

Scary Stuff: Illinois Sales Tax Whistleblower Update – First E-tailers and now Custom Tailors

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You may have already seen the [Bloomberg article](#) issued on June 1, 2017 which outlines what many of us have sadly come to know as the "Diamond" qui tam claims: the ongoing exploitation of the Illinois False Claims Act and abuse of the state and local tax regime by an aggressive lawyer turned whistleblower.

I won't repeat the Bloomberg article's details, other than to confirm that the industry *du jour* for the Diamond qui tam claims is custom tailors. Many of these custom tailor companies targeted by Diamond are located outside of the United States, such as Hong Kong, London, etc. While some are located in the US, none have a physical presence in Illinois.

Visit a customer in Illinois and get hit by a false claims lawsuit?

The new Diamond claims of fraud for failure to collect sales/use tax relate to sales generated by a foreign or out-of-state company's representative spending a day or two in Illinois taking measurements of potential customers for a suit or shirt to be specially made, and paid for, at a later date outside of Illinois.

Currently, there are 35 separate custom tailor qui tam lawsuits pending. According to Diamond, more are coming. The initial defendants are just now receiving notice of these lawsuits.

Here are some relevant open questions for these lawsuits:

1. Do these minimal visits, with no actual sale completed in Illinois, constitute sufficient nexus for a use tax collection obligation?
2. Does failure to charge and collect a tax actually constitute a false claim here?
3. Should the recent trade show regulations, setting minimum thresholds for sales/use tax collection at trade shows in Illinois, apply to these very similar fact patterns?
4. Can a foreign company not obligated to file a federal return, and thus unable to register to collect tax in Illinois, be found liable for failing to collect and remit Illinois tax?

Needless to say, the custom tailor industry is upset, not with having to collect and remit Illinois tax on a prospective basis, but with the idea that under the Illinois False Claims Act they should now have to

reach into their pockets and pay back taxes for six years ... plus a multiple of three times back taxes for damages ... plus additional significant penalties... *plus* Diamond's legal fees.

Many are considering no longer visiting Illinois at all.

Which state(s) will be next? And which industry?

It is no secret that there are numerous other states visited by custom tailors, as they do in Illinois, some of which have similar false claims acts and allow for similar claims to be made. Because each state's tax laws may be different, even the traveling custom tailors who may only visit a state once or twice each year will need to analyze the different laws in the various jurisdictions.

And custom tailors are only the most recent focus for Diamond. We've already seen the out of state wine and liquor shippers, the shipping and handling issue and the numerous e-tailers all sued by Diamond, so far.

In the end, if you are a retailer making sales to Illinois customers, even if you are located out of state, you should do all you can to protect from the potential Diamond qui tam claim, as you might already be on his, or another serial relator's, radar. Your business operations should be reviewed by an attorney experienced in false claims act issues as they may relate to multi-jurisdictional tax laws.

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