

**2007 DRAFTING REQUEST**

**Assembly Amendment (AA-AB223)**

Received: **01/09/2008**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Rich Zipperer (608) 266-5120**

By/Representing: **chris**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Adtl. Drafters:

Subject: **Tax, Other - sales**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Zipperer@legis.wisconsin.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Defining Internet access

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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/1	jkreye	1/10 jld	1/10	1/10			

FE Sent For:

<END>

**Kreye, Joseph**

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**From:** Reader, Chris  
**Sent:** Tuesday, January 08, 2008 4:03 PM  
**To:** Kreye, Joseph  
**Subject:** LRB1015/1

Joe, after review, it doesn't appear that the LRB1015/1, amendment to AB223, uses the latest federal definition of internet access. Can you draft a new amendment that uses the definition according to 110-108 121s1025 section 4, definitions, paragraph 5 (A) to (E)? (Found on page 3 of the PDF link below)

Thanks! It looks like the exec on AB223 will be Jan.22, so no rush- as long as we get it by the end of next week so we can review and submit in time.

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ108.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ108.110.pdf)

**Chris Reader**  
**Office of Rep. Zipperer**  
**Wisconsin State Assembly**  
**(608) 266-5120**

PUBLIC LAW 110-108—OCT. 31, 2007

INTERNET TAX FREEDOM ACT AMENDMENTS  
ACT OF 2007

Public Law 110-108  
110th Congress

An Act

Oct. 31, 2007  
[H.R. 3678]

To amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Internet Tax  
Freedom Act  
Amendments Act  
of 2007.  
Communications  
and tele-  
communications.  
47 USC 609 note.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Internet Tax Freedom Act Amendments Act of 2007”.

**SEC. 2. MORATORIUM.**

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

- (1) in section 1101(a) by striking “2007” and inserting “2014”, and
- (2) in section 1104(a)(2)(A) by striking “2007” and inserting “2014”.

**SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.**

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

“(c) APPLICATION OF DEFINITION.—

“(1) IN GENERAL.—Effective as of November 1, 2003—

“(A) for purposes of subsection (a), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

“(B) for purposes of subsection (b), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108-435).

“(2) EXCEPTIONS.—Paragraph (1) shall not apply until June 30, 2008, to a tax on Internet access that is—

“(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

“(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such

Effective date.

Applicability.

tax on telecommunications service purchased, used, or sold by a provider of Internet access.

“(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to June 30, 2008, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).”

#### SEC. 4. DEFINITIONS.

Section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in paragraph (1) by striking “services”,

(2) by amending paragraph (5) to read as follows:

“(5) INTERNET ACCESS.—The term ‘Internet access’—

“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

“(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

“(i) to provide such service; or

“(ii) to otherwise enable users to access content, information or other services offered over the Internet;

“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

“(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

“(E) includes a homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.”;

(3) by amending paragraph (9) to read as follows:

“(9) TELECOMMUNICATIONS.—The term ‘telecommunications’ means ‘telecommunications’ as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and ‘telecommunications service’ as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).”, and

(4) in paragraph (10) by adding at the end the following:

“(C) SPECIFIC EXCEPTION.—

“(i) SPECIFIED TAXES.—Effective November 1, 2007, the term ‘tax on Internet access’ also does not include a State tax expressly levied on commercial activity,

Effective date.

modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

“(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

“(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

“(III) is imposed on a broad range of business activity; and

“(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

“(ii) MODIFICATIONS.—Nothing in this subparagraph shall be construed as a limitation on a State’s ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

“(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.”.

#### SEC. 5. CONFORMING AMENDMENTS.

(a) ACCOUNTING RULE.—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking “telecommunications services” each place it appears and inserting “telecommunications”, and

(2) in subsection (b)(2)—

(A) in the heading by striking “SERVICES”,

(B) by striking “such services” and inserting “such telecommunications”, and

(C) by inserting before the period at the end the following: “or to otherwise enable users to access content, information or other services offered over the Internet”.

