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Alert | State & Local Tax (SALT)

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California Bill Proposes Expanding False Claims Act to Include Tax-Related Claims

California lawmakers are considering Senate Bill 799 (SB 799), introduced by Sen. Ben Allen, which proposes amending the California False Claims Act (CFCA) to encompass tax-related claims under the Revenue and Taxation Code.

The CFCA currently encourages employees, contractors, or agents to report false or fraudulent claims made to the state or political subdivisions, offering protection against retaliation. Under the CFCA, civil actions may be initiated by the attorney general, local prosecuting authorities, or qui tam plaintiffs on behalf of the state or political subdivisions. The statute also permits treble damages and civil penalties.

At present, tax claims are excluded from the scope of the CFCA. SB 799 aims to amend the law by explicitly allowing tax-related false claims actions under the Revenue and Taxation Code, subject to the following conditions:

1. The damages pleaded in the action exceed $200,000.

2. The taxable income, gross receipts, or total sales of the individual or entity against whom the action is brought exceed $500,000 per taxable year.

Further, SB 799 would authorize the attorney general and prosecuting authorities to access confidential tax-related records necessary to investigate or prosecute suspected violations. This information would remain confidential, and unauthorized disclosure would be subject to existing legal penalties. The bill also seeks to broaden the definition of “prosecuting authority” to include counsel retained by a political subdivision to act on its behalf.

Historically, the federal government and most states have excluded tax claims from their False Claims Act statutes due to the complexity and ambiguity of tax laws, which can result in increased litigation and strain judicial resources. Experiences in states like New York and Illinois illustrate challenges associated with expanding false claims statutes to include tax claims. For instance, a telecommunications company settled a New York False Claims Act case involving alleged under collection of sales tax for over $300 million, with the whistleblower receiving more than $60 million. Such substantial incentives have led to the rise of specialized law firms targeting ambiguous sales tax collection obligations, contributing to heightened litigation.

If enacted, SB 799 would require California taxpayers to evaluate their exposure under the CFCA for any positions or claim taken on tax returns. Importantly, the CFCA has a statute of limitations of up to 10 years from the date of violation, significantly longer than the typical three- or four-year limitations period applicable to California tax matters. Taxpayers may also need to reassess past tax positions to address potential risks stemming from this extended limitations period.

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