them to negotiate, come together, and come forward with legislation that would be uniform in nature. But what they're looking for is action from us to give them guidelines, to give them parameters in which designing for them what is acceptable, what would meet our requirements as far as what would be an appropriate model legislation, and we refuse to do it.

All we want to do is make it permanent, let it go away because we don't want to have political accountability. It's just really unfair. It just doesn't make any sense.

I just ask the gentleman from Virginia—and maybe I'm wrong—I think there are some Members on the Committee and in Congress that just because it's a tax bill or could be interpreted as somehow increasing taxes, they're opposed. Well, the reality is, this bill, or this situation is shifting taxes every day.

Mr. CONYERS. Would the gentleman yield?

Mr. DELAHUNT. I'll yield to my friend from Michigan.

Mr. CONYERS. Let me point out that he's correct. We're not doing anything about taxes. The most that we could do here in Judiciary Committee is to approve an interstate compact that would allow the States to finally achieve what they're desperately trying to do, is to come together to determine a uniform taxing authority for themselves.

Mr. DELAHUNT. In reclaiming my time, let me point out that we are drying up the availability of the sales tax as a potential source of revenue. The States are still going to have to raise revenue. Now, they can do it with the property tax. They can do it with the income tax. It's my understanding that maybe the gentleman from Tennessee wants to comment on this. Historically, Tennessee has relied substantially on the sales tax as revenue, and because that source of revenue is drying up, there is now movement within the State to adopt an income tax. It's a shifting of taxes. I mean it just—it just doesn't make any sense for us not to act in terms of including the criteria and the standards by which Congress would impose upon the States to achieve—to achieve a simplification system or to achieve a compact.

And I think we could do—I think, with just some sitting down, there's opportunities. We hear about 7,500 taxing jurisdictions. Maybe we could compel the States to make it easier to impose on local taxing jurisdictions and regional taxing jurisdictions, a system

that would be more acceptable and encouraging to the e-commerce——

Ms. LOFGREN. Would the gentleman yield?

Mr. DELAHUNT [continuing]. And to the local business community, simplify it.

Ms. LOFGREN. Would the gentleman yield?

Mr. DELAHUNT. I yield to the gentlelady from California.

Ms. LOFGREN. I'd like to just raise a different point of view on that latter subject, because we've all sort of accepted that uniformity of sales taxes necessarily are good, and that may or may not be the case. Let me use my county as an example. The voters, by a more than two-thirds vote, have on numerous occasions taxed themselves through a sales tax increase for——

Mr. SMITH. The gentleman's time has expired. Are there any other Members who wish to be heard on this amendment?

Ms. LOFGREN. I'd ask unanimous consent that the gentleman from——

Mr. SMITH. Without objection, the gentlewoman from California is recognized for one additional minute.

Mr. DELAHUNT. I continue to yield.

Ms. LOFGREN. To say that for some reason that we're going to say every city, every county, every regional transit authority has to be the same, is not necessarily a goal that's a valuable one when there's a——

Mr. DELAHUNT. Reclaiming my time. And I'm sure that there are exceptions, and I think that the gentlelady points to one within her own district, but I daresay that if we gave guidance to the States, that we would be able to reduce the number of taxing jurisdictions from 7,500 to a reasonable number that the States, the Federal Government, could reach an agreement, and we wouldn't be dealing every 2 or 3 years with this moratorium that is absolutely, in the end, drying up a significant revenue for the States so that we have some States like Florida now looking at a shortfall in their budget of $4 billion, 4 billion. I yield back.

Mr. BERMAN. Would the gentleman yield?

Mr. DELAHUNT. I yield to Mr. Berman.

Mr. SMITH. Actually——

Mr. DELAHUNT. I ask unanimous consent the gentleman have one additional minute.

Mr. SMITH. The gentleman from California's time has expired. The gentleman from California, Mr. Berman, is recognized for 1 minute. Is that what the gentleman requested or——

Mr. BERMAN. Well, may be the same. I'll take it.

