Alert: California False Claims Expansion Bill Preparing to Advance

Friday, May 8, 2020

The revived False Claims expansion bill in California, A.B. 2570, is on the agenda to be heard by the Assembly Judiciary Committee on May 11 at 10:00 am PDT. The proposal would authorize tax-based false claims actions, allowing private, profit-motivated parties to bring punitive civil enforcement lawsuits—an abusive practice that is prohibited under current law consistent with the vast majority of other states with similar laws. A nearly identical bill sputtered out last summer but has now been revived, as our colleagues covered in February:

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.

Few of these cases will involve internal whistleblowers, actual fraud, or reckless disregard of clear law. Instead, the cases in Illinois (a state that has adopted false
claims expansion to tax) usually involve inadvertent errors or good-faith 
interpretations of murky tax law. With the party bringing the case able to keep up to 
50% of the proceeds, the only winners in the proposal is the cottage industry of 
money hungry plaintiffs’ attorneys that will descend and harass good-faith taxpayers 
in an effort to pad their own pockets.

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