



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

Date Amended:	<b>Enrolled</b>	Bill No:	<b>SB 394</b>
Tax:	<b>Internet</b>	Author:	<b>Sher, et al.</b>
Board Position:	<b>Support</b>	Related Bills:	<b>AB 228 (J. Campbell)</b>

**BILL SUMMARY**

This bill would extend California’s Internet Tax Freedom Act for an additional one or two years, depending on when the California Commission on Tax Policy in the New Economy submits a specified report.

**ANALYSIS**

**Current Law**

*State law:* Part 32 (commencing with section 65001) of Division 2 of the Revenue and Taxation Code was added by AB 1614 (Ch. 351, Stats. 1998) to create the “California Internet Tax Freedom Act.” Subdivision (h) of section 65002 states the legislative intent that no existing or future state taxes or state fees be imposed by the state in a discriminatory manner upon Internet access or online computer services.

Subdivision (a) of section 65004 specifies that for the period January 1, 1999 through January 1, 2002, no local government may impose, assess, or attempt to collect any tax or fee on: 1) Internet access, online computer services, or the use of either; 2) a bit tax or bandwidth tax; or 3) any discriminatory tax on Internet access or online computer services. Subdivision (b) of section 65004 provides that this prohibition does not include any new or existing tax of general application, including but not limited to any sales and use tax, business license tax, or utility user tax that is imposed or assessed in a uniform and nondiscriminatory manner, as specified.

Under existing law, Part 18.3 (commencing with Section 38061) of the Revenue and Taxation Code, as added by SB 1933 (Stats. 2000, Ch. 619), the California Commission on Tax Policy in the New Economy was created to examine the impact of the Internet and other forms of electronic technology on the sales and use tax, telecommunications taxes, property taxes, and income taxes, as specified. Section 38066 requires the Commission to submit an interim report to the Governor and the Legislature not later than 12 months from the date of the Commission's first public meeting and a final report with recommendations not later than 24 months from the date of the Commission's first public meeting.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.*

*Federal law:* Under Title XI and XII of the Omnibus Appropriations Act of 1998, approved as H.R. 4328 by Congress on October 20, 1998 and signed as Public Law 105-277 on October 21, 1998, the federal "Internet Tax Freedom Act" was created to do the following:

- Prohibit state and local governments from taxing Internet access from October 1, 1998 until October 21, 2001.
- Prohibit state and local governments from imposing taxes that would subject buyers and sellers of electronic commerce to taxation in multiple states and protect against the imposition of new tax liability for consumers and vendors involved in commercial transactions over the Internet, including the application of discriminatory tax collection requirements imposed on out-of-state businesses through strained interpretations of "nexus."
- Establish a commission to study electronic commerce tax issues and report back to Congress after 18 months on whether electronic commerce should be taxed, and if so, how such commerce can be taxed in a manner that ensures that it will not be subject to special, multiple, or discriminatory taxes.
- Specify that it is the Sense of Congress that there should be no federal taxes on Internet access or electronic commerce.
- Declare that the Internet should be a tariff-free zone.

### **Proposed Law**

This bill would amend subdivision (d) of Section 65004 of the Revenue and Taxation Code to provide that the Internet Tax Freedom Act would remain in effect until January 1, 2004, unless the California Commission on Tax Policy in the New Economy fails to submit a specified report, in which case the California Internet Tax Freedom Act would be repealed on January 1, 2003

The bill would become operative January 1, 2002.

### **Background**

A measure to extend the sunset date was considered during the 2000 Legislative Session. That measure, AB 1784 (Lempert, et al.) was enacted into law (Chapter 618). However, the bill never became operative because the bill also contained an uncodified section that provided that AB 1784 would only become operative if Assembly Bill 2412 was enacted and became effective on or before January 1, 2001. Since Assembly Bill 2412 was vetoed by the Governor, the provisions of AB 1784 never became operative. (Assembly Bill 2412, Migden and Aroner, would have required certain out-of-state dot-com retailers to collect the applicable use tax if they were related to a substantially similar retailer operating in California, as specified.)

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

**COMMENTS**

1. **Sponsor and purpose.** The measure is sponsored by the author and is intended to continue a responsible tax policy regarding the taxation of the Internet so as to avoid any potential burdens placed on this evolving medium.
2. **The August 23, 2001 amendments simply added a co-author.**
3. **The July 23, 2001 amendments would conditionally extend the sunset date.** These amendments would specify that California's Internet Tax Freedom Act would be contingent upon the submission of a report by the California Commission on Tax Policy in the New Economy to the Governor and Legislature prior to December 1, 2002. The California Internet Tax Freedom Act would remain in effect until January 1, 2004, unless the Commission fails to submit the report, in which case the California Internet Tax Freedom Act would be repealed on January 1, 2003.
4. **The June 20, 2001 amendments delete the provisions requiring a study.** The amendments delete the requirement that would have required the Legislative Analyst to prepare a report reviewing California's telecommunications levies.
5. **The May 1, 2001 amendments change the sunset date to January 1, 2004.** Prior to this amendment, the bill would have specified that the California Internet Tax Freedom Act would remain in effect until January 1, 2007.
6. **There is pending federal legislation to also extend the federal Internet Tax Freedom Act.** Several bills pertaining to Federal Internet taxation have been introduced in Congress before to either make the federal moratorium permanent, or to extend it. These include: S. 245, S. 246, and S. 589 (Robert Smith), S. 288 (Wyden and Leahy), S. 512 (Dorgan, et al.), S. 777 (Allen & Burns), H.R. 1410 (Istook, et al.), HR 1552 (Cox, et al.) and HR 1675 (Cox).
7. **Board supported both federal and state legislation.** The Board unanimously supported the 1998 federal "Internet Tax Freedom Act" as well as California's Internet Tax Freedom Act of 1998.
8. **Related legislation.** A similar measure to extend California's Internet Tax Freedom Act has also been introduced. That measure, AB 228 (J. Campbell), would extend the Act for an additional *three* years.

**COST ESTIMATE**

Enactment of this measure would not have any impact on the Board's administrative costs.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

**REVENUE ESTIMATE**

Enactment of this measure would have no impact on the State's or local jurisdictions' sales and use tax revenues nor would it impact the revenues derived from the imposition of the Emergency Telephone Users Surcharge or any other fee or tax administered by the Board.

---

Analysis prepared by:	Sheila T. Sarem	445-6579	09/14/01
Contact:	Margaret S. Shedd	322-2376	
sf			0394-enr

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*