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California Senate Appropriations Committee

*Via E-mail*

**Re: COST's Opposition re A.B. 1270; Removing the Prohibition Against Tax False Claims Act Suits**

Dear Chair Portantino, Vice-Chair Bates and Committee Members:

On behalf of the Council On State Taxation ("COST"), I am writing in opposition to A.B. 1270, which if implemented would allow False Claims Act suits for state and local tax issues. California's tax laws should be administered by the agencies charged with doing so (the Department of Tax and Fee Administration (CDTFA) and the Franchise Tax Board (FTB)), and not by private parties motivated by profit.

**About COST**

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. A significant number of COST's members conduct business in California and purchase a significant amount of goods and services used in the State.

**False Claims Acts Should Exclude State and Local Taxation**

The COST Board of Directors has adopted a formal policy position supporting the exclusion of state and local taxes from False Claims Acts.<sup>1</sup> That policy position states:

*Tax agencies should be the sole entities that administer and enforce state and local tax laws. It is inappropriate for persons or governmental entities outside the tax agency to initiate civil suits claiming undercollection or underpayment of a tax (false claims act suits).*

To consistently and equitably administer tax laws, a state agency must effectively control and enforce those laws. Allowing private parties to intervene in the administration, interpretation or enforcement of tax laws usurps the authority of those tax agencies, thereby creating uncertainty that is likely to result in inequitable treatment of taxpayers.

<sup>1</sup> <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/cost-fca-policy-statement-final.pdf>.

### COST's Major Concerns with False Claims Acts for Tax Disputes


There are four primary reasons that California's False Claims Act should not to be expanded to allow private individuals, as opposed to the CDTFA and the FTB, to administer California's tax laws:

- First, tax issues are complicated. The CDTFA and FTB employ experts capable of dealing with complex tax issues, many of which are nuanced and often subject to degrees of interpretation. California's taxing authorities should control the overall administration of the State's tax laws, as opposed to third parties driven by their own financial interests.
- Second, applying the False Claims Act to tax matters makes it difficult, if not impossible, for the CDTFA and FTB to effectively administer tax issues, including development of cases for litigation and settlement of tax disputes. For example, California's recently enacted sales tax economic threshold in response to the U.S. Supreme Court's recent decision in *South Dakota v. Wayfair* should be administered by the CDTFA, not by third-party litigators that may have limited tax expertise and/or inappropriate financial motivations.
- Third, expanding the False Claims Act to apply to taxes could inappropriately allow private parties access to confidential taxpayer information. Private parties could also gain access to a business's confidential customer information (products purchased, credit reports, etc.), which creates risks for the potential improper disclosure of private "trade secret" information.
- Finally, expanding the False Claims Act to apply to taxes will make California a less attractive place for businesses to conduct their operations. Allowing private parties to assert their interpretation of California's tax law will create havoc, confusion, and create additional anxiety for both taxpayers and the CDTFA and FTB.

### Conclusion

For the reasons discussed above, COST urges the Committee to reject A.B. 1270 and retain the tax exclusion in California's False Claims Act.

Sincerely,



Nikki Dobay

cc: COST Board of Directors  
Douglas L. Lindholm, COST President & Executive Director