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Amazon Takes On California

By MATT RICHTEL and VERNE G. KOPYTOFF Published: July 13, 2011

SAN FRANCISCO — Amazon, the world's largest online merchant, has an ambitious and far-reaching new agenda: it wants to rewrite tax policy for the Internet era.

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James Best Jr./The New York Times

Amazon said this week that it would push a voter initiative in California that could eliminate sales tax for virtual sellers with only a modest physical presence in the state. Its move instantly escalated the company's long-running battle with many states over collecting sales tax, taking the question directly to voters. And it has sharply intensified its dispute with physical retailers like Wal-Mart Stores and Target, which have vowed to fight the measure.

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Stephen Carter of Hayward, Calif., says he buys from Amazon four times a week and backs limiting sales tax on online purchases.

Some political science and business professors say the conflict could take on the polarizing nature of Proposition 13, a decades-old referendum that limited property tax increases and remains a lightning rod in the state. Political experts say Amazon's proposed referendum is likely to gather the signatures necessary to appear on the ballot as early as next February.

Nancy F. Koehn, a retail historian at the Harvard Business School, said the initiative highlighted the evolution of Internet retailing into a "major highway of commerce."

Internet shopping "is no longer a small, out-of-the way quirky tributary of shopping," she said, adding: "It's the fastest-growing distribution channel in America. This is a referendum on how we're going to treat it."

She said that what happened in California could catch on in other states and

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have a domino effect.

Ms. Koehn, who opposes the idea of exempting online retailers from sales tax, said the stakes were amplified by the fact that state budgets, already under duress, needed the hundreds of millions of dollars in potential tax generated by online retailers.

“Do we really want online retailers big and small to walk through a gaping door that says ‘You don’t have to pay sales tax?’” she said. “I don’t think we want to send the message that companies can fund a political campaign for a referendum and maybe your customers won’t be subject to sales tax.”

Amazon argues that such sales tax, even if it raises revenue, ultimately hurts investment and job growth. “Californians deserve a voice and a choice about jobs, investment and the state’s economic future,” Paul Misener, Amazon’s vice president of global public policy, said in a statement about the referendum.

The referendum is a response to a California law, passed last month, that requires Internet retailers to pay sales tax if they have affiliates or subsidiaries in the state. State officials estimate Amazon will owe \$83 million in taxes this year, nearly half of the \$200 million the state estimates Internet retailers owe over all.

Amazon says the law penalizes companies that have not traditionally been subject to sales tax.

Big retailers are already organizing and financing opposition. They complain that Amazon has an unfair advantage because it does not collect sales tax from shoppers while other retailers must add in the extra cost, which in California starts at 7.25 percent.

“They need to play by the same rules as everybody else,” said Danny Diaz, a spokesman for the Alliance for Main Street Fairness, a coalition of large and small retailers that is agitating for Amazon to pay sales tax.

In a signal of how the political arguments might line up, William R. Harker, senior vice president of Sears Holdings, which owns Sears and Kmart, said in an interview, “At a time where our state and municipal governments are going through really a fiscal crisis, taking steps to collect taxes that are already on the books is to me the fiscally responsible thing to do.”

The question of how to tax out-of-state retailers is a longstanding one, dating back to the popularity of catalog shopping. Courts have ruled that companies without a physical presence in a given state are exempt from collecting sales tax there.

Individual consumers are supposed to declare what they owe in so-called use tax when they file taxes, but most people do not.

The boom of Internet commerce has prompted a growing number of states to pass laws redefining “physical presence.” California’s law, which took effect July 1, is the most expansive, while laws in other states, like Illinois, Colorado and Connecticut, expand the definition of physical presence to include affiliates but not subsidiaries.

To avoid paying sales taxes in those states, Amazon has severed business ties



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with its affiliates, local Web sites that promote and link to Amazon products. Two weeks ago, in response to the California law, Amazon cut ties with California affiliates. In Texas, it plans to close a warehouse to avoid having a physical presence. In New York, Amazon has gone to court to challenge a state law that defines physical presence to include affiliates. In the meantime, the company is collecting New York sales tax.

But using the initiative process here takes the war to another level, industry analysts said. It is an evolution that is in some ways natural, given that companies like Google and Microsoft get more political as they get bigger. But that kind of visibility also brings public relations risks because opponents of the measure will seek to define Amazon as taking money out of the state without contributing to the state's infrastructure, said Colin W. Gillis, who follows Amazon for BGC Financial, an investment firm.

"Think of the backlash that Wal-Mart has gotten in terms of how it wrecks Main Street," he said. "There hasn't been that kind of thing directed at e-commerce, but it's likely to come."

Others consider Amazon to be squarely in the right. George Runner, a Republican member of the state Board of Equalization, said the proposed referendum would spare not just Amazon but thousands of smaller online retailers, which he argued could not possibly handle the intricacies of collecting sales tax for California, and other states starting to demand it, too.

"Some mom-and-pop company doing an Internet business out of their garage, they would be responsible for collecting sales tax," said Mr. Runner. He argued, like Amazon, that California's new law hurts jobs by causing online retailers to cut ties with affiliate companies in the state and to close subsidiary offices.

"They'll say, 'We're not going to do our research for the [Kindle](#) in California,' " Mr. Runner said. "It just takes more jobs out of California."

Some opponents of Amazon's proposed referendum say the company is putting its own profits above California, jobs and economic fairness.

"Of the top 10 Internet retailers in the state, only one does not collect sales tax — that's Amazon," said Nancy Skinner, a state assemblywoman whose proposed legislation was incorporated into the California law. Among the others are Wal-Mart and Target, which have physical presences in the state.

Californians are already dividing on the issue. Stephen Carter, 47, a technology manager at AT&T who lives in Hayward, Calif., and buys from Amazon four times a week, said he was supporting the referendum, arguing that taxing Amazon was "unjust" and that revenue would be wasted by the legislature.

Matthew Stotts, 41, a Santa Barbara resident who does marketing for [venture capital](#) firms, spends as much as \$1,000 a month on Amazon. He said he generally believed that limiting taxes on Internet retailers helped spur innovation. But he does not like that the company is taking its case to taxpayers and bypassing the Legislature. "What I want to see from Amazon is innovation, not litigation," he said.

Stephanie Clifford contributed reporting from New York.

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