Mr. SMITH. Okay, take your 1 minute.

Mr. BERMAN. I'd like—I'm wondering if the gentleman from Alabama, who offered the amendment, Mr. Bachus, just would u be willing to seek unanimous consent to alter your amendment to allow the ban on access taxes to the Internet to remain permanent, and simply make your moratorium on the multiple and discriminatory taxes?

Mr. BACHUS. Mr. Berman, I feel like any pressure that we take off the urgency in addressing the sales tax issue, we're—I feel like that any urgency that we take off is just going to be one more step to delaying this whole process.

Mr. BERMAN. Unless it mean your amendment pass.

Mr. BACHUS. The original moratorium was put in place at the same time that the Advisory Commission, which Mr. Barr and I have sort of traded words over, was appointed. And you know what they were supposed to do? They were supposed to come back with two things. One was a recommendation on how to handle taxation of excess taxes. The other thing they were supposed to do is they were supposed to give us a recommendation on how to simplify sales tax. It was the commission, which is stacked with people who represent high-tech companies. There are no brick and mortar people on it.

Mr. SMITH. The gentleman's time from California has expired.

Mr. BACHUS. They didn't do that.

Mr. SMITH. Are there any other Members who wish to be heard on—for what reason does the gentleman from California wish to be recognized?

Mr. SCHIFF. Move to strike the last word.

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. Thank you. I won't take that much time. I just wanted to add on to what my colleague from California said. I'm inclined to support the amendment as it is. I'd actually be happier to support it in the form that Congressman Berman suggested, and I think the likelihood of passage of the amendment would be significantly enhanced, which would mean that there would be more pressure placed on the issue with the passage of this amendment, than with the failure of the amendment, and I would just encourage the——

Mr. FRANK. Would the gentleman yield?

Mr. SCHIFF. Yes.

Mr. FRANK. I would say you're moving to tactics now, and I agree with that, but on the other hand, we could vote for the amendment, and then enough of us would be willing to pare it down later. And I would make this point—the leadership——

Mr. BACHUS. I tell you what, I'm going to——

Mr. FRANK. I was talking. Excuse me. I think what we need to do is recognize that the leadership is going to bring this bill up, probably—if they get it the way they want it, the amendment comes up on suspension. If in fact though this amendment is passed, I'm sure they would agree to some further amendments. So I agree with the goal of having it adopted in the form that the gentleman from California mentioned. But one way to do that would be to pass the larger amendment and then we could work down from there.

Mr. SMITH. The gentleman from California has the time.

Mr. SCHIFF. I would yield to the gentleman from Alabama.

Mr. BACHUS. Let me say this. I think what we're doing, we're extending the ban, and I think that either way it's going to extend the ban for 2 years, and if we don't address this sales tax issue within 2 years, the country in a recession, we're going to have teachers being laid off, we're going to have firefighters laid off, we're going to have police officers laid off, we're going to have State and local governments and county governments unable to function. And that to me—and we are not—we are extending the ban on access. We're extending it for 2 years. We're extending it along with everything else. The problem is that they're defined in here, so I'm going to stick with my original amendment.

Mr. SCHIFF. If I can reclaim the balance of my time, I understand the gentleman's decision, and the only disagreement I would have with my colleague.

Mr. BACHUS. It changes nothing over the next 2 years.

Mr. SCHIFF. The only disagreement I'd have with my colleague from Massachusetts—and he's probably a far better vote counter than I am—I don't think it will pass as it is. I think it has a greater chance of passing as amended.

Mr. FRANK. Would the gentleman yield?

Mr. SCHIFF. Yes.

Mr. FRANK. I agree, but the author doesn't, so we've got to face reality.

Mr. SCHIFF. I yield back the balance of my time.

Mr. SMITH. The gentleman yields back the balance of his time. Are there any other Members who wish to be heard on the amendment?

