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Food Services Providers & Investigations by State Attorneys General

New York State's new Taxpayer Protection Bureau, which New York State Attorney General Eric Schneiderman established in January 2011, was designed to eliminate fraud and recoup money illegally taken from New York State taxpayers. The Taxpayer Protection Bureau recently targeted a food services provider relative to their rebate and billing practices. On October 5, 2011, Attorney General Schneiderman announced a \$1.6 million settlement with Whitson's Culinary Group stemming from allegations under the New York False Claims Act and allegations of overcharging school districts and other education providers to the tune of \$800,000. This clearly will not be the last investigation or settlement.

The Whitson's settlement has spurred investigations into fraudulent rebating practices by food services providers in other U.S. jurisdictions, including New Jersey, Massachusetts, and the District of Columbia. In addition, a member of the New York Attorney General's Office recently testified before the United States Senate's Homeland Security & Governmental Affairs Committee, identifying common practices in the food services industry and highlighting their impact on federal government programs like the National School Lunch Program. Accordingly, food services providers across the United States can expect to remain under intense scrutiny.

"These are difficult financial times for New Yorkers and our state," said Attorney General Schneiderman on the day the Whitson's settlement was announced. "Today's announcement sends a clear message that those who seek to defraud New York taxpayers will be held accountable. On behalf of students, parents and taxpayers, we are pleased that these schools will get their money back, and that Whitson's will no longer be able to siphon funds meant to benefit students."

According to the New York Attorney General's Office, Whitson's received savings from sweetheart deals with its food and materials vendors, but did not pass on these savings to New York schools, in violation of both federal and state law. Whitson's must pay \$1.6 million to the state and affected school districts and must comply with reforms to improve transparency. The reforms include:

1. Providing written disclosures to school district clients where off-invoice rebates are involved;
2. Establishing a hotline for clients to call with any questions concerning rebates; and
3. Paying for an independent auditor's review of Whitson's off-invoice rebate program.

To protect your food services company by conducting a pro-active audit before an investigation and/or to protect against possible liability during such investigations, we invite you to contact one of the authors on the Venable team.

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