

First Estate Tax Case Filed Under N.Y. Whistleblower Law

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- Involves alleged underpayment of New York estate tax
- Former employee alleges New York doctor falsely claimed Florida residency

(Bloomberg Law) -- New York's first unsealed qui tam estate tax case has been filed by a whistleblower alleging that a deceased physician falsely claimed to reside in Florida.

The whistleblower, Doreen L. Light, alleged that the estate of Dr. Myron R. Melamed owes at least \$1.7 million in estate taxes to New York. Light, a long-time administrator at Melamed's pathology company, alleged that the physician and his estate falsely claimed he resided in Florida when he actually lived and worked full-time in Westchester County, N.Y.

The suit, which was filed in New York State Supreme Court in Manhattan, is believed to be the first such case filed under the state's False Claims Act for claims under the estate tax. It also touches on the contentious issue in New York of domicile and residency.

Geoffrey Weinstein, special counsel at Cole Schotz P.C., told Bloomberg Tax that “these are baseless claims, with no basis in law or fact.” Weinstein, who represents Melamed's two sons, said the suit is “solely motivated by greed of a disgruntled former employee.”

“This malicious attempt to smear the integrity and reputation of renowned physician, decedent, Dr. Myron Melamed will be vigorously defended,” he said in an email.

The suit claims that Melamed and his company, University Pathology P.C., failed to report earned income to New York from 2008 to 2013, falsely claiming to reside in Florida. It also alleges that he entered into an agreement with his sons, who are also named defendants, to take steps to illegally avoid estate taxes.

“When New York changed the law in 2010 to allow whistle-blowers to bring forward claims about tax violations, the idea was to address the full range of

violations that creative minds can come up with, and that includes cheating on estate taxes by falsely claiming that New York estate taxes do not apply,” Randall M. Fox, a partner with Kirby McInerney LLP, told Bloomberg Tax in an email.

‘Only Matter of Time’

“We have already seen whistle-blower cases about sales taxes, personal income taxes and corporate franchise taxes,” said Fox, a former bureau chief in the attorney general's Taxpayer Protection Bureau. “It was only a matter of time before a case specifically about estate taxes was filed.”

Peter L. Faber, a partner at McDermott Will & Emery LLP, said the plaintiff will have a difficult burden of proof to meet in this case because residency cases rely on a person's state of mind.

“A person's domicile is the place that she or he regards as a permanent home,” Faber, a critic of the state's False Claims Act, told Bloomberg Tax in an email. “It is a subjective concept.”

“The claimant in this case, who was an employee of the decedent, apparently is claiming that he falsified records, but she would not only have to prove this, she would have to establish that, when all of the facts involving the person's life are taken into account, he was in fact domiciled in New York and that his estate owed the tax,” Faber said. “She must establish a tax liability, and it would not be enough for her to show simply that he tried to avoid tax.”

The case is New York ex rel. Light v. Melamed, N.Y. Sup. Ct., No. 101451/14, amended complaint filed 1/19/18.

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For More Information

Text of the amended complaint is at <http://src.bna.com/vTD>.