Mr. GOODLATTE. Mr. Chairman?

Mr. SMITH. The gentleman from Virginia, Mr. Goodlatte, is recognized for 5 minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, I want to say to the gentleman from Alabama that I think that claim that the failure to act——

Mr. CONYERS. Regular order, Mr. Chairman.

Mr. GOODLATTE. Mr. Chairman, I was yielded to by the gentleman from Texas.

Mr. CONYERS. My dear from Virginia has spoken on this already.

Mr. GOODLATTE. Mr. Chairman, I was yielded to by you, if you recall. I have not spoken on this amendment.

Mr. CONYERS. I apologize.

Mr. SMITH. Virginia still has the time.

Mr. GOODLATTE. I thank the Chairman. The gentleman from Alabama I think is taking an alarmist position here, and I think in response of that, we have to point out that we're talking about of the hundreds of billions of dollars of sales taxes collected collectively by all the States, probably only 1 or 2 or 3 percent of that, even 2 years from now would be lost. But that issue is irrelevant to the issue of extending the moratorium because I believe—and in response to the comments made by the gentleman from Massachusetts, I believe that if 30 or 35 States got together and passed a uniform State law, and said, "This is what's subject to the tax and this is what the tax would be," but we can't pull the trigger on that until we have the nexus laws changed because of the Quill decision. And I think it's important to stress——

Mr. NADLER. Would the——

Mr. GOODLATTE. I will in a minute. I think it's important to stress to everybody that this moratorium is not a moratorium on the collection of sales tax because I had that discussion with the gentleman from California. The sales taxes are not access fees. They're not multiple or discriminatory fees. They're not covered by this legislation, and therefore, the moratorium doesn't apply to them. Many sales taxes are already collected on the Internet depending upon how the business has a nexus with the State in which the sales tax is owed.

Mr. DELAHUNT. Would the gentleman yield?

Mr. GOODLATTE. I will in just a minute. So the point is, that if those things were to talk place, I think the Congress would have to take a look at that and vote on it at that time, but at that time, we would then know what we're voting on. Right now we're not—we don't have a clue what we're voting on when we change the nexus rules. And so therefore, I would have the say that to attach any kind of limitation on extending the moratorium less than 5 years would be a mistake because I don't think anybody in this room doesn't want to continue the moratorium on access fees and new and discriminatory tax on the Internet. Their concerns relate to sales taxes, but they haven't produced the goods yet.

And I'll be happy to yield to the gentleman from Massachusetts.

Mr. DELAHUNT. I don't think anyone's asking Members of the Committee just simply to pass legislation that would automatically commit this Congress to a compact that the States produced. What the States are looking toward are what features, what aspects of a streamlined sales and use tax system incorporated in a compact would Congress require? And that in the bill block. I mean, issues such as a uniform format for tax returns and remittance, reasonable compensation for tax collection by sellers——

Mr. GOODLATTE. Reclaiming my——

Mr. DELAHUNT. These are all aspects.

Mr. GOODLATTE. Reclaiming my time, I would like to see the goods before I vote on them.

Mr. Chairman, I yield back the balance of my time.

Mr. SMITH. The question occurs on the amendment. All in favor say aye.

All opposed say nay.

In the opinion of the Chair, the nays have it.

Mr. BACHUS. Chairman, request a roll call.

Mr. SMITH. A roll call has been requested, and the clerk will call the role.

The CLERK. Mr. Hyde?

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Bryant?

Mr. BRYANT. Aye.

The CLERK. Mr. Bryant, aye. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Graham?

Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman.
Mr. BERMAN. No.
The CLERK. Mr. Berman, no. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. SMITH. The gentleman from Virginia, Mr. Boucher?
Mr. BOUCHER. Votes no.
The CLERK. Mr. Boucher, no.
Mr. SMITH. The gentleman from California, Mr. Berman?
Mr. BERMAN. Aye.

