

1999 SENATE FINANCE AND TAXATION

SCR 4053

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4053

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 3-1-99

Tape Number	Side A	Side B	Meter #
SCR 4053 # 1	X		0-2780
Committee Clerk Signature <i>Sheila Wald</i>			

Minutes:

Sen Urlacher - Opened the hearing on SCR 4053, roll taken. A RESOLUTION WITH REGARD TO BALANCED MEMBERSHIP OF THE ADVISORY COMMISSION ON ELECTRONIC COMMERCE.

Sen T. Mathern - Submitted testimony and it is attached. Also addressed the amendment attached would like committee to act on it, 93131.0101.

Sen. Kinnoin - It calls for 16 members and then the next paragraph states 19?

Sen. Mathern - The difference there are 3 people that are on by virtue of their office, they would be representing Fed. Agencies. We would not be concerned about changing those, only the other 16, and make sure they properly represent the States.

Sen. Christmann - Is this a rural balance in these members?

Sen. Mathern - They are from various States, one concern is that they are heavily weighted on the East. There are not enough weighted on States and Local Govt.

Sen. Dorso - This is an issue on Internet itself, and we are not satisfied how they put this committee together. Very little input from urban or rural areas. Very important. The FCC, just announced that IFC, are long distance providers. Being they consider them long distance carriers, what difference is there between them and ATT, or Sprint, etc. We tax them, and we should be able to tax IFC. Taxation of sales over the Internet, there is spending going on. This is a serious problem. We need to send a clear message to Congress. We are losing millions of \$ in the State of North Dakota.

Sen Wardner - Is the Fed Govt. planning on getting something out of this or is this for the States to take care of the sales tax?

Sen. Dorso - That will be part of the issue. It is our tax, not the Federal Government.

Sen Kinnoin - Once Committee is set up, how would they handle the tax?

Sen. Dorso - I don't know how they will handle it, Sen. Dorgan was on our side when we went to Washington, we lobbied to have this study set up. We didn't get equal representation on this commission.

Connie Sprynczynatzk - ND League of Cities. We support this resolution.

Sen. Christmann - The whole concept of collecting the taxes on the Internet, don't we also have opportunity by not having sales tax, as everyone else doesn't have tax on the Internet? So we have the same customer traffic numbers as big city merchants, as long as no one charges it?

Connie S. - I would like to be able to say yes to that, I think the Internet could be a great equalizer it doesn't matter where you are located, but I think this is not good news. We could

have huge warehouses located here, and have an ordering system, but what about all the jobs you have in a community. You have a whole different system of taxation related to that physical presence of that business. A Corp. is going to pay, and the tax will come out of that physical presence.

A MOTION TO ACCEPT THE AMENDMENTS WAS MADE BY SEN. WARDNER, AND SECONDED BY SEN. CHRISTMANN. VOTE 6-0-1. A MOTION TO DO PASS WITH AMENDMENTS AND ON CONSENT CALENDAR, MADE BY SEN CHRISTMANN AND SEN. STENEHJEM SECONDED. CARRIER WILL BE SEN. CHRISTMANN. 7 -0 -0.

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4053

Page 1, line 3, after "Commerce" insert "and urging the Advisory Commission on Electronic Commerce to be mindful in its deliberations of the impact of Internet usage and Internet sales transactions on telecommunications, traditional retail businesses, and state and local tax bases"

Page 1, after line 8, insert:

"WHEREAS, equal representation for state and local governments is critical to North Dakota and other states because sales taxes have traditionally been a state prerogative and the participation of state and local governments is essential to the validity of recommendations of the Advisory Commission because the enormous growth in Internet usage and Internet sales transactions seriously impacts telecommunications, traditional retail businesses, and state and local tax bases; and"

Page 1, line 22, after "Commerce" insert "and urges the Advisory Commission on Electronic Commerce to be mindful in its deliberations of the impact of Internet usage and Internet sales transactions on telecommunications, traditional retail businesses, and state and local tax bases"

