

Patuxent Consulting Group, Inc.

1100 H Street, NW
Suite 1200
Washington, DC 20005
Ph: 202-349-7019
Fx: 202-783-0575

November 2, 2007

**TO: Joe Huddleston,
Executive Director
Multistate Tax Commission**

**FROM: James C. Rosapepe
Leonard L. Lucchi
Carolyn M. Brenner**

**RE: Federal Legislative Activities –
Report to the Executive Committee**

Congress is speeding toward its November 16, 2007 Target Adjournment date with much important business still on its plate including all of the appropriations bills, the farm bill, and the confirmation of Judge Mukasey. Congress is probably finished with action state tax issues for the year, but one can never be too sure. Here is the status of state tax issues now before Congress:

- 1. Extension of the Internet Tax Freedom Act (H.R. 3678)** – On Halloween, the day before the internet moratorium was scheduled to expire, the President signed this legislation into law. The new law extends the moratorium on taxation of internet access for **seven** years, preserves the 1998 grandfather clauses for those states already taxing internet access, clarifies that those states that replaced corporate income taxes with gross receipts taxes can still tax internet service providers, and redefining “internet access” to clarify that ancillary services such as video and music can still be taxed. The House originally passed a 4-year moratorium with only 2 dissenting votes, although the vote on whether to make the moratorium permanent failed on a close party-line vote in the Judiciary Committee. The Senate, by unanimous consent, sent the bill back to the House with a 7-year amendment and the House, under suspension of the rules, accepted that amendment without a recorded vote. A copy of Judiciary Chairman John Conyers’ remarks in the Congressional Record interpreting the new “internet access” definition is attached. Chairman Conyers was a very strong and forceful advocate for state taxation authority throughout the entire debate.

- 2. Mobile Workforce State Income Tax Fairness and Simplification Act of 2007 (H.R. 3359)** – This legislation, sponsored by Reps. Hank Johnson (D-GA) and Chris Cannon (R-UT), aims to establish a uniform national threshold of 60 workdays within a calendar year before a state may tax certain non-residents. A hearing on this bill was held November 1, 2007 by the House Judiciary Committee’s Subcommittee on Commercial and Administrative Law. Witnesses at the hearing were Doug Lindholm representing COST, Dee Nelson representing the American Payroll Association, Harley Duncan representing FTA, and Prof. Wally Hellerstein of the University Of Georgia School Of Law. All of these witness statements are attached. Because he was not affiliated with an interest group, Prof. Hellerstein’s testimony seemed to be accorded extra weight by the Members of the Subcommittee. Although he testified that “Congress has never enacted comprehensive legislation limiting state taxation of interstate commerce”, he did state that Congress had the authority to enact H.R. 3359, that there was “substantial historical precedent” to do so, and its enactment would be “an appropriate exercise of congressional power.” Staff did not know when or whether this legislation would be scheduled for markup and vote.
- 3. “Discriminatory Taxation” Legislation** – Several pieces of legislation have been introduced seeking to prohibit taxation of certain property and services in a manner that is consistent with taxation of other property and services. These bills would affect taxation of cell phone services (S. 166, H.R. 436), natural gas pipelines (H.R. 2230), rental vehicles (H.R. 2453) and multichannel video programming distribution services (H.R. 3679). In addition, there has been much discussion regarding the introduction of a bill or an amendment concerning taxation of hotel intermediary services. There is a possibility that there may be a single, general hearing on all of these subject areas early next year in the House.
- 4. Business Activity Tax Simplification Act of 2007 (S. 1726)** – This legislation sponsored by Senators Chuck Schumer (D-NY) and Mike Crapo (R-ID) was introduced last June and referred to the Senate Finance Committee. No action on this bill is contemplated in the immediate future, but it will continue to be monitored.
- 5. Sales Tax Fairness and Simplification Act (S. 34, H. 3396)** – While no recent developments on this legislation have occurred in the Senate, the House legislation, which was introduced in September, was referred by House Judiciary Chairman John Conyers (D-MI), himself a cosponsor, to a different subcommittee than the subcommittee to which previous bills have been referred. The legislation is now before the Subcommittee on the Courts, Internet and Intellectual Property, chaired by Rep. Howard Berman (D-CA). The bill’s sponsor, Rep. Bill Delahunt (D-MA) is pushing for the bill to have a hearing as soon as possible.