

SALT SHAKER

Shaking things up in state and local tax.



Taxpayers Sue New York State Under False Claims Act; Citizens Demand To Get What They Pay For

A group of New York taxpayers are deploying a new weapon in their fight against inefficient government: The False Claims Act. The law, which is often used by government prosecutors to punish alleged fraud committed by taxpayers, imposes penalties of up to three times the damages suffered, along with statutory penalties of up to \$12,000 for every fraudulent claim. This is the first case in which the False Claims Act has been used against the government.

"This is about fairness and holding government officials to the same standards it holds its citizens," said Gloria All-Red, attorney for the aggrieved citizens' group. "Politicians who raise your taxes need to deliver on their promises. If they don't, or if they violate the public trust, the citizens of New York deserve to be made whole."

The lawsuit seeks to hold New York officials accountable for what is alleged to be years of inefficiency, ineffectiveness

and corruption. The plaintiffs point to rising property taxes, late budgets, deteriorating infrastructure, high unemployment, and bland sloppy joes in school cafeterias, as a few examples.

Some commentators wonder whether the plaintiffs' claim will even make it out of the starting gate. Professor Ivy Ray Tower notes that the False Claims Act statute itself bars lawsuits from being filed against government officials. "The courts don't have jurisdiction to hear the case," said Tower, noting further that the law "just doesn't let you sue the government." Professor Tower did not rule out a potential suit under New York's false advertising laws, however.

Asked for a response, All-Red noted that the government has been refusing to follow the laws it passes for years. "Do as I say, not as I do, is not a valid defense under New York law. We think the courts will agree and let our lawsuit proceed."

States Engage Transfer Pricing Firms to Identify Overpayments, Refunds

Increasing scrutiny over transfer pricing audits performed by providers compensated on a contingent basis took a surprising new twist. One of these firms has been directed by states to upgrade its software to identify tax overpayments. The software, which adjusts taxpayers' profits by comparing a taxpayer's publicly available financial data against tax return data, has been criticized as creating bogus tax

assessments. The new version has been tinkered with to identify situations where companies paid TOO MUCH tax AND are owed tax refunds.

While the Sutherland SALT team applauds the door swinging both ways, we remain opposed to this flawed tax computational tool.

U.S. Supreme Court Accepts a Plethora of Economic Nexus Cases

In an unprecedented move attracting the attention of state tax practitioners nationwide, the U.S. Supreme Court granted certiorari in a dozen intangible property licensing cases and will devote the majority of its 2012-2013 term to one question: "Does the physical presence test endorsed in *Quill Corp. v. North Dakota* apply to corporate income taxes?" The Court's action follows denial of certiorari in [more than two handfuls of economic nexus cases](#) presented to the Court over the last 20 years.

When asked why the Court is willing to devote so much time on its upcoming docket to nexus cases, SCOTUS commentator Vera Justice observed that the Court is just plain tired of waiting for Congress to resolve the issue. "The

Court made it clear in *Quill* that Congress was most qualified to determine what standards should be used to limit state taxation of out-of-state companies. Congress has yet to take action in the 20 years since the *Quill* decision. The Court has lost confidence that Congress is going to move on this issue any time soon."

Court watchers are also speculating how much time the Court will provide for oral arguments. Typically, the Court provides litigants one hour for oral arguments; however, the Court has agreed to extend oral argument time to six hours on important social issues such as Obama's healthcare plan and *Miranda* rights.

"Also in the News"

