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In California, Amazon Pushes Hard to Kill a Tax

By DAVID STREITFELD
Published: September 4, 2011

SAN FRANCISCO — The struggling state of California thinks it has found gold in taxing e-commerce. But that money is proving much more elusive than it seemed just a few months ago.

[Amazon.com](#), the Seattle-based retailer that is the state's chief target, is fighting back with all the resources of a company whose stock market valuation is nearly \$100 billion. In an unusual move that opponents say is a violation of the state constitution, Amazon is taking directly to voters its argument that it should not be required to collect sales tax.

Infuriated state lawmakers are responding with what some observers are calling "the nuclear option": writing new legislation that goes after Amazon and other online retailers under an "urgency" clause. If they can get the new measure passed by a two-thirds vote before the end of the legislative session on Friday, it will trump Amazon's efforts toward a voter referendum.

To sway a few legislators, Amazon is making a counterproposal: if California drops the tax issue for a few years, the retailer says it will build two warehouses in the state and hire 7,000 workers. In a state with 12 percent unemployment, that might seem an attractive offer.

"This is a game of chess with ultimately billions of tax revenues at stake across the country and strong competing values on either side," said Tracy Westen, chief executive of the Center for Governmental Studies, a Los Angeles research group. "High drama for policy wonks."

At its heart, the standoff between Amazon and California is simple: the state passed a law at the beginning of the summer requiring online retailers with a physical presence in the state to collect sales taxes. Amazon denies that its subsidiaries in the state, which include a unit that designed the Kindle, constitute such a presence.

Enlarge This Image



Rich Pedroncelli/Associated Press
State Senator Loni Hancock of California, center, and other lawmakers are using a rare tactic to stop Amazon's efforts toward a voter referendum on sales taxes.

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J. Emilio Flores for The New York Times
Sabrina Nelson and her husband live in suburban Los Angeles and are the proprietors of Vegsource.com. She is upset at the state for its new sales tax law.

The stakes go far beyond the \$200 million the state is hoping to get from Amazon and other online retailers, money it has already put into its new budget. (Local communities stand to reap an additional \$100 million.) Amazon fears that a defeat in California will

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sway legislators across the country, and that it will lose a critical pricing advantage. It is fighting a similar measure in New York in the courts.

Opposing Amazon are traditional retailers as big as Wal-Mart and as small as the neighborhood bookstore — the few that are left. “Amazon is killing our business in bricks-and-mortar stores,” said Bill Dombrowski, head of the California Retailers Association, which was the driving force behind the original law.

Amazon easily collected the half-million signatures necessary to put the issue on ballots next June. Since people will in essence be voting on whether to pay an additional 8 or 9 percent when they buy online, Amazon could easily triumph among voters who are watching their wallets. Democrats in the Legislature responded with an urgency bill, a rare tactic used only a few times a year.

“We’re not doing this lightly,” said State Senator Loni Hancock, a Berkeley Democrat. “But it seems like Amazon doesn’t really care about the State of California or the people whose lives are affected by whether or not we have enough money for schools and roads and to keep the libraries and parks open.”

Any Californian who buys a book or a DVD player from Amazon is supposed to pay a use tax when filing state taxes. In practice, however, few do. For years, the issue has been simmering. Then came the withering recession, and the economic calculus changed.

In the two months since the law took effect, Amazon has declined to start collecting sales tax in California. Once it submits the signatures for the referendum and they are verified, the law will be suspended until the vote.

Senator Hancock and other Democrats say they have stopped shopping at Amazon. “This is getting pretty acrimonious,” said the California treasurer, Bill Lockyer, who said he was also boycotting the retailer. “It’s snarly.”

Amazon, which declined to comment for this article, is trying to head off the urgency measure by drafting new legislation that is more to its liking. The warehouses it is offering to build would ordinarily be the kind of physical presence in the state that would clearly require it to collect sales taxes, but Amazon’s proposed measure would guarantee the retailer an exemption. Gov. Jerry Brown and the Democrats have already rejected the offer.

To pass the urgency bill, the 25 Democrats in the State Senate all need to support the measure and persuade at least two of the 15 Republicans to join them, a difficult prospect but not an impossible one. If the legislation fails — or if Democrats, sensing they do not have the votes, do not bring it up — it will be at least a moral victory for Amazon.

But not a final one. The California Retailers Association will most likely sue to have Amazon’s referendum canceled, arguing that the state constitution forbids using a referendum to tamper with the budget.

The struggle is proving divisive. Immediately after the law was passed at the end of June, Amazon cut off its California affiliates. These were the thousands of Web sites that referred customers to the retailer’s site in return for a cut of the transaction. If they constituted a physical presence under the law, Amazon wanted to be rid of them.

For some of the affiliates abruptly cast adrift, this was merely irritating; for others, it was a threat to their livelihood. Glenn Richards, an Orange County musician, is in the first group, but he is nevertheless angry at Amazon.

“I used to spend thousands and thousands of dollars with Amazon on computers and musical equipment,” said Mr. Richards, 40. Not anymore: “People have to look in the mirror and ask themselves, ‘Are these short-term fixes of saving a dollar here and a dollar there the right thing to do?’ ”

Sabrina Nelson, who lives in suburban Los Angeles, is the opposite: full of rage at the state. She and her husband, Jeff, are the proprietors of Vegsource.com, a resource for vegans, and they say Amazon’s move deprived them of a healthy chunk of their income.



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“Why didn’t these legislators who supposedly represent me care about us?” asked Ms. Nelson, who is in her mid-40s. “They did this law for Wal-Mart and Macy’s and Target. But the genie is not going back into the bottle. You’re not going to stop people from buying on the Internet.”

INSIDE NYTIMES.COM



Nick Loper, 28, forced to choose between being an Amazon affiliate and being a Californian, decided to move. He says his shopping comparison and referral site, ShoeSniper.com, was on track to do \$250,000 in revenue this year. When Amazon said it would no longer pay Mr. Loper his commission, most of that disappeared.

“I always figured my own stupid decisions would put me out of business, not some stupid law that doesn’t benefit anyone,” Mr. Loper said.

A few weeks ago, Mr. Loper took his virtual store and his physical body 200 miles to the east, just over the Nevada state line. He now lives in a one-room apartment. On weekends, he commutes back to his wife in Livermore, not far from San Francisco.

Despite all the trouble the issue has caused him, he says he sees both sides of the argument — and no simple resolution. “In the two months since the law passed, no online store has said they’re going to comply,” Mr. Loper said. “The state is chasing money that doesn’t exist.”

A version of this article appeared in print on September 5, 2011, on page B1 of the New York edition with the headline: Amazon Pushes Hard To Kill a Tax.

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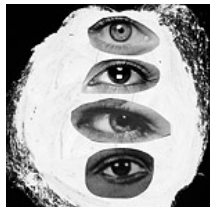
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