

Insights: Publications

When Whistleblowers and Consumers Come Knocking: A Practitioner's Guide to Sales Tax False Claims Act Litigation and Class Actions

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Kilpatrick partners David Hughes and David Ruskin recently presented a webinar providing a comprehensive overview of the growing litigation risks facing businesses under state False Claims Acts and consumer class action lawsuits in the sales tax context. Their discussion examined the legal frameworks governing qui tam actions—including the elements of liability, procedural defenses, and state-specific legislative developments in jurisdictions such as Illinois, New York, Ohio, and the District of Columbia—alongside the certification requirements and defense strategies for sales tax class actions. Drawing on recent case law through 2026, the session equipped tax professionals with practical mitigation strategies and litigation insights to reduce exposure and respond effectively when claims arise.

They provide the following key takeaways from their presentation:

1. **Expanding Tax FCA Exposure** - State False Claims Acts can create liability for both traditional false claims and “reverse” false claims, including alleged efforts to avoid tax or other payment obligations to the state. Exposure varies substantially by jurisdiction, but may include treble damages, per-claim civil penalties, relator awards, and attorneys' fees.
2. **Scienter Is Central** - A false-claims case generally turns on a false statement or claim, an obligation to pay the state, and the requisite knowledge. Although specific intent to defraud is not required, ambiguity in governing law, reasonable legal interpretations, and reliance on sound legal advice can be important defenses to scienter.
3. **Illinois Remains Active** - Illinois has been a leading venue for tax whistleblower litigation, with recurring waves targeting alleged sales- and use-tax undercollection across internet retailers, shipping charges, wine sales, and specialty retailers. Recent Illinois decisions underscore that agency guidance and the taxpayer's conduct after that guidance may create fact issues that make early dismissal more difficult.
4. **Consumer Claims Differ** - Sales-tax class actions are commonly brought under consumer-protection theories and often concern overcollection, incorrect rates or jurisdictions, newly enacted exemptions, and alleged unlawful retention of tax. Defenses may include administrative-exhaustion requirements, exclusive

tax-refund remedies, voluntary-payment principles, arbitration provisions, and challenges to class certification.

5. **Prevention Matters** - Whistleblower and consumer claims can originate from employees, customers, competitors, family members, and opportunistic plaintiffs, making internal controls especially important. Businesses should regularly assess tax positions, monitor changes in tax law and agency guidance, preserve support for reasonable interpretations, and promptly remediate identified collection or remittance issues.

Related People



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