- New Alabama Governor's budget anticipates that all *South Central Bell* refund claims will be resolved by 2042. Legislature likely to extend date to 2050.
- California's retroactive tax penalties are declared unconstitutional.
- Streamlined Sales Tax Governing Board declares any food item over 400 calories is a taxable snack. Streamlined Sales Tax Governing Board renamed "Kind-a/Sort-a Streamlined Sales Tax Governing Board."
- New Jersey contemplating "throwing in" sales made by affiliates.
- Texas proposes legislation to repeal Margins Tax and replace it with a tax based on net income.
- Sutherland to release a SALT coffee table book entitled "SALT Shoes" that will highlight shoes worn by state tax professionals.
- **Correction** to March 29 Article, "Illinois Administrative Law Judge Rules in Favor of Corporate Taxpayer." On March 30, the Illinois Commissioner of Revenue announced a correction, stating that the 42-page opinion was one big typo. The ALJ has retracted the original opinion and issued a one-page opinion in which the taxpayer loses. Auditors within the Department of Revenue are said to be considering whether they will bring a lawsuit against the ALJ for intentional infliction of emotional distress.
- Responding to complaints by multistate taxpayers, New York State and New York City have agreed to coordinate audits of corporate taxpayers. The simplification agreement provides that New York State will initiate all audits, and New York City has agreed to come to the exact opposite conclusions of the state, resulting in a win-win for everyone.
- Michigan announces that in 2013, it will replace its corporate income tax with a net gross receipts tax; in 2015, it will replace the net gross receipts tax with a Value Subtracted Tax; in February 2016, it will replace the Value Subtracted Tax with a gross net receipts tax; and in November 2016, it will replace the gross net receipts tax with the WDKWWD tax. WikiLeaks reports that "WDKWWD tax" means "We Don't Know What We're Doing" tax.

SALT PET(S) OF THE MONTH

Sutherland SALT Adds Partner, 17 New Pets to Sacramento Office

Sutherland SALT is pleased to announce that Carley Roberts joined the firm's Sacramento office as a partner on February 9, 2012. "We are thrilled that Carley joined us. She brings 13 years of California experience and 17 new pets to Sutherland's SALT practice," said Sutherland Managing Partner Mark D. Wasserman. Adds Sutherland SALT Partner, Jeff Friedman, "Carley joins our SALT practice at a critical time. After two years of publishing the Pet of the Month, we were looking for candidates that could add to the depth and breath of our pet inventory. Ensuring the continuity of the Pet of the Month underscores our commitment to providing the highest quality service to our clients. Her presence in California is a huge bonus." Wasserman added: "Sutherland's SALT practice has always had lovable dogs and cats. Adding horses and goats is a major step in our strategic plan. We are delighted to have Carley and her entourage join the team."

Cats

Waylon (aka "Psycho")
(male, 10-year-old tabby)

In his first week at home, Waylon got spooked and attacked Carley, causing her to need six stitches in the back of her head!



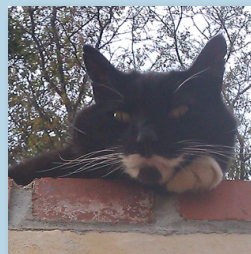
Kenya (female, 9-year-old mix)

Kenya is a stray Carley and Jeremy adopted and brought home after visiting in Mombasa, Kenya. She slobbers uncontrollably and doesn't have a single vice.



Socks (male, 13-year-old tuxedo cat)

A lover of car rides, guests have been known to leave the house only to find Socks in the car on the drive home.



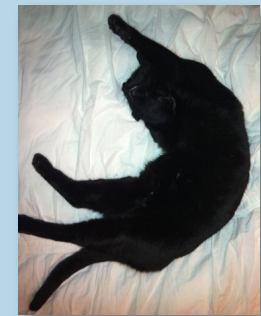
Gus (male, 16-year-old tabby)

A sucker for attention among the visitors who board horses at their ranch, Gus is the mascot of the stables.



Monkey (male, 6-year-old Bombay)

When Monkey isn't hunting, he can be found at the foot of Carley and Jeremy's bed, stretched end-to-end, belly up, with his paws stretched above his head.



Dogs

Aside from Buster, who already had a name when he was adopted, the dogs all have alcohol-related names. Surely a coincidence.

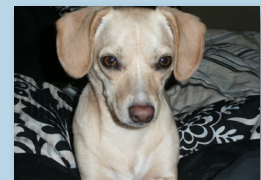
Buster (male, 9-year-old lemon beagle)

No, the camera did not add 15 pounds ... Buster tips the scales at 48 pounds.



Dolce (dessert wine by Far Niente) (female, 3-year-old doxie mix)

Sweet and gentle to her core, Dolce is also a trained and registered service dog used by Jeremy in his job (he is a speech and language service provider to kids with autism).



Bubbles (favorite flavor of Three Olives vodka) (female, 2-year-old rat terrier)

There is no question Bubbles is the smartest dog in the pack—maybe a little too smart at times.



