House approves permanent Internet access tax moratorium

The House of Representatives on June 9 approved by voice vote legislation that would permanently extend the current-law moratorium on state and local Internet access taxes and multiple and discriminatory taxes on electronic commerce. The Permanent Internet Tax Freedom Act (H.R. 235) also would allow for the expiration of protections for certain Internet access taxes that were levied before October 1998 and grandfathered into the moratorium. The grandfathering protections currently apply to taxes imposed by South Dakota, North Dakota, Wisconsin, New Mexico, Hawaii, Texas, and Ohio.

The House approved identical legislation last year.

Senate prospects unclear

A Senate companion bill, the Internet Tax Freedom Forever Act (S. 431), was introduced in that chamber by Finance Committee member John Thune, R-S.D., and ranking Democrat Ron Wyden of Oregon in February. Finance Chairman Orrin Hatch, R-Utah, has so far not announced plans for a mark-up, however.

Wyden introduced legislation to permanently extend the Internet tax moratorium last year when he chaired the Finance Committee. But he never held a committee mark-up and the bill’s progress was stymied by lawmakers who sought to link action on Internet access taxes with provisions from the Marketplace Fairness Act of 2014 (MFA) that were intended to make it easier for a state to capture sales and use tax revenue from transactions involving on-line and other “remote” vendors that do not have an in-state physical presence. Finance Committee member Mike Enzi, R-Wyo., for example, introduced competing legislation last year that would have coupled a 10-year extension of the Internet tax moratorium and the grandfather rules with the MFA’s remote sales tax provisions. (For prior coverage, see Tax News & Views, Vol. 15, No. 34, Nov. 14, 2014.) Although the Internet access tax moratorium generally has broad support in Congress, remote sales tax collection has been a more divisive issue. Rather than creating splits along purely partisan lines, however, on-line sales tax collection generally pits lawmakers from states that impose sales and use taxes against those from states that do not.

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Efforts to link the two issues appear likely again this year. Enzi introduced a remote sales tax bill – the Marketplace Fairness Act of 2015 (S. 698) – in March. In the wake of the House’s passage of the permanent Internet access tax moratorium, Sen. Heidi Heitkamp, D-N.D., a co-sponsor of Enzi’s MFA legislation, issued a statement urging lawmakers to “pass both of these needed bills together to help level the playing field and give small businesses, as well as individuals and families, fixes they deserve.” (A similar situation could emerge in the House, although Speaker John Boehner, R-Ohio, blocked attempts by lawmakers in that chamber last year to link the two tax issues.)

Current Internet access tax moratorium set to expire

The Internet access tax moratorium and related grandfathering provisions have been in effect since 1998 and have been extended temporarily a number of times since then – most recently
as part of the government funding package approved last December in the closing days of the 113th Congress. They are scheduled to expire on October 1.

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