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Non-Traditional State Tax Litigation: A Look at Four Pending Cases

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State tax litigation traditionally arises in a few standard contexts. Most commonly, state tax litigation follows audit assessments or refund claim denials. Increasingly, however, state tax litigation is arising in other contexts. Perhaps most significantly, tax whistleblower lawsuits have surged over the last 10-15 years in Illinois and New York. Class action attorneys have gotten into the act as well, in some cases filing large class action lawsuits alleging that retailers erroneously collected sales tax from customers. There are a few cases pending in the courts now that cannot easily be grouped into any of the above categories. One involves four states suing the Treasury Department, alleging that federal tax laws are hampering state sovereign tax authority. Another involves fights between Delaware and numerous other states over which state has the right to take custody of certain unclaimed property. Two cases involve taxpayers who have pro-actively sued an out-of-state tax department in a local court. This article will describe and discuss all four cases, noting the central issues in dispute and explaining how in each case the litigation arose. It will close with some concluding observations.

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