(b) VOICE SERVICES.—The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

#### SEC. 6. SUNSET OF GRANDFATHER PROVISIONS.

47 USC 151 note.

Section 1104(a) of the Internet Tax Freedom Act is amended by adding at the end thereof the following:

“(3) EXCEPTION.—Paragraphs (1) and (2) shall not apply to any State that has, more than 24 months prior to the date of enactment of this paragraph, enacted legislation to repeal the State’s taxes on Internet access or issued a rule or other proclamation made by the appropriate agency of the State that such State agency has decided to no longer apply such tax to Internet access.”.

**SEC. 7. EFFECTIVE DATE.**

47 USC 151 note.

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted, except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

Approved October 31, 2007.

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**LEGISLATIVE HISTORY—H.R. 3678 (S. 2128):**

**HOUSE REPORTS:** No. 110-372 (Comm. on the Judiciary).

**CONGRESSIONAL RECORD**, Vol. 153 (2007):

Oct. 16, considered and passed House.

Oct. 25, considered and passed Senate, amended.

Oct. 30, House concurred in Senate amendment.





*Jld*

**ASSEMBLY AMENDMENT ,  
TO 2007 ASSEMBLY BILL 223**

*in 1-9-08  
due used 1-16-08  
D-N*

1 At the locations indicated, amend the bill as follows: ✓

2 **1.** Page 1, line 4: ✓ before that line insert:

3 **"SECTION 1d.** ✓ 77.51 (5) of the statutes is amended to read:

4 77.51 (5) For purposes of subs. (5n) ✓ (13) (e) and (f), and (14) (L) and s. 77.52

5 (2m) "incidental" means depending upon or appertaining to something else as

6 primary; something necessary, appertaining to, or depending upon another which is

7 termed the principal; something incidental to the main purpose of the service.

8 Tangible personal property transferred by a service provider is incidental to the

9 service if the purchaser's main purpose or objective is to obtain the service rather

10 than the property, even though the property may be necessary or essential to

11 providing the service." ✓

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20.

12 **2.** Page 1, line 4: delete ✓ **"SECTION 1"** and substitute **"SECTION 1m"**. ✓

1           **3.** Page 2, line 4: delete lines 4 to 7 and substitute:

2           "77.51 (5n) (a) "Internet access" means a service that enables users to connect  
3 to the Internet to access content, information, or other services offered over the  
4 Internet.

5           (b) "Internet access" includes all of the following:

6           1. The purchase, use, or sale of telecommunications services by a provider of a  
7 service described under par. (a) to the extent that the telecommunications services  
8 are purchased, used, or sold to provide the service described under par. (a) or to  
9 otherwise enable users to access content, information, or other services offered over  
10 the Internet.

11           2. Services that are incidental to providing a service described under par. (a),  
12 if the services are furnished to users as part of providing a service described under  
13 par. (a), including a home page, electronic mail and instant messaging, including  
14 voice capable and video capable electronic mail and instant messaging, video clips,  
15 and personal electronic storage capacity.

ST&T

16           3. A home page, electronic mail and instant messaging; including voice capable  
17 and video capable electronic mail and instant messaging; video clips, and personal  
18 electronic storage capacity provided independently from or not packaged with a  
19 service described under par. (a).

20           (c) "Internet access" does not include voice, audio or video programming, or  
21 other products and services, except services described in pars. (a) and (b), that use  
22 Internet protocol or any successor protocol and for which there is a charge, regardless  
23 of whether the charge is separately stated or aggregated with the charge for a service  
24 described in par. (a) or (b)."

1

4. Page 2, line 19: delete "services". ✓

2

(END)

*d-note*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa1034/1dn

JK: ^:...

date

jld

Representative Zipperer:

Please review this draft carefully to ensure that it is consistent with your intent. The Internet access definition is based on changes made by Public Law 110-108 to section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.kreye@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa1034/1dn  
JK:jld:jf

January 10, 2008

Representative Zipperer:

Please review this draft carefully to ensure that it is consistent with your intent. The Internet access definition is based on changes made by Public Law 110-108 to section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

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