

The Internet Tax Freedom Act: In Brief

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Summary

The Internet Tax Freedom Act (ITFA; P.L. 105-277), enacted in 1998, implemented a three-year moratorium preventing state and local governments from taxing Internet access, or imposing multiple or discriminatory taxes on electronic commerce. The act included a grandfather clause allowing state and local governments to continue taxing Internet access, provided the tax had been imposed and enforced before October 1, 1998. Under the moratorium, state and local governments cannot impose their sales tax on the monthly payments that consumers make to their Internet service provider in exchange for access to the Internet.

The 113th Congress passed multiple extensions of ITFA. The Internet tax moratorium and grandfather clause were first set to expire on November 1, 2014, but were extended through December 11, 2014 as part of the continuing resolutions appropriations bill (P.L. 113-46). These provisions were extended further as part of the Consolidated and Further Continuing Appropriations Act of 2015 (P.L. 113-235) through October 1, 2015.

In the 114th Congress, legislative proposals to permanently extend parts of ITFA have been introduced in both houses of Congress. The Permanent Internet Tax Freedom Act (H.R. 235), which would permanently extend the moratorium on Internet access taxes while allowing the grandfather clause to expire, was passed by the House on June 9, 2015. Companion legislation has been introduced in the Senate (S. 431).

The original three-year moratorium has been extended five times. As the original moratorium was extended, changes were made to the definition of Internet access to include or exclude different services and technology. Notable changes include the inclusion of digital subscriber lines under the moratorium and the exclusion of Voice over Internet Protocol services.

Through time, the grandfather clause has protected a decreasing number of states' abilities to tax Internet access, as changes to the grandfather clause have been implemented. While 13 states previously taxed Internet access and were protected under the grandfather clause, 7 states now tax Internet access. In addition, changes made to ITFA in 2007 rendered the grandfather provision inapplicable for states that repealed or nullified their tax laws on Internet access before the enactment of these changes.

Policy options, including allowing the moratorium to expire, extending the moratorium either permanently or temporarily, and eliminating the grandfather clause, have been continually debated. Proponents of the moratorium argue that it provides a subsidy to consumers increasing the number of individuals that have access to the Internet. Additionally, proponents cite the reduced administrative burden for businesses under the moratorium. Opponents of the moratorium cite unequal tax treatment of similar services, impacts on state revenues, and an encroachment on states' autonomy over their tax laws as reasons to allow the moratorium to expire.

The Internet Tax Freedom Act and its subsequent extensions are often conflated with issues related to the taxation of electronic commerce across state borders. ITFA is largely unrelated to these issues. For a discussion of interstate electronic commerce and taxation issues, refer to CRS Report R41853, *State Taxation of Internet Transactions*, by Steven Maguire, and CRS Report R42629, *"Amazon Laws" and Taxation of Internet Sales: Constitutional Analysis*, by Erika K. Lunder and Carol A. Pettit.

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The moratorium on Internet access taxes prohibits states or their political subdivisions from imposing new taxes on Internet access services. The moratorium was most recently extended through October 1, 2015, as part of the Consolidated and Further Continuing Appropriations Act of 2015 (P.L. 113-235). Whether to continue extending the moratorium is an issue of debate. Extending the moratorium could increase individual access to the Internet, which could reduce the inequitable distribution of Internet access across income levels and increase economic efficiency. Allowing the moratorium to expire could allow states to apply taxes to Internet and non-Internet services equally and increase state and local revenues.

Legislative Status and Background

The Internet Tax Freedom Act of 1998 (ITFA; P.L. 105-277) imposed on state and local governments a three-year moratorium, from October 1, 1998, to October 1, 2001, on (1) new taxes on Internet access, and (2) multiple or discriminatory taxes on electronic commerce. It also established the Advisory Commission on Electronic Commerce. The moratorium includes a grandfather clause allowing states that already had "imposed and enforced" a tax on Internet access to continue enforcing those taxes. The evolution of the Internet, its interaction with telecommunication services, and disputes over state autonomy have led to a number of changes in the law with its successive extensions.

The Internet Tax Nondiscrimination Act (P.L. 107-75), enacted in 2001, was the first extension of ITFA. It extended the Internet tax moratorium and the grandfather clause protections through November 1, 2003, but made no additional changes to the law.