Page 2, line 2, after "Representatives" insert ", to each member of the Advisory Commission on Electronic Commerce"

Renumber accordingly

Date: 3/1/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4053

Senate Senate Finance and Taxation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 10th ord

Action Taken No Pass w/ Amend + placed on Consent Calendar

Motion Made By Sen. Christmann Seconded By Sen. Stenehjem

Senators	Yes	No	Senators	Yes	No
SENATOR URLACHER	✓				
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER	✓				
SENATOR KINNOIN	✓				
SENATOR KROEPLIN	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Christmann

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4053: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4053 was placed on the Sixth order on the calendar.

Page 1, line 3, after "Commerce" insert "and urging the Advisory Commission on Electronic Commerce to be mindful in its deliberations of the impact of Internet usage and Internet sales transactions on telecommunications, traditional retail businesses, and state and local tax bases"

Page 1, after line 8, insert:

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Page 2, line 2, after "Representatives" insert ", to each member of the Advisory Commission on Electronic Commerce"

Renumber accordingly

1999 HOUSE FINANCE AND TAXATION

SCR 4053

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4053

House Finance and Taxation Committee

Conference Committee

Hearing Date March 9, 1999

Tape Number	Side A	Side B	Meter #
1	x		9.5
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

SEN. TIM MATHERN, DIST. 11, FARGO, Introduced the bill. See attached testimony.

Also submitted a copy of letters to the Majority & Minority leaders and the Speaker of the House relating to appointments made to the Advisory Commission on Electronic Commerce. Also, a summary of the Internet Tax Freedom Act.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 3-9-99, Tape #2, Side A, Meter #32.7

REP. GROSZ Made a motion for a DO PASS

REP. GRANDE Second the motion. MOTION CARRIED.

14 Yes 0 No 1 Absent

REP. WARNER Was given the floor assignment.

Please type or use black pen to complete

Date 3-9-99
Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4053

House HOUSE FINANCE & TAX Committee

- Subcommittee on _____
 - Conference Committee
- } Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Grosz Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	A				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 14 0
(Yes) (No)

Absent 1

Floor Assignment Rep. Warner

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)
March 9, 1999 3:57 p.m.

Module No: HR-42-4382
Carrier: Warner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SCR 4053, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SCR 4053 was placed on the Tenth order on the calendar.

1999 TESTIMONY

SCR 4053

TESTIMONY

Prepared by Senator Tim Mathern

Senate Finance and Taxation Committee

March 1, 1999

Mr. Chairman, and members of the Finance and Taxation Committee. I am Senator Tim Mathern from District 11 in Fargo. I am here to ask for your support for SCR ~~4048~~.

4053

The Internet Tax Freedom Act, which was signed into law on October 21, 1998, and which the National Conference of State Legislators (NCSL) supported, established the federal Advisory Commission on Electronic Commerce. The Advisory Commission is to review state and local taxation relative to electronic commerce transactions and all remote commerce. The Advisory Commission was to consist of nineteen members, sixteen of who would be appointed by the Congressional leadership. The Act stipulates the following requirements for the sixteen members to be appointed by Congress:

- Eight representing state and local governments
- Eight representing industry and consumer groups
- Five members to be appointed by the Speaker and three members to be appointed by the House Minority Leader
- Five members to be appointed by the Senate Majority Leader and three members by the Senate Minority Leader

The appointments were to be made within 45 days of the enactment date - December 5, 1998.

NCSL along with the other national state and local government organizations submitted a list of government leaders.

By December 7, the four Congressional leaders appointed ten representatives from industry and only six from state and local governments. NCSL immediately issued a statement faulting the congressional leadership for not following a law they had just passed and made clear that they would challenge

any meeting of the Advisory Commission with the imbalance between state and local government and industry representatives.

As a result, Senator Daschle called back one of his industry appointments and named a former state legislator Gene LeBrun to the Commission. The Advisory Commission was to have met by December 20, 1998 to select a chairman. This has not happened. NCSL recently wrote President Clinton to ask that the three federal members not participate in any meetings or assist the Advisory Commission in any way until this matter is resolved. Meanwhile, the eighteen months that the Act provides for the Commission to make its report continues to run down.

