

NEW YORK ATTORNEY GENERAL PUSHES FORWARD WITH TAX PROSECUTIONS UNDER FALSE CLAIM ACT

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Practices & Industries

State & Local Tax

This week brought another significant development in the world of tax enforcement in the Empire State: the first successful tax whistleblower case under New York's whistleblower statute.

In August 2010, New York amended its False Claims Act, becoming, in a landmark move, the first state in the nation to expressly authorize private whistleblowers to bring suit against tax cheats for knowing violations of the state's tax laws. On March 5, 2013, the Office of the Attorney General announced that it had successfully resolved, in record time, its first prosecution under the new law.

A prominent tailor, Mohanbhai "Mohan" Ramchandani, and his business, Mohan's Custom Tailors, Inc., a men's custom-clothing business located in midtown Manhattan, each pleaded guilty to felony charges related to a 10-year scheme to defraud the government of state income and sales and use taxes. The combined civil and criminal investigation began when a whistleblower – not an auditor – with inside information about Mr. Ramchandani's fraudulent practices tipped off the attorney general and brought a suit, under seal, against the perpetrator.

In reaching a settlement this week with the attorney general, Mr. Ramchandani and his business each pleaded guilty to felony tax charges, and Mr. Ramchandani faces a state prison sentence of up to three years. Moreover, he has been ordered to pay \$5.5 million in damages and penalties, of which \$1.1 million will go to the whistleblower.

In a press release announcing the settlement, Attorney General Eric Schneiderman stated, "There are no excuses for tax cheats...This office will continue to bring aggressive action against tax evaders who believe they are above the law." There is every reason to believe him.

Significantly, it took the Attorney General's Office less than three years to bring its first tax whistleblower case to conclusion, which stands in sharp contrast to the federal whistleblower program administered by the Internal Revenue Service. The latter program has, so far, been much more sluggish in producing results.

The case against Mr. Ramchandani should be of interest to taxpayers, New York businesses, and potential whistleblowers. It demonstrates that New York's False Claims Act has real teeth, and that the Office of the Attorney General is no paper

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Under the 2010 amendments, private citizens with inside information (think former employees, ex-spouses, accountants, bookkeepers, disgruntled colleagues, comptrollers, housekeepers—the possibilities are endless) are now empowered to “blow the whistle” on anyone who knowingly made a false claim with respect to taxes due to the state, subject to certain dollar thresholds. Violators are subject to treble damages and severe financial penalties. Unlike a standard audit, investigations are conducted by the attorney general through the newly created Taxpayer Protection Bureau, with the assistance of the Department of Taxation and Finance. Also, unlike a standard audit, the statute of limitations under the False Claims Act is a staggering 10 years.

As an antifraud statute, the False Claims Act deputizes, in effect, regular citizens to combat tax fraud by bringing to the light of day nefarious conduct that might otherwise have escaped detection through the normal enforcement channels. To incentivize citizens to bring suit, the False Claims Act enables the whistleblower to collect up to 30 percent of the damages as a reward.

Whether a prospective whistleblower is considering bringing a False Claims Act suit or an individual or company is the subject of a whistleblower investigation, delicate handling of the case is essential. A thorough review and analysis of the evidence is critical and a proper presentation of the claims or defenses may mean the difference between helping to combat fraud, if you are the whistleblower, or defending against a highly intrusive investigation, if you are the target of a whistleblower claim.

The Ramchandani conviction is just the tip of the iceberg.

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