



STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	02/13/01	Bill No:	AB 228
Tax:	Internet	Author:	J. Campbell
Board Position:		Related Bills:	SB 394 (Sher)

BILL SUMMARY

This bill would extend California's Internet Tax Freedom Act for an additional three years - until January 1, 2005.

ANALYSIS

Current Law

State law. Under California 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." This Act states legislative findings and declarations 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, and specifies the following:

- 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 Internet access, online computer services, or the use thereof, or a bit tax or bandwidth tax, except that prohibition does not include:
 1. Any existing tax, including any sales and use tax, business license tax, or utility user tax that is imposed in a uniform and nondiscriminatory manner, as specified.
 2. Any cable television franchise fee on online computer services or Internet access delivered over a cable television system, except as specified.

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 protects against the imposition of new tax liability for consumers and vendors involved in commercial transactions over the Internet, including the application of discriminatory

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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 they can be taxed in a manner that ensures such commerce won't 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 Section 65004 of the California Internet Tax Freedom Act within the Revenue and Taxation Code to specify that the Internet Tax Freedom Act shall remain in effect only until January 1, 2005, and as of that date, is repealed.

Background

A similar measure 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 applicable use tax when they had a substantially similar retailer operating in California.)

COMMENTS

1. **Sponsor and purpose of the bill.** 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. **There is pending federal legislation to also extend the federal Internet Tax Freedom Act.** Four bills pertaining to Federal Internet taxation have recently been introduced before Congress. Senator Robert Smith, introduced two bills: S. 245 that would make permanent a ban on Internet taxes, and S. 246 that would extend the moratorium for five years. Also, Senators Ron Wyden and Patrick Leahy introduced a measure, S. 288, to make the moratorium on access taxes permanent, and to extend for five years the moratorium on multiple and discriminatory taxes. It also contains provisions to encourage the adoption of a streamlined sales tax system by the states. In addition, House Member Chris Cox introduced a moratorium extension measure that contains the same moratorium provisions as those contained in the Wyden-Leahy bill.

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3. **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.
4. **Related Legislation.** Another measure to extend California's Internet Tax Freedom Act for an additional *five* years has been introduced- SB 394 (Sher).

COST ESTIMATE

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

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.

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