In 2004, the Internet Tax Nondiscrimination Act (ITNA; P.L. 108-435) extended the Internet tax moratorium through November 1, 2007. Before the passage of ITNA, some states had implemented taxes on digital subscriber line (DSL) Internet connections claiming they were a telecommunication service and therefore exempt from the ITFA moratorium. ITNA changed the definition of Internet access to include DSL connections under the moratorium. Taxes on DSL service were given grandfather protection through November 1, 2005, and grandfather protection for other Internet access taxes in place before October 1, 1998, was extended through November 1, 2007. Changes in ITNA also excluded Voice over Internet Protocol (VoIP) services from the moratorium, allowing state and local governments to tax this service. Lastly, ITNA directed the Government Accountability Office (GAO) to investigate the impact of the Internet tax moratorium on state and local government revenues and the adoption of broadband technologies.[1]

The Internet Tax Freedom Act Amendments Act of 2007 (P.L. 110-108) extended the Internet tax moratorium and the original grandfather clause through November 1, 2014. Additionally, the law revoked grandfather protections if states had voluntarily repealed their Internet access taxes since the passage of ITFA in 1998.

[1] The results of the GAO investigation were published in two reports in 2006. U.S. Government Accountability Office, *Internet Access Tax Moratorium: Revenue Impacts Will Vary by State*, GAO-06-273, January 2006, http://www.gao.gov/new.items/d06273.pdf, and U.S. Government Accountability Office, *Telecommunications: Broadband Deployment is Extensive Throughout the United States, but it is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, GAO-06-426, May 2006, http://www.gao.gov/new.items/d06426.pdf.

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As part of a continuing appropriations resolution (P.L. 113-164) enacted in 2014, the Internet tax moratorium and the grandfather clause protections were extended through December 11, 2014, but no additional changes to the law were made.

The most recent extension of ITFA was included in the Consolidated and Further Continuing Appropriations Act of 2015 (P.L. 113-235), which extended the Internet tax moratorium and the grandfather clause protections through October 1, 2015. With this extension, ITFA has been extended five times.

In the 114th Congress, legislative proposals to permanently extend parts of ITFA have been introduced in both houses of Congress. The Permanent Internet Tax Freedom Act (H.R. 235) was passed in the House on June 9, 2015, which would permanently extend the moratorium on taxing Internet access while allowing the grandfather clause to expire. Companion legislation (S. 431) has been introduced in the Senate, but has yet to receive a vote.

Moratorium on Taxing Internet Access

The moratorium on Internet access taxes established by ITFA and its subsequent extensions prohibits states or their political subdivisions from imposing any new taxes on Internet access services. Internet access service is defined as "a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers."[2] The sale and purchase of Internet access services is exempt from taxation under ITFA; however, costs related to acquired services, such as an Internet service provider (ISP) leasing capacity over fiber, are not covered by the moratorium and thus potentially subject to taxation.[3] Internet access is often bundled with other services such as voice or video service. In these situations, if the ISP can reasonably separate the charges related to Internet access from the other service charges, the Internet access charges remain exempt from taxation; otherwise the Internet access charges can be taxed.[4]

The moratorium on taxing Internet access affects consumers of the Internet, ISPs, and state and local governments. One of the most significant effects of ITFA is that state and local governments cannot impose their sales taxes on the monthly payments that consumers make to their ISP, such as Comcast or AT&T, in exchange for access to the Internet. The moratorium prohibits taxes on Internet access services regardless of whether the tax is imposed on the consumer or the provider.

The moratorium affects state and local governments by limiting the activities that can be taxed, reducing their potential tax base, which may reduce state and local revenues. One estimate suggests that the moratorium on Internet access taxes could reduce potential state and local revenues by as much as $6.5 billion each year.[5] It should be noted that this estimate assumes that

[2] 47 U.S.C. § 151, note.

[3] U.S. Government Accountability Office, *Internet Access Tax Moratorium: Revenue Impacts Will Vary by State*, GAO-06-273, January 2006, pp. 10-11.

[4] 47 U.S.C. § 151, note.

[5] Michael Mazerov, *Congress Should End - Not Extend - the Ban on State and Local Taxation of Internet Access Subscriptions*, Center on Budget and Policy Priorities, Washington, DC, July 10, 2014, Table 2, http://www.cbpp.org/cms/?fa=view&id=4161.

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all states and local governments would impose their sales tax on Internet access services. This revenue estimate is further discussed below in the "State Revenues and Autonomy" section.

