

False Claims Acts Should Exclude State & Local Taxes

Position: *Tax agencies should be the sole entities that administer and enforce state and local tax laws. It is inappropriate for persons or governmental entities outside the tax agency to initiate civil suits claiming undercollection or underpayment of a tax (false claims act suits).*

Explanation: Because tax laws are complex and subject to differing interpretations, each state has established a revenue agency charged with administering the laws and applying them uniformly to taxpayers. The state or local tax agency, and not outside parties such as private litigants, should initiate examinations and enforce the tax laws the agency administers. While attorneys general enforce the states' laws and may assist a state tax agency in litigation and/or appeals, they should not be involved in processes such as false claims act suits that usurp the state tax appeals system and negate taxpayers' rights. A state's law should be clear that private parties may not interfere with a tax agency's administration of the tax and that the tax agency has exclusive jurisdiction to enforce tax laws.¹

False Claims Act Tax Suits: To address fraud in the healthcare industry and other areas where fraudulent claims for reimbursement are made against the government, many states allow private litigants and/or the state's attorney general to sue a person that made a "false claim" against the government. These types of actions are also called *qui tam* suits. Most states either do not apply their false claims statutes to tax matters or explicitly exclude state and local taxes from such actions, similar to the federal government's exclusion for taxes administered by the Internal Revenue Service from the federal False Claims Act.² However, some states implicitly or explicitly permit false claims suits to be filed for alleged violations of the tax laws.

For tax laws to be consistently and equitably administered, a single agency must control the enforcement of a tax law. Allowing private parties to intervene in the administration, interpretation or enforcement of the tax law usurps the authority of the tax agency, creates uncertainty and results in inequitable treatment of taxpayers.

False claim actions have the effect of extending statutes of limitation in cases not involving proven tax fraud. Further, the potential recovery of attorneys' fees and treble damages has led to a plethora of frivolous false claims suits being filed. All of this unfairly penalizes business taxpayers, contrary to the intent of both false claims acts and tax laws (which already provide for attorneys' fees where applicable, penalties, and statutes of limitation).

A prior revenue director for the State of Illinois, Brian Hamer, has described false claims suits by individuals as one of his Department's biggest challenges. He said: "Illinois should eliminate the current legislative scheme. These actions need to be brought back to the tax administration and its lawyer, who is the Illinois Attorney General."³ State laws that permit false claims actions in tax matters should be amended to exclude taxes. States contemplating the enactment of a false claims act should expressly exclude all state and local taxes before adopting such laws.

¹ This policy statement also applies to other transactional taxes administered by other governmental agencies.

² While a False Claims Act lawsuit initiated by an outside party is an inappropriate approach to tax administration and enforcement, a limited whistleblower program, administered solely within the tax agency, to address tax fraud (*e.g.*, sales or withholding tax collected and not remitted), is less objectionable. The Multistate Tax Commission has rejected a proposal that the states adopt a broad False Claims Act approach that would allow tax administration actions to take place outside a tax agency. The Internal Revenue Service's (IRS) whistleblower program keeps control of the program within the IRS. The IRS has complete discretion to determine whether to initiate an enforcement action and such proceedings are bound by all of the normal administrative rules regarding statutes of limitations, penalties and administrative appeals.

³ Maria Koklanaris, *Illinois Bills Take Aim at Applying False Claims Act to Tax*, State Tax Notes, March 17, 2015.