Mr. SMITH. Mr. Berman votes aye. And the gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Aye.

The CLERK. Mr. Scott, aye.

Mr. SMITH. The gentlewoman from Pennsylvania, Ms. Hart?

Ms. HART. I want to vote aye.

The CLERK. Ms. Hart, aye? Ms. Hart? What is she?

Mr. SMITH. Are there any other Members who have not voted or who wish to change their vote?

[No response.]

Mr. SMITH. If not, the clerk will report.

The CLERK. Did she switch?

Mr. SMITH. She switched and Berman switched.

The CLERK. Mr. Chairman, there are 19 ayes and 15 nays.

Mr. SMITH. The amendment is agreed to. Are there any other amendments?

Mr. BERMAN. Mr. Chairman?

Mr. SMITH. The gentleman from California, Mr. Berman, is recognized for the purpose of offering an amendment?

Mr. BERMAN. Yes, I would like orally, by unanimous consent, to have a chance to have an amendment considered to strike the 2-year provision as it relates to the access moratorium and maintain the permanence of that ban in the bill. Does everybody understand? The base bill has a ban on access taxes or charges. The amendment—no, permanent. The amendment made that permanent ban a 2-year moratorium, just on access. The effect of my amendment would make a permanent access ban, permanent access ban, and a 2-year moratorium on multiple and discriminatory taxes.

Mr. NADLER. Mr. Chairman? Mr. Chairman, reserving a point of order.

Mr. SMITH. Who raises the point? The gentleman from New York.

Mr. NADLER. Reserving the right to object. I'm trying to remember my parliamentary procedure, but isn't it Mr. Berman's amendment would exactly negate the entire purpose of the amendment we just passed?

Mr. BERMAN. No. If I may speak to that.

Mr. NADLER. Well, in that, as you said, the underlying bill said permanent, the amendment said 2 years, your amendment says permanent.

Mr. BERMAN. No. The underlying bill had two provisions essentially. One was a permanent ban on access taxes and charges and fees, and the second was a 5-year moratorium on multiple and discriminatory taxes. My amendment would simply—the amendment that passed turned both into 2-year moratoriums. I would maintain the permanent ban on access taxes and leave the 2-year ban on multiple and discriminatory taxes.

Mr. NADLER. My—I raise the point of order on the grounds that on one of the two provisions at least, it is exactly the opposite of the amendment, and perhaps we should have moved to sever the previous amendment, but I do believe it's out of order at this point.

Mr. SMITH. Does the gentleman object to the unanimous consent request by the gentleman from California?

Mr. NADLER. I'm sorry?

Mr. SMITH. Does the gentleman from New York object to the unanimous consent request from the gentleman from California?

Mr. NADLER. I thought the unanimous consent request was simply that it be stated orally, not written. To that I do not object. I'm raising a point of order to the substance of the amendment.

Mr. FRANK. Parliamentary inquiry?

Mr. SMITH. If the gentleman will wait just a minute, I'm going to confer with the parliamentarian to see what the proper procedure would be from this point on.

Mr. BERMAN. Mr. Chairman? Mr. Chairman? Maintaining the grandfather provision.

I ask unanimous consent to alter my amendment for making it permanent, to simply making it a moratorium for 99 years, and we'll deal with it later.

Mr. NADLER. That I'll object to.

Mr. SMITH. Objection has been heard by the gentleman from New York. Objection to the unanimous consent request.

Mr. NADLER. Yes. To 99 years.

Mr. SMITH. Objection to the unanimous consent request has been heard. Are there any other amendments?

Mr. FRANK. Parliamentary inquiry, Mr. Chairman.

Mr. SMITH. The gentleman from Massachusetts is recognized for a parliamentary inquiry.