The Grandfather Clause

ITFA contained a grandfather clause to allow state and local governments to continue taxing Internet access if they already had a tax on Internet access that was generally imposed and actually enforced before October 1, 1998. Initially 13 states were included under the grandfather clause, but a number of states have voluntarily eliminated their Internet access taxes since the passage of ITFA.[6] Currently seven states claim to collect tax revenue from Internet access: Hawaii, New Mexico, North Dakota, Ohio, South Dakota, Texas, and Wisconsin.[7] According to a recent survey, these seven states collect a combined $563 million per year from their taxes on Internet access.[8] The grandfather clause protecting taxes on Internet access implemented before October 1, 1998, is set to expire alongside the tax moratorium on October 1, 2015.

In addition to the original grandfather clause established in ITFA (P.L. 105-277), an additional grandfather clause was established as part of the Internet Tax Nondiscrimination Act (ITNA; P.L. 108-435) for certain taxes on Internet access imposed and enforced before November 1, 2003. The grandfather clause established under ITNA expired on November 1, 2005, which largely applied to state and local taxes on DSL Internet access services.

Moratorium on Multiple or Discriminatory Taxes

ITFA also prohibits state and local governments from imposing multiple or discriminatory taxes on electronic commerce. The ban on multiple taxes prohibits more than one state, or more than one local jurisdiction at the same level of government (i.e., more than one county or city), from imposing a tax on the same transaction, unless a credit is offered for taxes paid to the other jurisdiction. However, the state, county, and city in which an electronic commerce transaction takes place could all levy their own sales (or use) taxes on the transaction.

The ban on discriminatory taxes prohibits additional taxes or an alternative tax rate on a good, service, or information delivered electronically that would differ from the tax or rate applied to the same, or similar, good, service, or information if it were purchased through traditional commerce (e.g., brick and mortar stores, catalog sales). In other words, under the moratorium the same tax rate must be applied to similar items regardless of how they were purchased. For example, purchasing a book through a local book store's website cannot be taxed at a higher rate than purchasing it at the local book store's physical location.

ITFA also lists conditions under which a remote seller's use of a computer server, an Internet access service, or online services does not establish a minimal connection to a state for taxation purposes. These circumstances include the sole ability to access a site on a remote seller's out-of-

[6] Ibid, p. 18.

[7] Henry Reske, "Ending Internet Law's Grandfather Clause Could Cost States $500 Million," *Tax Analysts*, 2014-15565, June 24, 2014.

[8] Ibid.

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state computer server; the display of a remote seller's information or content on the out-of-state computer server of a provider of Internet access service or online services; and processing of orders through the out-of-state computer server of a provider of Internet access service or online services. Some businesses have taken advantage of these nexus limits in ITFA's definition of discriminatory tax to establish what are referred to as Internet kiosks or dot-com subsidiaries. The businesses claim that these Internet-based operations are free from sales and use tax collection requirements. Critics object that these methods of business organization are an abuse of the definition of discriminatory tax.[9]

Use Taxes and Interstate E-Commerce

The collection of use taxes has become a larger issue in public debates recently; however, this issue is largely unrelated to ITFA and its moratorium on Internet taxes. ITFA deals specifically with taxes on Internet access, and multiple or discriminatory taxes on electronic commerce, while the issues related to taxing interstate electronic commerce center largely on the Supreme Court's decision in *Quill Corp. v. North Dakota* and the Commerce and Due Process Clauses of the Constitution.[10] Both clauses require that an entity have some type of connection, or nexus, with a state before the state can impose a tax on it. *Quill* established that, under the Commerce Clause, a retailer must have a "physical presence" in the state before the state can require the retailer to collect use taxes, while due process imposes a lesser standard.[11] A great deal of electronic commerce involves firms that have a physical presence in a single state where they house their servers or warehouse their goods but sell goods to individuals in the other 49 states. Due to the definition of nexus established in *Quill,* firms cannot be compelled to collect use taxes from individuals at the point of sale when engaged in transactions in states where they have no physical presence. Instead, individuals making the purchase are supposed to remit a use tax to their own state governments; compliance with this requirement is low.[12]

For further discussion of interstate electronic commerce issues see CRS Report R41853, *State Taxation of Internet Transactions*, by Steven Maguire, and CRS Report R42629, *"Amazon Laws" and Taxation of Internet Sales: Constitutional Analysis*, by Erika K. Lunder and Carol A. Pettit.

