



MULTISTATE TAX COMMISSION

**Multistate Tax Commission  
Resolution No. 05-04**

**Resolution Regarding Tax Fairness in the Proposed Federal Extension of the  
“Internet Tax Freedom Act Amendments of 2007”**

**Whereas**, the Internet Tax Freedom Act Amendments Act of 2007 expires on November 1, 2014; and

**Whereas**, the Act was enacted in large part because Congress was concerned that state taxes on Internet access might impede the growth of the Internet and preclude its ready availability to all Americans; and

**Whereas**, the Internet has become a robust and stable institution and empirical evidence has shown that Internet access is not materially impeded in those states that impose excise taxes on access to the Internet; and

**Whereas**, Congress may consider measures to modify the Act, including making the moratorium on the imposition of taxes a permanent one and eliminating the grandfather clause that permits states that already imposed and enforced such taxes to continue to do so; and

**Whereas**, these changes could have unintended consequences on state and local revenue systems, exposing them to substantial adverse consequences; and

**Whereas**, electronic commerce business models, technology and practices have changed significantly since the enactment of the original Internet Tax Freedom Act in 1998, especially in the areas of “access” and “content”; and

**Whereas**, sound tax policy demands that all forms of commerce be treated equally; and

**Whereas**, there is no economic reason to justify treating electronic commerce, or other forms of remote commerce more favorably than any other form of commerce; and

**Whereas**, permanent extension of the moratorium and repeal of the grandfather clause would constitute a preemption of state authority that is traditionally considered unacceptable by many state officials; and

**Whereas**, the Multistate Tax Commission recognizes that, nonetheless, Congress may choose to modify the moratorium; now therefore, be it

**RESOLVED**, That the Internet Tax Freedom Act is not necessary to protect or ensure the growth or availability of the Internet and should not be extended; and be it further

**RESOLVED**, That if Congress chooses to extend the moratorium on state taxation of Internet access, the Multistate Tax Commission respectfully urges it to do so in accord with the following guidelines:

Any extension of the moratorium should preserve the grandfathered ability of those states currently imposing a tax on charges for Internet access to continue to do so if they so choose.

The definition of Internet access contained in the moratorium should be rewritten to eliminate opportunities to bundle otherwise taxable content into a single package of Internet access in a manner that would prevent states and localities from imposing their taxes on the otherwise taxable content, thus preserving the competitive equity among all forms of commerce.

Any extension of the moratorium should not be accompanied by provisions or separate legislation that grants more favorable state and local tax treatment to commerce involving goods or services transferred, conducted or delivered by electronic or other remote means as compared to commerce involving goods and services transferred, conducted or delivered by other means.

Any extension of the moratorium should not be expanded to preempt statutory authority to tax telecommunications services, even as those services migrate to Voice over Internet Protocol technology.

The definition of discriminatory taxes contained in the current legislation should be amended to insure that it does not allow a seller through affiliates to avoid a tax collection obligation in a state even though the seller has a substantial nexus in the state.

*Adopted this 29<sup>th</sup> day of July, 2005, by the Multistate Tax Commission.*

*Adopted, as amended, this 28<sup>th</sup> day of July, 2010, by the Multistate Tax Commission.*

  
Joe Huddleston  
Executive Director

This resolution shall expire at the Annual Business Meeting of the Multistate Tax Commission in 2015.