California Bill Would Allow Tax Fraud Whistleblowers

- False Claims Act exemption for tax matters would end
- State attorney general backs plan

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California's attorney general wants to expand the state's False Claims Act to allow whistleblowers to report alleged tax fraud.

The office of Xavier Becerra, a Democrat, says a bill he is sponsoring to extend California's whistleblower law to tax matters is necessary to keep up with evolving corruption schemes. Business groups say it would be a breathtaking expansion of governmental power in tax disputes.

The Senate Judiciary Committee passed the bill, A.B. 1270 by Assemblyman Mark Stone (D), with a 7-2 vote July 2. It moves next to the Senate Governance and Finance Committee. The bill passed the Assembly in May.

The expansion of the False Claims Act would help the state close the gap between tax owed and tax collected, which is estimated at $20 billion to $25 billion a year, Stone said.

"This is refining the tool to make it more effective," he said. "I don't see it as a major expansion."

Like New York

California's proposal is similar to New York's tax whistleblower law in place since 2010, said Dennis Ventry Jr., a law professor at the University of California, Davis.

New York has prosecuted or reached several settlements in whistleblower tax cases, most recently announcing a $330 settlement with Sprint Corp. for claims that it failed to collect and pay sales tax on flat-rate access charges for wireless calling plans.

Under the California bill, whistleblowers could confidentially report information to the attorney general about fraudulent tax claims individuals or companies make to state tax agencies, reversing an existing exemption from the False Claims Act for matters involving the Revenue and Taxation Code.

The AG would decide whether to prosecute the claims.

If the AG successfully prosecuted a case, the whistleblower would be eligible for up to three times the amount of damages a court awards in addition to between $5,500 and $11,000 for each violation of the law. Awards could go to the whistleblower if the taxpayer engaged in fraud has annual income of $500,000 or more and the damages in the case are more than $200,000.

The AG would be required to consult with tax authorities such as the Franchise Tax Board or the Department of Tax and Fee Administration and could obtain confidential taxpayer records at issue. The whistleblower wouldn't have access to the records.

If the AG decided not to pursue a case, the whistleblower could proceed with his or her own court action. Employees, contractors, or agents who act as whistleblowers would be protected against retaliation from the taxpayer.

Opposition on the Rise

The bill got little attention as it moved through the Assembly in April and May, but business groups are now vocal in their opposition. Opponents include the California Chamber of Commerce, the Civil Justice Association of California, the Council On State Taxation, and the Motion Picture Association of California.

The bill would allow whistleblowers to insert themselves into cases in which taxpayers believe they have taken a credible but possibly aggressive tax position, the Civil Justice Association of California, the Motion Picture Association of America, and several other business groups said in a June 26 letter to the committee.

"A.B. 1270 represents a breathtaking expansion of governmental power in tax disputes," the groups said. "Contrary to assertions that the bill will help address egregious cases of tax fraud by wealthy individuals and businesses, the bill converts the existing system of resolving tax disputes into one where government and private plaintiffs have the incentive to bring False Claims Act cases."

The bill is unclear on whether it would allow for dual enforcement of tax matters, with tax agencies pursuing enforcement at the same time that a false claims case moves forward, the chamber argued in a June 26 letter to the committee.

Representatives of the AG's office rejected the criticism.

"This bill does not punish innocent mistakes," Supervising Deputy Attorney General Rick Acker told the committee. "It does not punish people who vigorously contest their tax bills but are honest with the government. It only punishes people who commit tax fraud."

Ventry said the bill's requirement that the AG consult with the tax agencies on the front end would prevent dual enforcement. The opponents' arguments come close to endorsing fraud, he said.

"It's really close to saying 'we should be able to do whatever we want unless the tax agency catches us,'" Ventry said.

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