Mr. Chairman, we need to be concerned as we have a enormous potential loss of tax revenue if this Commission and its activity is not done right. The resolution before you is important to the future of North Dakota as it sends a clear message to Washington about our concerns.

I have some amendments to the bill to apply our concern about taxation for your consideration. I reviewed these with Senator Nelson and he also supports the amendments.

I have attached copies of letters from NCSL and the Council of State Governments (GSC) marked A and B. These provide additional background and give further rationale for the resolution before you today. Also attached is a summary of the Internet Tax Freedom Act marked C.

I ask for your Do Pass recommendation. Thank you very much.



NATIONAL CONFERENCE OF STATE LEGISLATURES

444 NORTH CAPITOL STREET, N.W. SUITE 515 WASHINGTON, D.C. 20001
202-624-5400 FAX: 202-737-1069

DANIEL T. BLUE, JR.
SENIOR HOUSE MINORITY LEADER
NORTH CAROLINA
PRESIDENT, NCSL

THOMAS R. TEDCASTLE
DIRECTOR, BILL DRAFTING
AND GENERAL COUNSEL
FLORIDA
STAFF CHAIR, NCSL

WILLIAM POUND
EXECUTIVE DIRECTOR

December 10, 1998

The Honorable Trent Lott
Majority Leader
U.S. Senate
Washington, D.C.

The Honorable Newt Gingrich
Speaker of the House
Washington, D.C.

The Honorable Tom Daschle
Minority Leader
U.S. Senate
Washington, D.C.

The Honorable Richard Gephardt
Minority Leader
U.S. House of Representatives
Washington, D.C.

Dear Senator Lott, Speaker Gingrich, Senator Daschle, and Representative Gephardt:

We are writing to protest the appointments you have made to the Advisory Commission on Electronic Commerce. We urge you to meet at the earliest possible opportunity to reconsider the appointments and to create a commission that is balanced, representative of the various interests concerned with Internet taxation, and complies with the legal requirements established in the Internet Tax Freedom Act. Your failure to include more representation on the commission for state legislators leads us to conclude that you do not understand the significance of the commission's jurisdiction for state legislatures and the very future of state revenue systems.

As they currently stand, the appointments fail to meet two provisions of the new law. Among your sixteen collective appointments, ten represent the private sector and consumers and only six represent state and local governments. The law, as you know, specifies that eight of the members represent state and local governments. In addition, your collective appointments fail to include a state or local official from a state that does not have a sales tax, even though that is one of the criteria delineated in the law. Failing to comply with the law will make the commission vulnerable to challenge in court and risks wasting the next 18 months on legal wrangling rather than serious study of the questions involved with electronic commerce and the nation's revenue system.

The National Conference of State Legislatures put forward three candidates for the Advisory Commission. All are legislative leaders, knowledgeable about taxation and electronic commerce issues, and committed to crafting a workable and balanced approach to taxation of the Internet and other remote sales. One, New Hampshire Speaker Donna Sytek is the only nominee that we know of who represents a state that does not use a sales tax. Ignoring our organization's recommendations disregards the vital role of state legislatures in our federal system, especially in formulating tax policy. Failing to include more legislators weakens the commission and will undermine the credibility of its findings, especially among the 50 state legislatures—the bodies that will be entrusted with implementing the commission's findings.

The National Conference of State Legislatures was a moderating influence throughout the negotiations that led to passage of the Internet Tax Freedom Act. We believe state legislators would perform that same function in the deliberations of the commission. We urge you to reconsider your appointments, to include more state legislators on the commission, and to form a commission that will make a thoughtful and considered contribution to the evolution of the country's tax policy. We would be happy to answer any questions you may have.

