

Multistate Tax Commission

Resolution No. 05-04

Resolution Regarding Tax Fairness in the Proposed Federal Extension of the “Internet Tax Nondiscrimination Act”

Whereas, the Internet Tax Nondiscrimination Act expires on November 21, 2007; and

Whereas, the Act imposes a moratorium on the imposition of new taxes on charges for Internet access and prohibits multiple and discriminatory taxes on electronic commerce; and

Whereas, Congress may consider measures to modify the Act, included making the moratorium on the imposition of taxes on charges for Internet access a permanent one and the elimination of the existing 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, the current moratorium requires the General Accountability Office to conduct a study of the impact of the moratorium on state and local revenues and submit the study to Congress by November 21, 2005; 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 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:

- The moratorium should not be extended for more than two years.
- 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 competitive equity among all forms of commerce.
- Congress should consider the approach taken by Texas in exempting Internet access from taxation, whose sales tax on Internet access is measured by a clear and specific dollar amount.
- 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 or 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.
- Provisions consistent with the standards developed by the Streamlined Sales Tax Project should be incorporated into an extension of the moratorium so States would be authorized to require some remote sellers without a physical presence in the state to collect sales and use taxes on sales made into the state under a simplified sales and use tax administration system.
- The requirements for a simplified sales tax system should not require adoption of specified standards of nexus for other types of state and local taxes, but should provide that collection and remittance of sales and use taxes, in and of itself, would not be considered a factor in determining nexus for other state and local taxes.

- Congress should commit itself to achieving equity in sales and use tax collections by authorizing states, in advance, but subject to congressional veto, to require collection of the tax by remote sellers that exceed a de minimis sales threshold, the authorization taking effect automatically once a critical mass of states have implemented the simplifications outlined by the Streamlined Sales Tax Project.

Adopted this 29th day of July, 2005 by the Multistate Tax Commission.

Joe Huddleston
Executive Director

This resolution shall expire at the Annual Business Meeting of the Multistate Tax Commission in 2010.