



Government Is Greediest Actor in “Amazon Tax” Debate

By George Runner

Editorial boards and newspaper columnists are quick to assign “greed” as the motive driving Amazon, eBay and others to oppose a new law aimed at making more out-of-state online retailers collect sales tax on behalf of the State of California. But the greediest actor in this drama isn’t Amazon—it’s the government.

You see, online retailers didn’t pick this fight. State lawmakers did—out of misguided lust for revenue they’ll never see.

Put aside the rhetoric and consider the facts. Under the U.S. Constitution, state lawmakers can’t compel out-of-state retailers to collect sales tax unless those retailers have a physical retail presence—known as “nexus”—in our state. Californians are supposed to pay use tax—the equivalent of sales tax—on out-of-state purchases, but few do.

It works the same way in reverse. California businesses making out-of-state sales in states where they have no brick and mortar retail presence don’t have to register with the tax bureaucracies in those states, collect and remit sales tax and be subject to audits. In five states where Amazon collects and remits sales tax, many California businesses don’t.

But rather than educate Californians on how sales and use tax law works, lawmakers have managed to confuse the issue. The so-called “Amazon Tax” distorts the definition of nexus in three devilish ways. Under this new law, out-of-state companies that share income with California-based affiliate advertisers or create jobs in our state via subsidiaries are now suddenly deemed in-state companies if they continue those relationships.

And that’s just the start. The “Amazon Tax” also contains an insidious “long-arm” provision granting sweeping power to the State Board of Equalization to further expand what constitutes nexus. No one knows yet what that will look like, and the resulting uncertainty could make out-of-state companies wary of contracting with Californians for years to come.

At a time when California’s unemployment rate is already among the worst in the nation, the “Amazon Tax” sends the entirely wrong message to out-of-state job creators, entrepreneurs and investors. The unfortunate but unsurprising result is lost jobs and income for our state.

It's not too early to declare the "Amazon Tax" a failure. Out-of-state online retailers have already overwhelmingly chosen to opt out of the new law by ending their affiliate advertising relationships with Californians. They continue to sell into California without collecting sales tax. The "playing field" for retailers has become no more level but is certainly now much more confusing.

A recent USC/LA Times poll found that a majority of young people, Blacks and Latinos, and a plurality of all Californians, oppose this new law. Why? Perhaps they understand better than our tax-hungry Legislature that driving away jobs and investment won't solve our problems.

For the sake of our state, let's hope sanity prevails in this debate.

Elected in November 2010, George Runner represents more than nine million Californians as a member of the State Board of Equalization. For more information, visit www.boe.ca.gov/Runner.