



Memorandum

October 24, 2007

TO: The Honorable Ron Wyden
Attention: Joshua Sheinkman

FROM: Legislative Attorney
American Law Division

SUBJECT: Internet Tax Moratorium

This memorandum is furnished in response to your request for an analysis of whether the definition of "internet access" in the Internet Tax Freedom Act Amendments (H.R. 3678) as passed by the House is more restrictive (would permit more activities to be taxed by the states) than that of the Internet Tax Moratorium which is set to expire on November 1, 2007.

The expiring moratorium defines "Internet access" 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 users. The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.¹

Exemption is provided for voice services over the Internet.²

H.R. 3678 would define "Internet access" as follows:

The term "Internet Access"--

¹ Pub. L. 105-277, Div. C, Title XI, § 1105(5), 112 Stat. 2681, 2725, as amended, codified at 47 U.S.C. § 151 note.

² *Id.* at § 1108 which states:

Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold (i) to provide such service; or (ii) to otherwise enable users to access content, information or other services offered over the Internet;

(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and

(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), or (C).

The language of H.R. 3678 would be more restrictive in at least two ways. First, the “enables users to connect” language of paragraph (A) would limit the moratorium to taxes upon the connection provider and services they provide under (B) and (C). Thus, if an Internet user utilized one provider to connect to the internet and another paid provider of, for instance, email services, the connection provider would be covered by the moratorium but not the paid email provider. Under the current moratorium, each would be covered.

Second, the exemption of paragraph (D) would allow the taxation of many more products and services than the existing exemption under the current § 1108.

We hope this information is responsive to your request. If you have further questions, please call.