



Statement of Patrick M. Gleason
California State Affairs Manager, Americans for Tax Reform

Assembly Bill 178
Committee on Revenue & Taxation
California State Assembly

April 27, 2009

Dear Members of the Committee,

My name is Patrick Gleason and I serve as California State Affairs manager for Americans for Tax Reform. **On behalf of Americans for Tax Reform, I write to express to the committee our staunch opposition to Assembly Bill 178.** While, unfortunately, I am not available to present at today's hearing, I appreciate the opportunity to submit written testimony in opposition to AB 178, which would result in yet another massive tax increase on Californians at a time when they can least afford it.

As you know, AB 178 would require retailers with no physical presence in California to collect and remit the state's sales tax on products purchased by Californians. **This measure, commonly referred to as the "Amazon Tax," would apply the highest sales tax in the nation to tangible personal property (TPP) purchased from out of state retailers by California consumers.**

Current law, under *Quill v. North Dakota*, requires a business have a physical presence or "nexus" in a state in order for the state to compel that business to collect and remit sales taxes. AB 178 attempts to circumvent the federal interstate commerce law by presuming that a company has a physical nexus if business is solicited through a third-party advertiser that is based in California.

Competitive Disadvantage Increased

Proponents of this legislation contend that AB 178 will make Californian retailers more competitive. While this is a laudable goal, the unintended effects of AB 178 would yield the opposite result, increasing California businesses competitive disadvantage and raising the already high burden borne by Golden State taxpayers in the process.

AB 178 expands the definition of "doing business" in the state to include any retailer that, while based out of state, advertises on a California-based website using a click-thru banner ad or other link. If advertising with California-based websites were to create a nexus in the state for out of state retailers, those retailers will simply chose to terminate click-thru advertising agreements with California-based websites. Why would they not? **Retailers can gain the exact same access to California's consumer base with click-thru ads and other promotional links on websites based outside California. AB 178 would give them incentive to do so.**

When New York passed a law similar to AB 178 last year, Overstock.com suspended all contracts with such online advertisers in New York. Likewise, **AB 178 will eliminate an important source of revenue, which income tax is paid on, for many online entrepreneurs and other California-based organizations.**

California is Already Overly Taxed

As you know, Californians pay the highest marginal income and sales tax rates in the country, rates that were raised even higher by the February budget agreement. Furthermore, Californians currently

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spend 204 days out of the year, well over half the year, just paying for the cost of their government. This oppressive burden is not without consequences. For years, families, individual taxpayers, and employers have fled to more friendly environments in other states; taking skills, jobs, and revenue with them. With the sixth highest state and local tax burden in the nation and a state business tax climate ranking nearly dead last, California is simply not an attractive place to move to, invest, or start a business in right now.

In an effort to counteract the inherent nature of the state's onerous tax rates, proponents of AB 178 seek to unconstitutionally reach across state lines to collect taxes from retailers with no presence in California, raising the cost of goods for Golden State residents in the process. This is precisely the wrong remedy to increase competitiveness of California businesses or rectify the state's budget crisis. Rather than attempt an unconstitutional overreach across state lines, which will likely saddle taxpayers with significant legal costs, **California lawmakers should instead make in-state businesses more competitive by lowering the tax rates they pay, which are presently the highest in the nation.**

Controlling Spending – Not Raising Taxes – Is the Answer

Simply put, if increased taxation were the answer, California would be in great shape. The reality is, however, that despite having one of the highest tax burdens in the nation, the Golden State is facing the prospect of a \$42 billion budget deficit. The latest budget agreement passed by the legislature in February resulted in billions of dollars in additional taxes on Californians. Yet, already we are seeing the adverse and unintended consequences of that budget deal and other tax increasing measures such as AB 178. The legislature's own budget analyst recently announced that the sales, income, and car tax hikes passed in February will fall short of projections by at least \$8 billion. The fact is that people and businesses alter their behavior in response to changes in taxation.

The California Board of Equalization projects that AB 178, if passed, will yield \$150 million in additional revenue for the state. This is a drop in the bucket when compared to the size of the state's deficit. This fact, combined with the unintended and adverse effects of the bill, should make AB 178 a non-starter for California lawmakers.

Chronic overspending, not insufficient taxation, is the problem that has created the state's dire fiscal situation. Only by addressing out of control spending can California's budget crisis be rectified. Rather than ever higher taxes, a hard spending cap that limits spending to population and inflation growth is the optimal remedy for California. State spending has tripled since 1991. Had spending been limited to population and inflation since then, California would have a \$15 billion surplus as opposed to the \$42 billion deficit that it currently faces. **Lastly, one of the few things that economists of all political stripes agree on is that tax hikes should be avoided during times of recession**

For the aforementioned reasons I urge the committee to reject AB 178. I thank you for the opportunity to comment on this important matter. Any further questions or concerns can be submitted to me via email at pgleason@atr.org.

Sincerely,

Patrick M. Gleason
California State Affairs Manager
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