Mr. FRANK. Mr. Chairman, as I understand it, we are now in full Committee, which means that this bill will go to the floor, so that the amendment of the sort that Mr. Berman wants or others might want, would be—could be formulated and it could actually be put in writing, and we could look at it between now and its going to the floor, because my assumption is that the leadership of the Committee and the House will be in no great rush to put the bill as it currently stand on the suspension calendar, thus giving an opportunity for Mr. Berman to write down the amendment and deal with it. Would that be correct, Mr. Chairman?

Mr. SMITH. The gentleman makes a good point, would be correct.

Mr. NADLER. Mr. Chairman?

Mr. SMITH. For what purpose does the gentleman from New York wish to be recognized?

Mr. NADLER. Clarification. I hope the Chair did not—I did not object to the oral qualify of Mr. Berman's amendment. I objected to changing to 99 years.

Mr. SMITH. That was the understanding of the Chair as well.

Mr. FRANK. Mr. Chairman, based on your ruling, I object to everything. [Laughter.]

Mr. SMITH. Are there any other amendments?

Mr. SCHIFF. Mr. Chairman, parliamentary inquiry?

Mr. SMITH. Any other——

Mr. SCHIFF. Mr. Chairman, parliamentary inquiry?

Mr. SMITH. The gentleman from California is recognized for a parliamentary inquiry.

Mr. SCHIFF. I was a little unclear by the point raised by the gentleman from New York. If he is not objecting to the oral nature of the proposed amendment, and the amendment is in the 99-year form, is it not in order?

Mr. NADLER. No, I objected to the——

Mr. BERMAN. He did not object to the oral version of my original amendment, but when I suggested a unanimous consent request to make an oral amendment that would make it an order, he objected to that.

Mr. NADLER. That's right.

Mr. SCHIFF. If the gentleman would yield. So that if I offered an amendment along the lines of the amended amendment from Congressman Berman, that would be in order?

Mr. SMITH. The gentleman is correct. If the gentleman would put that in writing, then the Chair could consider it.

Mr. SCHIFF. Well, I believe that there's no objection to the amendment being offered orally.

Mr. FRANK. Yeah, there is. I would object. Given the fact—reserving the right to object. Given the fact that we have every chance to get an amendment carefully considered between now and final, I mean, I don't always have the highest standards of the way we should operate, but I think trying to do something on the fly at this point when there's no necessity, isn't the best way to go. I think if we wait—you know that the leadership of the Committee and the House does not want to rush this bill through now. There is ample opportunity for people to talk about that amendment, so I would object the anything that wasn't the regular order now, given that we're going to have a chance to go to the next stage.

I mean it used to be that around here you would vote in Subcommittee and then Committee, and you would actually go to the floor of the House and consider the bill. And while some people may never have seen that operate and others may have forgotten how to do it, it's not a bad tradition to revive.

Ms. JACKSON LEE. Parliamentary inquiry. Would the gentleman yield?

Mr. SMITH. Does the gentleman from California, Mr. Schiff, yield back the balance of his time?

Mr. SCHIFF. Yes, thank you, Mr. Chairman.

Ms. JACKSON LEE. Mr. Chairman, I have a parliamentary inquiry.

Mr. SMITH. The gentlewoman from Texas is recognized for her parliamentary inquiry.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Inasmuch as I am satisfied with the official vote taken in this body that saw the 2-year amendment prevail, my question is that if other amendments are proposed on the way to the floor, will all Members be notified in order to have the opportunity to object or have the input into that particular amendment?

Mr. SMITH. The gentlewoman has not stated a parliamentary inquiry. Are there any other amendments?

Mr. BARR. Regular order, Mr. Chairman.

Mr. SMITH. The gentleman from Alabama, Mr. Bachus, is recognized for offering an amendment.

Mr. BACHUS. Mr. Chairman, I have an amendment at the table. It's Amendment 105.

Mr. BARR. Reserving a point of order.

Mr. SMITH. The gentleman from Georgia reserves a point of order.

