

Sprint To Pay NY \$330M In Tax FCA Case, \$63M For Tipster

By Jack Newsham

Law360 (December 21, 2018, 12:27 PM EST) -- Mobile giant Sprint Corp. will pay \$330 million to resolve a New York False Claims Act suit that accused the company of shirking \$100 million in state taxes, with almost \$63 million of that sum going to a whistleblower, the state attorney general said Friday.



Sprint Corp. will pay \$330 million to settle claims that it shirked New York state and local taxes on certain cellphone plans for at least nine years. (AP)

The settlement is the biggest recovery by the New York Attorney General in a state FCA suit and the biggest settlement won by any single state under a state false-claims law, the AG's office said. Sprint had been accused of failing to collect state and local sales taxes on portions of certain plans from at least 2005 through 2014.

"Sprint knew exactly how New York sales tax law applied to its plans," Attorney General Barbara Underwood said in a statement. "Yet, for years the company flagrantly broke the law, cheating the state and its localities out of tax dollars that should have been invested in our communities."

According to the state, Sprint's in-house and external lobbyists were engaged in efforts to shape the 2002 law that was at issue in the case, New York Tax Law Section 1105(b)(2). The carrier's lobbyists and lawyers knew that sales taxes applied to all calls, but "arbitrarily" deemed some fraction of usage to be interstate calls and therefore untaxed, the attorney general's office said.

The case began with a whistleblower suit filed by Empire State Ventures LLC in 2011, but the state threw its own resources into the case and filed suit the next year. Aspects of the case were **litigated** to New York's Court of Appeal, and Sprint **sought intervention** by the U.S. Supreme Court, but it was denied. Discovery has been ongoing in recent months.

The AG's office thanked Empire State Ventures for providing "information and assistance in this investigation." David Koenigsberg, a lawyer for ESV, said the company was a Wyoming entity but declined to share any other details about the person or people affiliated with it.

Koenigsberg, who once worked on the civil side of the U.S. Attorney's Office for the Southern District of New York, said he wasn't involved in negotiations, which were between the attorney general's office and Sprint. He praised the state and said the solid result was partly attributable to an almost-unique feature of New York law.

"New York is one of a few states that allows you to bring a qui tam suit for tax claims," he said, using the legal Latin term for whistleblower actions.

Two other whistleblower lawyers who worked on the case during their time at the AG's office said the deal was a major victory. Randall Fox of Kirby McInerney LLP said the result — more than triple the \$100 million in lost tax revenues that had initially been alleged — underscored the strength of the state's case. He said emails showing the lobbyists' knowledge was key evidence.

"Here, you have a company that fought this case tooth and nail for seven years and what they have to show for it, at the end of the day, is paying full damages and having created a good chunk of law that shows how strong the False Claims Act is," said Fox, who was the first chief of the AG's Taxpayer Protection Bureau.

He noted that it's unclear how high the alleged damages rose before Sprint stopped its alleged misconduct or how much the state could have won if the case had gone to trial. While seeking to collect for the same alleged underpayment under both the FCA and state tax law might not have won court approval, Fox said, the FCA also imposed penalties of \$6,000 to \$12,000 per violation when the suit was filed, and how many violations occurred may have been disputed.

Gregory Krakower, of counsel at Getnick & Getnick LLP, said states that don't yet allow qui tam suits for tax underpayment should take note of New York's track record. He noted that the Sprint case came soon after two settlements with Harbert Management Corp. and affiliates — the whistleblower was represented by his firm — that resulted in \$70 million for the city and state.

The federal government and other states should "follow New York's lead in empowering and rewarding whistleblowers who expose corporate tax schemes that deprive governments of needed revenue and that disadvantage honest businesses that comply with the law," he said, adding, "It's not just the statute. It's the partnership between the attorney general's office and whistleblowers that makes this work."

A stipulation of discontinuance was filed, but the settlement document was not immediately available Friday.

The deal was revealed three days after Sprint and T-Mobile announced that they had gotten one more key regulatory sign-off on their planned merger.

The company previously told shareholders that it didn't expect any resolution of the state's suit to have a "material adverse effect" on its finances. Lisa Belot, a Sprint representative, said that statement was accurate and that the company was pleased with the deal.

"While we disagree with the state's characterizations, we believe resolving this matter is in the best interest of the company," she said in an email.

The state was represented by Bryan Kessler and David Farber of the New York Attorney General's Office.

ESV was represented by David Koenigsberg and John Menz of Menz Bonner Komar & Koenigsberg LLP.

Sprint was represented by E. Leo Milonas and David Keyko of Pillsbury Winthrop Shaw Pittman LLP and Dane Butswinkas, David Blatt, Kenneth Brown, Adam Harber and Matthew Blumenstein of Williams & Connolly LLP.

The case is People et al. v. Sprint Communications Inc. et al., index number 103917/2011, in the Supreme Court of the State of New York, County of New York.

--Editing by Alyssa Miller.

Update: This story has been updated with counsel information and with comments from Fox and Krakower.

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