



LAWSUIT REFORM ALLIANCE OF NEW YORK

OPPOSE

BILL NUMBER: S.8872 (HOYLMAN)/A.11066(Weinstein)
SUBJECT: Expansion of the False Claims Act related to Tax Issues
DATE: November 9, 2020
CONTACT: Tom Stebbins

Summary:

This legislation would expand the state's False Claims Act by creating mechanisms for the Attorney General, local governments and private plaintiffs to file lawsuits without having to demonstrate that false claims were made "knowingly." It would also extend the statute of limitations and apply retroactively.

Why we oppose this legislation:

The Legislation Is Unnecessary

- The state's Department of Taxation and Finance already has a range of statutory remedies, including criminal fraud enforcement statutes, that allow the Department to both recover lost revenues and penalize fraudulent filings.

Creates Incentives for Abuse

- By opening up non-fraudulent tax filings to third party litigation, this bill would create a predatory cottage-industry of filing claims against large tax filers in order to fish for errors and/or coerce a settlement. Since the law requires no knowledge of wrongdoing, defending a case would be costly and difficult, thereby incentivizing opportunistic trial lawyers to file claims looking for a payout.

Violates other Provisions and Protections of Tax Law

- Taxpayers would lose the protections of the Taxpayer Bill of Rights and would be unable to fully utilize protections designed to put tax disputes before tax experts.
- Third party suits can be brought for ten years, while the Tax Department is required to assess underpayments within three years, raising serious constitutional concerns about due process.
- Due to this misalignment of statutory timelines, third party lawsuits could presumably be brought against taxpayers who have settled their audits with the Department of Taxation and Finance.

There is a Better Way

- Rather than open up our taxation system to the profit-seeking motives of third party attorneys, a far more straightforward approach would be something similar to the "whistleblower" statute employed by the Internal Revenue Service (IRC § 7623).

The Lawsuit Reform Alliance of New York is a not-for-profit association of businesses, healthcare professionals, membership organizations, and concerned citizens dedicated to reform of the legal system in order to foster a better business climate, promote job growth and address the growing cost of lawsuit abuse.