Belvedere (named after the vodka) (male, 2-year-old rat terrier)



Belvedere has a sophisticated-looking “tuxedo” coat pattern, so he was named after both Belvedere vodka and also the TV show from the 1980s, “Mr. Belvedere.”

Tanq (short for Tanqueray) (male, 4-month-old mini-border collie and Chihuahua mix)



Tanq is the newest addition to the menagerie. Carley and Jeremy quickly fell in love with Tanq’s cute little fox face, and, needless to say, Tanq is home to stay after his foster days.

Horses

Carley and Jeremy started 2011 with 11 horses but recently decided to downsize to 5, despite its impact on the Pet of the Month supply.

Lottie (mare, 25-year-old Thoroughbred)



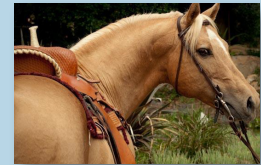
Part of the Roberts family for 14 years, Carley still takes Lottie out for short trail rides from time to time, but she is retired now.

007 (“Seven”) (gelding, 7-year-old Clydesdale)



Seven is the youngest horse on the ranch. Incredibly sweet and smart, he is the “starter” horse for friends and family who are uneasy about riding a horse for the first time.

Skipper (stallion, 15-year-old American Quarter Horse Palomino)



With gorgeous Palomino coloring and gentle brown eyes, Skipper charms everyone he meets.

Persie (gelding, 9-year-old Appaloosa)



Born and raised on the ranch, Persie is Carley’s blue-eyed devil and pretty much acts like an oversized dog.

Baby (mare, 12-year-old American Quarter Horse)

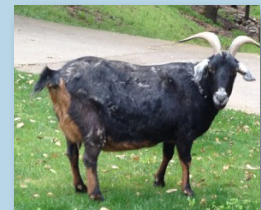


Baby is a beautiful buckskin, trained in cutting. Baby’s disposition is sweet and even, making her a solid, dependable mount.

Goats

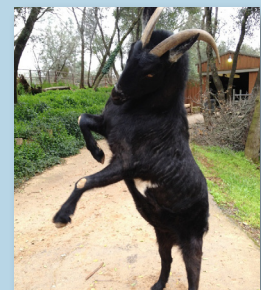
The property before Carley and Jeremy’s current ranch had acres of poison oak, so they adopted goats to clear the land. Despite the fact that the poison oak has not been a problem for nearly a decade, the goats still freely roam the ranch but never leave the property (how weird is that?).

Precious (female, 11-year-old Nubian)



Precious is a sweet but extraordinarily overweight goat. She is the mom of Sherwin.

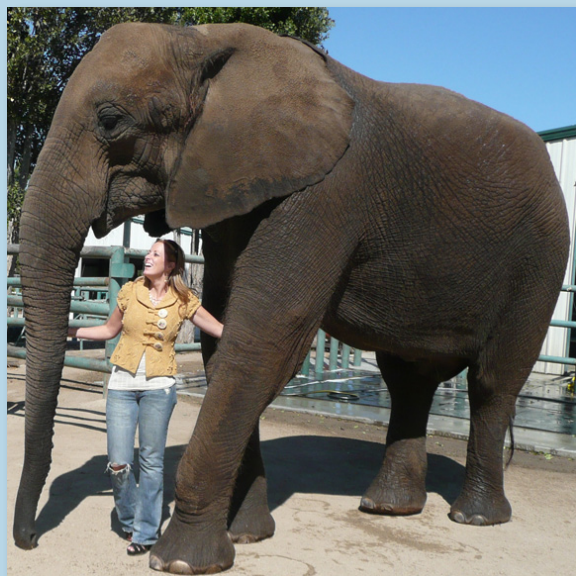
Sherwin (male, 9-year-old half Nubian, half Pygmy)



Sherwin is one sassy goat. You must be careful not to turn your back on this guy, or he just might knock you on your rear end.

A Walk on the Wild Side

Bored with the usual pets—cats, dogs, horses...goats??—Carley and Jeremy have been pondering adding some more unusual creatures to the lot. Following are a couple contenders who may be found frequenting the ranch very soon.



APRIL FOOL'S!

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