Economic and Policy Considerations

The largest policy consideration with respect to ITFA centers on whether to extend the moratorium on Internet access taxes. The 113th Congress passed two temporary extensions of ITFA, however, multiple legislative proposals in the 114th Congress have called for a permanent extension of the moratorium as well as eliminating the grandfather clause protections (H.R. 235 and S. 431). Those calling for an extension of the moratorium cite the benefits of increased access to the Internet, which may be achieved through tax-free Internet access. Others calling for the

[9] See CRS Report RL33261, *Internet Taxation: Issues and Legislation*, by Steven Maguire and Nonna A. Noto.

[10] CRS Report R42629, *"Amazon Laws" and Taxation of Internet Sales: Constitutional Analysis*, by Erika K. Lunder and Carol A. Pettit.

[11] Ibid. pp. 2-5.

[12] Linda O'Brien, "Tax Trends: States Address Declining Tax Revenues," *The Tax Magazine*, April 1, 2005, p. 9.

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expiration of the moratorium cite the unfair tax advantage given to services delivered via the Internet

The alternative policy proposals surrounding the Internet tax moratorium can be evaluated based upon their implications for economic efficiency and equity in the tax code. Additional factors related to the traditional autonomy states have over their own tax laws, and congressional intent related to the Internet Tax Freedom Act of 1998, also come to bear when analyzing the alternative policy options.

Allow the Moratorium to Expire

The Internet tax moratorium is set to expire on October 1, 2015. Proponents of allowing the moratorium to expire focus their arguments on the inequitable treatment of similar services under the tax laws due to the moratorium.[13] Services provided through the Internet avoid taxation, while similar offline services can face multiple taxes. Additionally, issues of federalism and state autonomy over their own tax codes, as well as the original congressional intent when ITFA was passed in 1998, are cited by the National Governors Association when discussing policy options related to the ITFA.

Technology-Neutral Tax Laws

The Internet provides numerous services that are similar to services that are provided through more traditional means and are subject to taxation by state and local governments. The moratorium on taxing Internet access therefore provides a relative tax advantage to services offered through the Internet. For example, an individual who would like phone service can obtain similar service either by purchasing plain old telephone service (POTS), which is often subject to state and local sales taxes, or they can purchase Internet access and use a free service, like Skype, to make phone calls and avoid paying any sales or use taxes. Opponents of the Internet tax moratorium cite this inequitable treatment under the act as a principal reason to allow it to expire.[14]

The inequitable tax treatment under the moratorium violates the principle of horizontal equity. The principle of horizontal equity suggests that like-situated individuals should be taxed in a similar manner. With the current Internet tax moratorium, two firms that provide almost identical services can be subject to different tax rates based on how the service is provided, either over the Internet or by a brick-and-mortar business.

State Revenues and Autonomy

As the Internet has grown in size and popularity, states have forgone a source of potential revenues because of the federal moratorium. As mentioned previously, one estimate suggests that states could collect as much as $6.5 billion in revenue each year from taxing Internet access.[15] This estimate assumes that all states and local jurisdictions would impose their sales taxes on

[13] Michael Mazerov, 2014.

[14] Ibid.

[15] Ibid.

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Internet access. This is unlikely to occur when considering that multiple grandfathered states eliminated their Internet access taxes voluntarily, and California even implemented a similar state-level moratorium on Internet taxes in 1999. Estimating the lost revenue from the Internet tax moratorium is difficult because it is necessary to speculate how states would have acted in the absence of the moratorium. The seven states that currently collect sales tax on Internet access raise an estimated $563 million per year.[16]

States have historically been allowed the freedom to determine how they want to raise their own revenues. ITFA is one example of a departure from this relationship in that the federal government restricted state and local governments from taxing certain activities. The National Governors Association has voiced concerns about the federal government encroaching on state autonomy, and hopes to revise parts of ITFA to shrink the definition of Internet access to allow taxation of more activities related to the provision of Internet access.[17]

Original Congressional Intent

Multiple reports accompanying ITFA suggest that the Internet tax moratorium was meant to be a temporary solution and legislators expected the moratorium to be replaced with some alternative tax structure. A report from the Senate Committee on Finance states, "the Committee determined that a limited moratorium, accompanied by a review of appropriate tax and trade issues, will give Congress the opportunity to evaluate proper State and local government interstate taxation."[18] Additionally, the Senate Committee on Finance stated that, "fair and administrable rules for taxing and regulating the use of the Internet ... should be developed."[19] The House Committee on Commerce referred to the Internet tax moratorium as a "time-out" and called for the commission created in ITFA to generate legislative proposals addressing taxation of the Internet.[20]

The commission established in ITFA was expected to develop legislative proposals for fair and administrable tax rules for the Internet. The commission did not implement any policy proposals, and efforts to develop federal legislation to govern the taxation of the Internet have stalled.

