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Taxes section

Congress must pass legislation extending the moratoria on discriminatory taxation of e-commerce and taxation of Internet access before mid-October. The current moratorium will expire soon. Contrary to popular belief, the Moratorium does not affect the ability of states to collect sales and use taxes. The Moratorium prohibits states from imposing multiple and discriminatory taxes on electronic commerce and from imposing taxes on Internet access. If Congress does not act, the situation will revert to where it was years ago with states being free to attempt to levy discriminatory taxes on the on-line delivery of goods, such as "newspapers," which are explicitly exempt from sales and use tax if delivered over-the-counter. In addition, states will be free to return to taxing Internet access, effectively raising the costs for access to the Internet for all income levels. A tax on access would inhibit Internet use by those least able to pay, thus widening the digital divide. The moratoria are fundamentally important, but we believe provisions that seek simplification of the current system of confusing and complex sales, use, business activity nexus standards, and telecommunications taxes should be included in the legislation.

Use tax

States do currently have the ability to tax remote commerce; they just do not enforce their mechanisms.

One of the most persistent myths during the course of the debate about Internet tax has been that the moratorium has somehow precluded states from collecting sales and use tax. This is not correct. The states have always had the ability to collect sales and use tax within their state borders. Sales made in a state by a remote vendor trigger a use tax obligation on the purchaser, rather than an obligation on the remote vendor to collect and remit a sales tax. Again, states have the authority to collect the use tax from its residents, although it is admittedly a difficult tax to widely enforce. For sales tax, the states have been provided a roadmap by the US Supreme Court in *Quill*.

Absent Congressional approval, the states cannot require out-of-state merchants without a physical presence in the state to collect and remit sales tax on purchases made in the state. While the states desperately want this authority, Congress must require the states to simplify their complex sales and use tax systems before granting authority to the states to burden out-of-state merchants with no physical presence in the state. Simplification must be sufficient so that these taxes no longer pose an undue burden on interstate commerce. The states must then convince Congress that their efforts have succeeded in removing the undue burden on interstate commerce that the *Quill* court found existed. The states have engaged in various efforts in recent years to simplify their systems but so far they have not proven successful.

Sales/Use tax - for ITAA

Obviously, states have the right to levy taxes as they find necessary; ITAA is concerned when state's taxation schemes discriminate against a means of commerce. We strongly oppose any imposition of discriminatory taxes that are levied because of a means of delivery or distribution. Similarly, we oppose multiple taxes, as referenced in the moratorium, regardless of form or application. To elaborate, discriminatory taxes are never justified. ITAA finds no validity in the argument that attempts to justify placing a tax only on a means of commerce or on a means of delivery of a product. To single out electronic commerce or the Internet for a system of discriminatory taxation cannot be justified. Hence, regardless of how goods or services are purchased, if they are to be taxed, they should be taxed at the same rate as goods or services purchased through "traditional means."