

Tax Collection Class Action & False Claims Act Project
Draft Issues List
February 22, 2013

1. To what extent do state laws currently allow class actions against sellers for overcollection of tax? To what extent are state False Claims Acts or common law equivalents being used in private litigation alleging undercollection of tax?

2. Should states that impose tax on the buyer limit buyers' class actions against sellers for overcollection of tax and/or False Claims Act litigation for undercollection of tax?

a. Have such actions altered the economics of tax collection, such that sellers may believe themselves at significant risk of litigation if they collect less than/more than the proper amount of tax?

b. What issues are implicated by having such actions heard by general civil courts rather than following state procedures for resolving tax disputes? For example, the taxing authority is often not joined as a party in these actions and may not have a right to intervene.

c. If a seller is in fact routinely overcollecting, do state tax procedures other than class actions adequately address that problem? Even if an individual consumer is aware of the issue, the amount of overcollected tax may well be too small to justify filing and documenting a refund claim. In the absence of a refund claim, can revenue departments effectively monitor routine overcollections in a cost-efficient manner?

d. State law requires sellers to collect tax on behalf of the state. Does the state therefore have an obligation to minimize seller costs of compliance by providing mechanisms to reduce consumer lawsuits against sellers for under- or overcollection of tax?

f. What additional costs are the states likely to incur if they establish administrative mechanisms to deal with systemic issues of overcollection of tax? In other words, if class actions were eliminated, would the states need to put something else in their place to address the possibility of systemic overcollection, and if so, what would be the associated costs?

3. If alternative procedures for individual consumer refund claims should be established, what should they be?

a. Should the project include taxes that are imposed on the seller rather than the buyer, given that the costs of the tax may be passed on to the purchaser in the price of the product or service? Economically, this can result in an "overcollection" of tax that is no different than is the case if the buyer is liable for payment of the tax. The ABA model statute is limited to taxes that are imposed on the buyer and collected by the seller.

b. The ABA model statute contains the following provision. "In the event that a taxing jurisdiction determines, in connection with three or more refund claims from purchasers that it has

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approved, that there are numerous similar transactions with respect to which tax should not have been collected, the taxing jurisdiction shall send written or electronic notice to all affected registered sellers advising them not to collect tax on such transactions. The taxing jurisdiction shall also post an announcement prominently on its official website notifying affected purchasers of the procedures they must follow in order to request a refund of tax on any such purchase transactions.” Is this provision or a provision substantially similar, administrable and cost effective? If not, should the states consider alternative procedures regarding systemic overcollections of tax, either on an industry-wide basis or as applied to an individual seller?