Sincerely,



Representative Daniel T. Blue, Jr.
 North Carolina House of Representatives
 President, NCSL



Senator Richard Finan
 President, Ohio Senate
 Immediate Past President, NCSL



Representative Paul Mannweiler
 Republican Leader, Indiana
 President-Elect, NCSL



Senator Jim Costa
 California Senate
 Vice President, NCSL

cc: Speaker-elect Bob Livingston

B

Council of State Governments
International City/County Management Association
National Association of Counties
National Conference of State Legislatures
National Governors' Association
National League of Cities
U.S. Conference of Mayors

January 22, 1999

The Honorable Trent Lott
Majority Leader
United States Senate
The Capitol, Room S-230
Washington, D.C. 20510

The Honorable Dennis Hastert
Speaker, U.S. House of Representatives
The Capitol, Room H-232
Washington, D.C. 20515

The Honorable Thomas A. Daschle
Minority Leader
United States Senate
The Capitol, Room S-221
Washington, D.C. 20510

The Honorable Richard Gephardt
Minority Leader
U.S. House of Representatives
The Capitol, Room H-204
Washington, D.C. 20515

Dear Senator Lott, Senator Daschle, Speaker Hastert, and Rep. Gephardt:

We are writing on behalf of the nation's state and local elected public leaders to urge you to complete the appointments of members to the Advisory Commission on Electronic Commerce in a manner that complies with the new Internet Tax Freedom Act. Expeditious action is important to ensure the commission can commence the work necessary to ensure equity between in-state businesses and Main Street retailers versus out-of-state and electronic sellers. Balance is critical if we are ever to attain consensus on a simplified sales and use revenue system for the new information technology and electronic marketplace economy of the nation.

We all agreed and supported your leadership in setting a moratorium on the imposition of any new state and local, but not federal, taxes on electronic commerce in order for a balanced commission to study and report back to the Congress on recommendations for a new and equitable system for the future. The appointments made to date do not yet meet the clear letter of the law. There is neither the specific balance between state and local governments, and business and consumers; nor is there any representative of "Main Street" retailers. The appointments create a cloud over the legitimacy of the commission.

We urge you to appoint additional government members as required by the law from the list provided last month by our organizations (enclosed). By appointing leaders recognized by elected officials across the country, you will enhance the ability of states and localities to make the difficult policy changes that industry needs to bring the sales tax into the 21st century.

We look forward to working with you on the implementation of this legislation to ensure that it enhances the global leadership in information technology of the United States and benefits our economies instead of serving as a mechanism to harm or create a bias against local retailers or a federally-sanctioned tax haven to drain vital resources critical to education, health care, and public safety from the citizens we all represent.

Thank you for your consideration in this matter.

Sincerely,

The Honorable Thomas R. Carper
Governor of Delaware
Chairman, National Governors' Association

The Honorable Kenneth McClintock
Puerto Rico Senate
Chairman, Council of State Governments

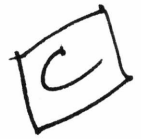
The Honorable Betty Lou Ward
Commissioner, Wake County, North Carolina
President, National Association of Counties

The Honorable Clarence Anthony
Mayor of South Bay, Florida
President, National League of Cities

The Honorable Deedee Corradini
Mayor of Salt Lake City, Utah
President, The U.S. Conference of Mayors

The Honorable Dan Blue
North Carolina State House of Representatives
President, National Conference of State Legislatures

Mr. Bryce (Bill) Stuart, City Manager
Winston-Salem, North Carolina
President, International City/County Management Association



Policy-Making Mandate	Examine international and national barriers as well as state and local taxes; allows commission to review all sales: Main Street; electronic; and remote (mail-order)
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Summary of Internet Tax Freedom Act

S. 442 as approved by the United States Senate and attached to the Omnibus Spending bill, H.R. 4328. Enacted into law on October 21, 1998.