Extending the Moratorium

The moratorium on Internet access taxes was most recently extended through October 1, 2015, by P.L. 113-235. Proponents of the Internet tax moratorium cite the benefits of increasing the number of people accessing the Internet, by keeping Internet access costs lower through its tax-free status under the moratorium. Proponents cite, as discussed below, numerous benefits from increasing the number of people on the Internet, including increased economic efficiency from network externalities and reducing the inequitable distribution of Internet access across income levels,

[16] Henry Reske, 2014.

[17] David Quam, *Testimony - Communications, Taxation, and Federalism,* National Governors Association, May 23, 2007, http://www.nga.org/cms/home/federal-relations/nga-testimony/page_2007/col2-content/main-content-list/may-23-2008-testimony—communic.html.

[18] U.S. Congress, Senate Committee on Finance, *Internet Tax Freedom Act*, Report to accompany S. 442, 105th Cong., 2nd sess., July 30, 1998, S.Rept. 105-276 (Washington: GPO, 1998), pp. 4-5.

[19] Ibid.

[20] U.S. Congress, House Committee on Commerce, *Internet Tax Freedom Act,* Report to accompany H.R. 3849, 105th Cong., 2nd sess., June 5, 1998, H.Rept. 105-570 (Washington: GPO, 1998), p. 12.

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often referred to as the digital divide. Additionally, some have argued that the moratorium prevents an undue administrative burden from being placed on ISPs, who would have to comply with upwards of 10,000 taxing jurisdictions across the country.[21]

Researchers have attempted to estimate how a change in the price of Internet access affects consumer decisions to purchase Internet access. Early estimates using data from 1998 suggested that a 10% increase in the price of Internet access could have reduced Internet service demanded by 27.5%.[22] More recent estimates suggest that a 10% increase in the price of Internet access could have reduced Internet service demanded by about 6% to 7%.[23] These lower estimates were derived using data from 2000 and 2008, and likely reflect the growing importance of Internet access as the technology has matured.

Network Externalities

Due to the nature of the Internet, having additional businesses and individuals connecting to the Internet provides benefits both for those new Internet users but also for those who were already accessing the Internet. Or in economic terms, when an individual purchases Internet access they receive personal benefits, in the form of increased access to goods, services, and information, but they also generate external benefits for other individuals already using the Internet, in that they now have another Internet user to interact with or engage in commercial transactions.[24] When an individual is making a decision about whether to purchase Internet access, this reasoning holds, they will consider only their personal benefits from accessing the Internet and may not consider the external benefits they will create by purchasing Internet access. This results in fewer individuals accessing the Internet than is socially optimal. Increasing the number of individuals on the Internet could improve economic efficiency, by bringing the number of people on the Internet closer to the socially optimal level.

The Internet tax moratorium can be thought of as a subsidy to individuals, helping to internalize the external benefits they produce when purchasing Internet access. An optimally crafted policy would provide a subsidy exactly equal to the external benefits produced by an additional individual joining the Internet. Some have argued that the subsidy provided by the Internet access tax moratorium is too large in comparison to the external benefits generated by an individual joining the Internet.[25] Additionally, scholars argue that as the Internet has grown the external benefits associated with an additional user have decreased, and at a certain point negative external consequences may arise from congestion.[26]

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[21] Internet Tax Freedom Act Coalition, "The Issue: Keep Access to the Internet Free From Taxation," Accessed October 30, 2014, http://itfacoalition.org/the-issue/.

[22] Austan Goolsbee, "The Value of Broadband and the Deadweight Loss of Taxing New Technology," *The B.E. Journal of Economic Analysis & Policy*, vol. 5, no. 1 (April 2006), pp. 1-31.

[23] Mark A. Dutz, Jonathan M. Orszag, and Robert D. Wilig, "The Liftoff of Consumer Benefits from the Broadband Revolution," *Review of Network Economics*, vol. 11, no. 4 (December 2012); Rajeev K. Goel, Edward T. Hsieh, and Michael A. Nelson, et al., "Demand Elasticities for Internet Services," *Applied Economics*, vol. 38, no. 9 (2006), pp. 975-980.

