
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER 98-25

SUBJECT: ADMINISTRATIVE PRONOUNCEMENT
Internet Access/Electronic Commerce Moratorium

DATE: November 24, 1998

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S. C. Code Ann. Section 12-36-910 (Supp. 1997)
S. C. Code Ann. Section 12-36-1310 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements are official advisory opinions of the Department.

On October 21, 1998, Congress enacted the Internet Tax Freedom Act to provide that no state or political subdivision shall impose from October 1, 1998 to October 21, 2001 any of the following taxes: (1) taxes on Internet access, unless such tax was generally imposed and actually enforced (i.e. collected) prior to October 1, 1998 and (2) multiple or discriminatory taxes on electronic commerce.

The term "electronic commerce" is defined in the Act to mean any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

The term "Internet access" is defined in the Act to mean a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

A copy of this Act is attached for your reference.

As a result of this moratorium, the Department will not enforce collection of sales and use taxes during October 1, 1998 to October 21, 2001 with respect to Internet access and electronic commerce as defined above.

Questions concerning the application of this law should be directed to the Department's Sales Tax Office Audit Section at 803-898-5788.

Editor's Note: The language presented below is taken from the final version of the Omnibus Appropriations Act.

H.R. 4328
Conference Report
DIVISION A -- OMNIBUS CONSOLIDATED APPROPRIATIONS

TITLE XI--MORATORIUM ON CERTAIN TAXES

SEC. 1100. SHORT TITLE.

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

TITLE I--MORATORIUM ON CERTAIN TAXES

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--
 - (1) Taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and
 - (2) Multiple or discriminatory taxes on electronic commerce.
- (b) **PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.**--Except as provided in this section, nothing in this title shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.
- (c) **LIABILITIES AND PENDING CASES.**--Nothing in this title affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this title affect ongoing litigation relating to such taxes.
- (d) **DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.**--For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either--
 - (1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency

of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

- (2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

[Ed. Note: At this point, this version omits several subsections which except from the moratorium certain individuals who engage in the business of providing information that is harmful to minors over the World Wide Web as well as Internet access providers that do not offer, free or for a fee, screening software to their customers at the time an agreement for service is entered into. These sections are not relevant to the primary taxation sections per se.]

SEC. 1102. ADVISORY COMMISSION ON ELECTRONIC COMMERCE.

- (a) Establishment of Commission.--There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the ``Commission"). The Commission shall--
 - (1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and
 - (2) conduct its business in accordance with the provisions of this title.
- (b) Membership.--
 - (1) In general.--The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as Follows:
 - (A) Three representatives from the Federal Government comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).
 - (B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose and income tax).
 - (C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups comprised of--
 - (i) 5 individuals appointed by the Majority Leader of the Senate;
 - (ii) 3 individuals appointed by the Minority Leader of the Senate;

- (iii) 5 individuals appointed by the Speaker of the House of Representatives; and
 - (iv) 3 individuals appointed by the Minority Leader of the House of Representatives.
- (2) Appointments.--Appointments to the Commission shall be made not later than 45 days after the date of the enactment of this Act. The chairperson shall be selected not later than 60 days after the date of the enactment of this Act.
- (3) Vacancies.--Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.
- (c) Acceptance of Gifts and Grants.--The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.
- (d) Other Resources.--The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to use the facilities of any such Department or Office for purposes of conducting meetings.
- (e) Sunset.--The Commission shall terminate 18 months after the date of the enactment of this Act.
- (f) Rules of the Commission.--
 - (1) Quorum.--Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.
 - (2) Meetings.--Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.
 - (3) Opportunities to testify.--The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.
 - (4) Additional rules.--The Commission may adopt other rules as needed.
- (g) Duties of the Commission.--
 - (1) In general.--The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet

and Internet access and other comparable intrastate, interstate or international sales activities.

(2) Issues to be studied.--The Commission may include in the study under subsection (a)--

(A) an examination of--

- (i) barriers imposed in foreign markets on United States providers of property, goods, services, or information engaged in electronic commerce and on United States providers of telecommunications services; and
- (ii) how the imposition of such barriers will affect United States consumers, the competitiveness of United States citizens providing property, goods, services, or information in foreign markets, and the growth and maturing of the Internet;

(B) an examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, and the impact of such collection on the global economy, including an examination of the relationship between the collection and administration of such taxes when the transaction uses the Internet and when it does not;

(C) an examination of the impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986;

(D) an examination of model State legislation that--

- (i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and
- (ii) would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales;

(E) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers; and

(F) the examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services.