I) Moratorium - Three years beginning on October 1, 1998 until October 21, 2001. State and local taxes included in the moratorium:

- Taxes on Internet access, unless such tax was generally imposed and actually enforced prior to 10/1/98. It is estimated that this grandfather would cover approximately 14 states, Wisconsin, Iowa, North Dakota, South Dakota, New Mexico, Tennessee, Ohio, Connecticut, Montana, New Hampshire, Texas, District of Columbia, Hawaii, and South Carolina. It also would include certain cities in Colorado: Aspen, Durango, Lakewood, Thornton, Boulder, Lafayette, Wheat Ridge, Aurora, Commerce City, Fort Collins, Golden and Littleton.
- Multiple taxes; and,
- Discriminatory taxes.
(This Act does not affect any liability for taxes accrued and enforced prior to the enactment of this legislation.)

II) Advisory Commission on Electronic Commerce - The Act establishes a Commission to conduct a thorough study of Federal, State and local and international taxation and tariff treatment of transactions using the Internet and Internet Access and other comparable intrastate, interstate or international sales activities.

The Commission shall have 19 members:

- 3 Federal: Secretaries of Commerce & Treasury and the United States Trade Representative
- 8 State and Local officials: at least one from a non-sales tax jurisdiction and one from a non-income tax state.
- 8 representatives from the electronic commerce industry, telecommunications carriers, local retail businesses and consumer groups.

The sixteen non-federal commission members shall be appointed:

- 5 by the Senate Majority Leader;
- 5 by the Speaker of the House of Representatives;

- 3 by the Minority Leader of the Senate; and
- 3 by the Minority Leader of the House of Representatives.

The appointments are to be made no later than 45 days after enactment (by 12/5/98). The members of the Commission shall select a Chairman within 60 days of enactment (12/20/98).

Issues to be studied by Commission:

1. Examination of barriers imposed in foreign markets on US providers of property, goods and services or information in electronic commerce and how those barriers impact US consumers and the growth of the Internet;
2. Examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, particularly comparing collection and administration of such taxes in transactions which are conducted over the Internet and when it does not;
3. Examination of the impact of the Internet and Internet access (particularly telephony over the Internet) on the revenue base for taxes imposed under the IRS Code of 1986, Section 4251;
4. Examination of model State legislation that would provide uniform definitions of categories of property, goods, services, or information subject to or exempt from sales and use taxes;
5. Examination of model state legislation that would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service or online services would be treated in a tax- and technologically- neutral manner relative to other forms of remote sales;
6. Examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments. Examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-state purchases from out-of-state sellers; and,
7. Examination of ways to simplify Federal, State and local taxes imposed on the provision of telecommunications services.

The Commission has 18 months from the date of enactment to issue a final report to Congress including legislative recommendations as required to address the findings of the Commission's study. Recommendations agreed to by the Commission shall be tax- and technologically- neutral and apply to all forms of remote commerce. All findings and recommendations must be agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

III) Definitions:

Discriminatory Tax - any tax generally imposed by a state or local government on electronic commerce that -

- Is not generally imposed and legally collectible on transactions involving similar property, goods, services or information accomplished through other means or at the same rate;
- Imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;
- Establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to all other providers of similar information through other means.

The term discriminatory tax also is applied to taxes imposed by state and local governments that use the sole ability to access a site on a remote seller's out-of-state computer server as a factor in determining a remote seller's tax collection obligations. This prohibition does not apply to those states and localities grandfathered in the moratorium.

Multiple Tax - in general means any tax imposed by a State or a political subdivision of the State on the same or essentially the same electronic commerce that is also subject to another tax imposed by another state or political subdivision without a credit for taxes paid in other jurisdictions. The prohibition against multiple tax shall not apply to "piggyback" state and local taxes.

For more information, contact Neal Osten, (202) 624-8660 in NCSL's Washington, D.C. office.



Commerce and Communications Committee

Visitor counts for this page.

TESTIMONY

Prepared by Senator Tim Mathern

House Finance and Taxation Committee

March 9, 1999

Mr. Chairman, and members of the Finance and Taxation Committee. I am Senator Tim Mathern from District 11 in Fargo. I am here to ask for your support for SCR 4053.

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