

ASSEMBLY BILL

No. 1614

**Introduced by Assembly Members Lempert, Cunneen,
Alquist, Bowen, Caldera, Kaloogian, Perata, Sweeney, and
Wayne**

June 3, 1997

An act to add Part 32 (commencing with Section 65001) to Division 2 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1614, as introduced, Lempert. California Internet Tax Freedom Act.

Existing law imposes various state income, franchise, property, and excise taxes and various user, regulatory, and franchise fees in connection with activity or property within the jurisdiction of this state. Existing law authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions.

This bill would enact the "California Internet Tax Freedom Act" to prohibit the imposition, assessment, or attempt to collect any tax or fee directly or indirectly on, or in connection with, the Internet, any interactive computer services, or the use of the Internet or any interactive computer services. The bill would make specified legislative findings and declarations in connection with that prohibition.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 32 (commencing with Section
2 65001) is added to Division 2 of the Revenue and Taxation
3 Code, to read:

4
5 PART 32. CALIFORNIA INTERNET TAX
6 FREEDOM ACT
7

8 65001. This act shall be known and may be cited as the
9 “California Internet Tax Freedom Act.”

10 65002. The Legislature finds and declares all of the
11 following:

12 (a) As a massive global network spanning not only
13 state but international borders, the Internet is inherently
14 a matter of interstate and foreign commerce within the
15 jurisdiction of the United States Congress under Section
16 8 of Article I of the United States Constitution.

17 (b) Even within the United States, the Internet does
18 not respect state lines and operates independently of
19 state boundaries. Addresses on the Internet are designed
20 to be geographically indifferent. Internet transmissions
21 are insensitive to physical distance and can have multiple
22 geographical addresses.

23 (c) Because transmissions over the Internet are made
24 through packet-switching, it is impossible to determine
25 with any degree of certainty the precise geographic route
26 or endpoints of specific Internet transmissions, and
27 infeasible to separate intrastate from interstate, and
28 domestic from foreign, Internet transmissions.

29 (d) Inconsistent and unadministrable taxes imposed
30 on Internet activity by state and local governments
31 threaten not only to subject consumers, businesses, and
32 other users engaged in interstate and foreign commerce
33 to multiple, confusing, and burdensome taxation, but also



1 to restrict the growth and continued technological
2 maturation of the Internet itself, and to call into question
3 the continued viability of this dynamic medium.

4 (e) Because the tax laws and regulations of so many
5 jurisdictions were established before the Internet or
6 interactive computer services, their application to this
7 new medium in unintended and unpredictable ways
8 threatens every Internet user, access provider, vendor,
9 and interactive computer service provider.

10 (f) The electronic marketplace of services, products,
11 and ideas available through the Internet or interactive
12 computer services can be especially beneficial to senior
13 citizens, the physically challenged, citizens in rural areas,
14 and small businesses. It also offers a variety of uses and
15 benefits for educational institutions and charitable
16 organizations.

17 (g) Consumers, businesses, and others engaging in
18 interstate and foreign commerce through the Internet or
19 interactive computer services could become subject to
20 more than 30,000 separate taxing jurisdictions in the
21 United States alone.

22 (h) The consistent and coherent national policy
23 regarding taxation of Internet activity that is needed to
24 avoid burdening this evolving form of interstate and
25 foreign commerce can best be achieved by the United
26 States exercising its authority under clause 3 of Article I
27 of Section 8 of the United States Constitution.

28 65003. For purposes of this part:

29 (a) "Internet" means the global information system
30 that is logically linked together by a globally unique
31 address space based on the Internet Protocol (IP), or its
32 subsequent extensions; and is able to support
33 communications using the Transmission Control
34 Protocol/Internet Protocol (TCP/IP) suite, or its
35 subsequent extensions, or other IP-compatible protocols;
36 and provides, uses, or makes accessible, either publicly or
37 privately, high level services layered on the
38 communications and related infrastructure described
39 herein.



1 (b) “Interactive computer service” means any
2 information, service, system, or access software provider
3 that provides or enables computer access by multiple
4 users to a computer server, including specifically a
5 service or system that provides access to the Internet and
6 such systems operated or services offered by libraries or
7 educational institutions.

8 (c) “Tax” means any enforced proportional
9 contribution imposed for the support of the state or any
10 political subdivision of the state.

11 (d) “Fee” means any franchise fee or regulatory fee
12 imposed by the state or any political subdivision of the
13 state. “Fee” does not include any user fee imposed by any
14 state or local agency that provides Internet services or
15 access to a user.

16 65004. (a) Except as provided in subdivision (b),
17 neither the state nor any local government, including any
18 political subdivision, may impose, assess, or attempt to
19 collect any tax or fee directly or indirectly on, or in
20 connection with, any of the following:

- 21 (1) The Internet.
- 22 (2) Any interactive computer services.
- 23 (3) The use of the Internet or any interactive
24 computer services.

25 (b) The prohibition in subdivision (a) against the
26 imposition of taxes or fees shall not apply to any of the
27 following:

- 28 (1) Taxes imposed on, or measured by, net income
29 derived from the Internet or interactive computer
30 services.
- 31 (2) Any fairly apportioned business license tax applied
32 to any business that has a business location in the taxing
33 jurisdiction.
- 34 (3) Any ad valorem tax or fee imposed pursuant to
35 Article XIII or Article XIII A of the California
36 Constitution.

37 (4) The authority of the state, or any political
38 subdivision thereof, to impose a sales or use tax on any sale
39 or other transaction effected by use of the Internet or



1 interactive computer services if both of the following
2 apply:

3 (A) The tax is the same as the tax imposed and
4 collected by the state, or political subdivision thereof, on
5 any sale or interstate transaction effected by mail order,
6 telephone, or other remote means within its taxing
7 jurisdiction.

8 (B) The obligation to collect the tax from sales or other
9 transactions effected by use of the Internet or interactive
10 computer services is imposed on the same person or
11 entity as in the case of sales or transactions effected by
12 mail order, telephone, or other remote means.

13 (5) Any other tax or fee that is not specially imposed
14 on the Internet, interactive computer services, or the use
15 of the Internet or interactive computer services.

16 SEC. 2. This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or
18 safety within the meaning of Article IV of the
19 Constitution and shall go into immediate effect. The facts
20 constituting the necessity are:

21 In order to maintain the continued viability of the
22 Internet and maintain a uniform policy of taxation
23 relating to Internet activity, it is necessary that this act
24 take effect immediately.