[24] George R. Zodrow, "Network Externalities and Indirect Tax Preferences for Electronic Commerce," *International Tax and Public Finance*, vol. 10 (2003), pp. 83-84.

[25] Ibid. p. 85.

[26] Austan Goolsbee and Jonathan Zittrain, "Evaluating the Costs and Benefits of Taxing Internet Commerce," *National Tax Journal,* vol. 52 (September, 1999), pp. 413-428.

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Digital Divide

The Internet has grown to a point where access is almost a necessity for individuals to fully participate in the economy. For example, the Internet has now become a crucial tool for finding and securing employment. Subsidizing Internet access could make the Internet more accessible for lower-income individuals, allowing them to participate more fully in the economy.[27] As of May 2013, 24% of adults making less than $30,000 per year did not use the Internet, while 4% of adults making more than $75,000 did not use the Internet. This disparity in access to the Internet between high- and low-income individuals is often referred to as the digital divide. However, when adults who did not use the Internet were asked why, about 9% cited the cost of Internet access as the reason they do not use the Internet.[28]

Extending the Internet tax moratorium provides a subsidy to all individuals, lowering the price of accessing the Internet. Lower prices could allow more low-income individuals to afford Internet access, potentially reducing the digital divide, and allowing lower-income individuals to participate more fully in the economy.

Offering a subsidy through maintaining the Internet tax moratorium is an inefficient policy solution to extend Internet access to lower-income individuals. The subsidy offered through the tax moratorium helps low-income individuals afford Internet access, but it also provides a subsidy for upper- and middle-income individuals who would have likely purchased Internet access regardless of the subsidy. Offering a more targeted subsidy exclusively to lower-income individuals would help ensure they have access to the Internet, while avoiding the inefficiencies generated by subsidizing individuals who would have purchased Internet access regardless of the tax moratorium.

Burdensome Tax Laws

It has been argued that allowing the tax moratorium to expire would put an undue burden on ISPs, by forcing them to comply with numerous different state and local tax jurisdictions.[29] Estimates made for the number of local sales tax jurisdictions in the United States range from 7,600 to 14,500.[30] Increasing the administrative burden of complying with the tax laws of multiple jurisdictions reduces economic efficiency by diverting resources from more productive uses. By exempting ISPs from state and local sales tax this administrative burden is avoided.

Permanent vs. Temporary

As discussed earlier, some argue that the tax moratorium was meant to be a temporary fix until more technologically relevant tax laws could be put in place. Additionally, it has been argued that

[27] Letter from 60 Plus Association, ASPIRA, and Consumer Action, et al. to Harry Reid and Mitch McConnell, September 17, 2014, http://itfacoalition.org/wp-content/uploads/2014/09/ITFA-Minority-Letter_Senate_Final.pdf.

[28] Kathryn Zickuhr, *Who's Not Online and Why*, Pew Research Center, Washington, DC, September 25, 2013, p. 6, http://pewInternet.org/reports/2013/non-Internet-users.aspx.

[29] Internet Tax Freedom Act Coalition, 2014.

[30] Glen Kessler, "McConnell's Claim that There Are 'Nearly 10,000' Tax Codes Nationwide," *The Washington Post*, April 29, 2013.

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preserving the temporary nature of the tax moratorium forces Congress to re-evaluate the policy every few years to ensure its effectiveness.

Others have argued for a permanent extension suggesting it would provide certainty for consumers, innovators, and investors.[31] In the 114th Congress, the House passed H.R. 235 and the Senate introduced S. 431, both of which would permanently extended the moratorium.

Elimination of the Grandfather Clause

In addition to extending the Internet tax moratorium, some have argued that the grandfather clause, permitting states to keep their taxes on Internet access if they were on the books prior to October 1, 1998, should be eliminated. A report by the House Committee on the Judiciary in the 113th Congress claims that the grandfather clause originally included in ITFA was meant to give states time to change their tax codes. It has now been 16 years and the committee believes this has been enough time for states to change their tax codes, and therefore the grandfather clause should be eliminated.[32]

In the 114th Congress, the House passed H.R. 235 and the Senate introduced S. 431, both of which would eliminate the grandfather clause from the ITFA moratorium.

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[31] U.S. Congress, House Committee on the Judiciary, *Permanent Internet Tax Freedom Act*, Report to accompany H.R. 3086, 113th Cong., 2nd sess., July 3, 2014, H.Rept. 113-510 (Washington: GPO, 2014).

[32] Ibid.

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