Mr. BACHUS. Mr. Chairman, I'm going to ask that this amendment be read in its entirety, because it will take about 3 minutes, and then I'll comment on it for about 30 seconds.

Mr. SMITH. The clerk will report the amendment.

The CLERK. Amendment to H.R. 1552 offered by Mr. Bachus. Page 2 after line 19, insert the following: section 4, streamline nonmultiple and nondiscriminatory tax systems.

Paragraph. It is the sense of the Congress that a State tax relating to electronic commerce, to avoid being multiple or discriminatory, should include the following.

[The amendment follows:]

Amendment to H.R. 1552

Offered by Mr. Bachus

Page 2, after line 19, insert the following:

1 **SEC. 4. STREAMLINED NONMULTIPLE AND NONDISCRIM-**
2 **INATORY TAX SYSTEMS.**

3 It is the sense of the Congress that a State tax relat-
4 ing to electronic commerce, to avoid being multiple or dis-
5 criminatory, should include the following:

6 (1) A centralized, one-stop, multiState registra-
7 tion system for sellers.

8 (2) Uniform definitions for goods or services
9 that might be included in the tax base.

10 (3) Uniform and simple rules for attributing
11 transactions to particular taxing jurisdictions.

12 (4) Uniform rules for the designation and iden-
13 tification of purchasers exempt from the nonmultiple
14 and nondiscriminatory tax system, including a data-
15 base of all exempt entities and a rule ensuring that
16 reliance on such database shall immunize sellers
17 from liability.

18 (5) Uniform procedures for the certification of
19 software that sellers rely on to determine nonmul-
20 tiple and nondiscriminatory taxes and taxability.

21 (6) Uniform bad debt rules.

1 (7) Uniform tax returns and remittance forms.

2 (8) Consistent electronic filing and remittance

3 methods.

4 (9) State administration of all nonmultiple and

5 nondiscriminatory taxes.

6 (10) Uniform audit procedures.

7 (11) Reasonable compensation for tax collection

8 that reflects the complexity of an individual State's

9 tax structure, including the structure of its local

10 taxes.

11 (12) Exemption from use tax collection require-

12 ments for remote sellers falling below a specified de

13 minimis threshold.

14 (13) Appropriate protections for consumer pri-

15 vacy.

16 (14) Such other features that the member

17 States deem warranted to promote simplicity, uni-

18 formity, neutrality, efficiency, and fairness.

Mr. COBLE. Mr. Chairman, would the clerk pull the mike a little closer to her, please.

The CLERK. Sorry. 1. A centralized one-stop multistate registration system for sellers. 2. Uniform definitions for goods or services that might be included in the tax base. 3. Uniform and simple rules for attributing transactions to particular taxing jurisdictions. 4. Uniform rules for the designation and identification of purchasers exempt from the nonmultiple and nondiscriminatory tax system, including a database of all exempt entities and a rule ensuring that reliance on such database shall immunize sellers from liability. 5. Uniform procedure——

Mr. BACHUS. Mr. Chairman, I'll ask unanimous consent to withdraw my amendment.

Mr. SMITH. Without objection, the gentleman withdraws his amendment. Are there any other amendments? If not——

Ms. JACKSON LEE. Mr. Chairman, I ask to strike the last word.

Mr. SMITH. Who wished to be recognized? The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, I'm trying to find out—since I wasn't a parliamentary inquiry before—we will have an opportunity to look at any amendments going to the floor, I would take it?

Mr. SMITH. That's my understanding.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. BACHUS. Chairman, I move the previous question.

Mr. SMITH. If there are no further amendments and the previous question has been moved, the question occurs on the motion to report H.R. 1552 favorably as amended. All in favor say aye.

All opposed, say no.

The ayes have it and the motion to report favorably is adopted.

Without objection the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to the House rules. Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days as provided by the House rules in which to submit additional dissenting, supplementary or minority views.

And the Committee stands adjourned.

[Whereupon, at 5:12 p.m., the Committee was adjourned.]

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