(3) EFFECT ON THE COMMUNICATIONS ACT OF 1934. -- Nothing in this section shall include an examination of any fees or charges imposed by the Federal communications commission or States related to--

(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et.seq.); or

(B) the implementation of the Telecommunications Act of 1996 (or of amendments made by that Act).

(h) NATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT.--The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association communications and Electronic Commerce Tax Project.

SEC. 1103. REPORT.

Not later than 18 months after the date of the enactment of this Act, the Commission shall transmit to Congress a report reflecting the results, including such legislative recommendations as required to address the findings of the Commission's study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

SEC. 1104. DEFINITIONS.

For the purposes of this title:

(1) Bit tax.--The term ``bit tax" means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services.

(2) Discriminatory tax.--The term ``discriminatory tax" means --

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that--

(i) is not generally imposed and legally collectible by such State or such 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 the 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; or
 - (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.
 - (iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or
- (B) any tax imposed by a State or political subdivision thereof, if--
- (i) except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998, the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or
 - (ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of--
 - (I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or
 - (II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services
- (3) Electronic commerce.--The term "electronic commerce" means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.
- (4) Internet.--The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol, to communicate information of all kinds by

wire or radio.

(5) Internet access.--The term "Internet access" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(6) Multiple tax.--

(A) In general.--The term "multiple tax" means 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 thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

(B) Exception.--Such term shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon.

(C) Sales or use tax.--For purposes of subparagraph (B), the term "sales or use tax" means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service.

(7) State.--The term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(8) Tax.--

(A) In general.--The term "tax" means--

(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition of or obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

(B) Exception.--Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573) or any other fee related to obligations or telecommunications carriers under the Communications

Act of 1934 (47 U.S.C. 151 et. seq.).

- (9) Telecommunications services.--The term "telecommunications services" has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).
- (10) Tax on Internet access. -- The term "tax on Internet access" means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services unless such tax was generally imposed and actually enforced prior to October 1, 1998.

TITLE XII--OTHER PROVISIONS

SEC. 1201. DECLARATION THAT INTERNET SHOULD BE FREE OF NEW FEDERAL TAXES.

It is the sense of Congress that no new Federal taxes similar to the taxes described in section 1101(a) should be enacted with respect to the Internet and Internet access during the moratorium provided in such section.

SEC. 1202. NATIONAL TRADE ESTIMATE.

Section 181 of the Trade Act of 1974 (19 U.S.C. 2241) is amended--

(1) in subsection (a)(1)--

(A) in subparagraph (A)--

- (i) by striking "and" at the end of clause (i);
- (ii) by inserting "and" at the end of clause (ii); and
- (iii) by inserting after clause (ii) the following new clause:
" (iii) United States electronic commerce,"; and

(B) in subparagraph (C)--

- (i) by striking "and" at the end of clause (i);
- (ii) by inserting "and" at the end of clause (ii);
- (iii) by inserting after clause (ii) the following new clause:
" (iii) the value of additional United States electronic commerce,"; and
- (iv) by inserting "or transacted with," after "or invested in";

(2) in subsection (a)(2)(E)--

- (A) by striking "and" at the end of clause (i);
- (B) by inserting "and" at the end of clause (ii); and
- (C) by inserting after clause (ii) the following new clause: " (iii) the value of

electronic commerce transacted with,"; and

(3) by adding at the end the following new subsection:

“(d) Electronic Commerce.--For purposes of this section, the term `electronic commerce' has the meaning given that term in section 1104(3) of the Internet Tax Freedom Act.”.

SEC. 1203. DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS.

(a) In General.-- It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the America, the North American Free Trade Agreement, and other appropriate venues.

(b) Negotiating Objectives.--The negotiating objectives of the United States shall be--

(1) to assure that electronic commerce is free from--

(A) tariff and nontariff barriers;

(B) burdensome and discriminatory regulation and standards; and

(C) discriminatory taxation; and

(2) to accelerate the growth of electronic commerce by expanding market access opportunities for--

(A) the development of telecommunications infrastructure;

(B) the procurement of telecommunications equipment;

(C) the provision of Internet access and telecommunications services; and

(D) the exchange of goods, services, and digitalized information.

(c) Electronic Commerce.--For purposes of this section, the term `electronic commerce' has the meaning given that term in section 1104(3).

SEC. 1204. NO EXPANSION OF TAX AUTHORITY.

Nothing in this Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act.

SEC. 1205. PRESERVATION OF AUTHORITY.

Nothing in this Act shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 (Public Law 104-104) or the amendments made by such Act.

SEC. 1206. SEVERABILITY.

If any provision of this title, or any amendment made by this title, or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that title and the application of that provision to other persons and circumstances, shall not be affected.