

DEPARTMENT OF TAXATION

2004 Fiscal Impact Statement

1. **Patron** Martin E. Williams

2. **Bill Number** SB 343

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** House Courts of Justice

4. **Title** Virginia Fraud Against Taxpayers Act;
Exception for State and Local Taxes

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would amend the Virginia Fraud Against Taxpayers Act to exempt all state and local taxes. Currently, only income taxes are exempted from the Act.

This is a Department of Taxation bill.

This bill does not specify an effective date.

6. **No Fiscal Impact.** (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

This bill would have no impact on the Department's administrative costs or General Fund revenue.

9. **Specific agency or political subdivisions affected:**

Department of Taxation
Local Tax Officials

10. **Technical amendment necessary:** No.

11. **Other comments:**

Background

The Virginia Fraud Against Taxpayers Act allows citizens to sue anyone who has defrauded the state with a false claim. These lawsuits are often referred to as a "qui tam" action, an abbreviation of a Latin phrase that means, "who sues on behalf of the King, as well as for himself." If successful, the citizen receives a portion of any amount recovered

for the state. A qui tam suit is between the citizen and the private party alleged to have committed fraud. The state itself is not a necessary party to the suit, although notice of the litigation must be given to the Attorney General. If the Attorney General decides not to intervene, the citizen may proceed with the suit. Of the several permissible courses of action, the suit may be settled by the private litigants or decided by the court, in each case without the participation of the state officials charged with administering the state agency alleged to have been defrauded.

The federal government and several states have similar laws. However, the federal False Claim Act specifically prohibits such suits for claims, records or statements made under the Internal Revenue Code.

Recently, qui tam cases have been asserted in other states alleging tax fraud.

- A suit was filed in Tennessee against 32 major retailers for failing to collect sales and use tax on Internet sales. The Attorney General intervened in the lawsuit and sought dismissal of the suit, which was granted.
- Suits were filed in Florida against relocation companies alleging underpayment of recordation tax on the deeds they recorded. After the court dismissed the cases, the Florida legislature amended the law to clarify that no tax was owed on the transactions that were the subject of the qui tam suit.
- An individual maintains a website alleging that tobacco companies are vulnerable to qui tam suits in several states for unpaid income and sales taxes.

Proposal

This bill would expand the existing exemption for income taxes to exempt all state and local taxes from the provisions of Virginia's qui tam law, the Virginia Fraud Against Taxpayers Act.

The Department is concerned that qui tam actions between private parties may affect undecided tax policies without input or approval by the Department. They may affect the Department's ability to administer state tax policy through regulation development, audit and appeals, advisory rulings, and other compliance activity. Qui tam suits for taxes, net of payments to private parties, may violate the Art X, § 7 of the Virginia Constitution, which requires that all taxes be collected by the proper officers and that all payments be by appropriation. Furthermore, qui tam suits for taxes would result in the disclosure of confidential tax information of the defendants (and, perhaps, their customers) because of expansive discovery provisions in the law, and the defendants would not be guaranteed the protections of the Taxpayer Bill of Rights.

The most immediate concern is that suits against Internet retailers may jeopardize the efforts of the Department, members of the Virginia General Assembly, other states, and the business community to resolve this issue through the Streamlined Sales Tax Project.

cc : Secretary of Finance

Date: 2/16/2004 JPJ