California’s Attorney General, Xavier Becerra, and Assembly Member Mark Stone have again advanced legislation that would amend the California False Claims Act (CFCA) to enlist private bounty hunters to go after California taxpayers. Becerra described the latest bill, AB 2570, as an additional tool to combat against “corporate cheats” whom Becerra claimed cost the state billions in lost revenue in 2019. Of course, the state already possesses an arsenal of tools to combat any underreporting: currently, the power to investigate cases of suspected tax fraud rests with the California Franchise Tax Board (FTB) and the California Department of Tax and Fee Administration (CDTFA). Thus, as many of the predecessor bill’s critics have adeptly noted, AB 2570 is more appropriately characterized as a “solution in search of a problem.”

The text of AB 2570 is almost identical to its predecessor, AB 1270, which failed to make it out of the legislature last year, and has likely given California’s business-savvy taxpayers a sense of dread-filled Déjà vu. AB 1270 came under intense opposition last summer because, as seen in other states, allowing qui tam plaintiffs to initiate civil suits for state and local tax issues leads to abusive practices and undermines the goal of voluntary compliance in tax administration.

Like AB 1270, AB 2570 is replete with problematic provisions, including: (1) the
imposition of a separate statute of limitations that will arguably trump any shorter limitations periods imposed by the Revenue & Taxation Code (See Cal. Gov’t Code § 12654(a) which permits claims under the CFCA to be pursued for up to 10 years after the date the violation was committed, compared to standard three or four years for tax audits); (2) a more lenient burden of proof for elements of an alleged violation; and, (3) extremely punitive damages—violators are subject to treble damages (i.e., three times the amount of the underreported tax, interest and penalties), an additional civil penalty of $5,500 to $11,000 for each violation, plus the costs of the civil action to recover the damages and penalties including attorney’s fees.

Unfortunately, private enforcement of state tax code violations has erupted over the past few years after whistleblowers in New York and Illinois purportedly have racked up multimillion dollar settlements as the result of such claims. If enacted, AB 2570 will open the floodgates to a slew of financially incentivized plaintiffs’ attorneys who are eager to enter the litigation lottery in hopes of winning a jackpot settlement payout from California’s taxpayers.

As discussed in our blog post from August 26, 2019, Vultures Circling as Bill to Expand California FCA to Tax Looms in Legislature, regarding AB 1270, when a false claims suit is filed by a private plaintiff (or relator) in a qui tam action, the recovered damages or settlement proceeds are divided between the state and the relator, with the relator permitted to recover up to 50% of the proceeds. See Cal. Gov’t Code § 12652(g)(3). Thus, this practice can be very lucrative for aggressive plaintiff’s attorneys.

Even though AB 1270 ultimately failed to pass in 2019, its successor AB 2570 is worth watching and opposing.

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