



memo

TO: Tax Committee Members
FROM: Ken Pokalsky
SUBJECT: False Claims Act legislation
DATE: 10/13/20

I welcome your review and comments on two legislative proposals amending the state's false claims act.

- S.8852 (Krueger)/A.11061 (Weinstein) would make the False Claims Act applicable to knowing acts related to "obligations" under the Tax Law, and repeals the Act's current language precluding FCA claims under the Tax Law related to acts that "knowingly conceals or knowingly and improperly avoids or decreases" an obligation to pay money to the state or a local government. The sponsor's memo says the intent of the bill is to extend the False Claims Act to instances where a taxpayer knowingly fails to file a tax return, a "loophole" in current law that "exempt[s] wealthy individuals and businesses."
- S.8872 (Hoylman)/A.11066 (Weinstein) creates a separate mechanism in the False Claims Act to allow for the recovery of "damages, including consequential damages" against any person who uses a false record related to their tax liabilities to the state or a local government, or who "conceals or improperly avoids or decreases" their tax obligations to the state or a local government. This would allow for Attorney General and qui tam civil actions to recover delinquent taxes and interest, and costs, without having to prove that such avoidance was done "knowingly," but would not subject this new categories of claims to the FSA's treble damages or civil penalty provisions. Separately, the bill also makes the current provisions of the False Claims Act applicable to "obligations" under the Tax Law. Again, the sponsor's memo says the bill is aimed at recovering unpaid taxes by "high income individuals and businesses."

You may recall that the state's False Claims Act (State Finance Law Article 13) was amended to apply to the state's Tax Law when legislation was quickly introduced and adopted at the end of the 2010 legislative session, sponsored by then-Senator (and soon to be Attorney General) Eric Schneidermann. We opposed that legislation, as it ignored existing tax fraud and other penalty and enforcement provisions of the Tax Law.

The Act was amended again in March 2013 as part of the state's FY 2014 budget, as part of a package aimed at fighting Medicaid fraud. Those amendments applied the Act to any a person that "knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or a local government, or conspires to do the same" (State Finance Law §189.1(h)). However, as a result of lobbying by The Business Council and others, this new paragraph h was made *not applicable* to claims under the Tax Law. We had successfully argued that the language regarding the "knowing and improperly" avoidance or decrease payments could capture virtually every case where additional tax is due upon audit, based on disagreements over the application of law.

It seems unlikely that either bill would advance before the end of 2020, but we expect both to be reintroduced in the 2021 legislative session and receive considerable attention given their sponsorship (including the fiscal committee chair in each house), their potential for generating state and local revenues, and their rhetoric regarding the targeting of "wealthy individuals and large corporations."

The bill text and sponsor's memo for both proposals is attached, as is the text of Section 189, and a copy of the 2013 amendments.

Please feel free to contact me if you would like to provide input on these proposals, and/or if you would like to serve on our Tax Committee work group that will be reviewing these proposals in detail. My direct dial is 518-694-4460 and email is ken.pokalsky@bcnys.org. Thanks.

S 8852 KRUEGER Same as A 11061 Rules (Weinstein)

ON FILE: 07/29/20 State Finance Law

TITLE....Relates to the liability of a person who presents false claims for money or property to the state or a local government
07/29/20 REFERRED TO RULES

A11061 Rules (Weinstein) Same as S 8852 KRUEGER

State Finance Law

TITLE....Relates to the liability of a person who presents false claims for money or property to the state or a local government
10/07/20 referred to ways and means

STATE OF NEW YORK

8852

IN SENATE

July 29, 2020

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law, in relation to the liability of a person who presents false claims for money or property to the state or local government a

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 4 of section 189 of the state
2 finance law, as amended by section 8 of part A of chapter 56 of the laws
3 of 2013, is amended to read as follows:

4 (a) This section shall apply to claims, records, [~~ex~~] statements, and
5 obligations made under the tax law only if (i) the net income or sales
6 of the person against whom the action is brought equals or exceeds one
7 million dollars for any taxable year subject to any action brought
8 pursuant to this article; and (ii) the damages pleaded in such action
9 exceed three hundred and fifty thousand dollars[; ~~and (iii) the person~~
10 ~~is alleged to have violated paragraph (a), (b), (c), (d), (e), (f) or~~
11 ~~(g) of subdivision one of this section; provided, however, that nothing~~
12 ~~in this subparagraph shall be deemed to modify or restrict the applica-~~
13 ~~tion of such paragraphs to any act alleged that relates to a violation~~
14 ~~of the tax law].~~

15 § 2. This act shall take effect immediately and shall apply to all
16 false claims, records, statements and obligations concealed, avoided or
17 decreased on, prior to, or after such effective date.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD17016-

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8852

SPONSOR: KRUEGER

TITLE OF BILL: An act to amend the state finance law, in relation to the liability of a person who presents false claims for money or property to the state or a local government.

PURPOSE OR GENERAL IDEA OF BILL: Repeals a section of the State Finance Law to expand liability to wealthy individuals and corporations that knowingly and illegally fail to file New York tax returns.

SUMMARY OF SPECIFIC PROVISIONS: This bill amends section 189 of the State Finance Law by repealing subsection 4(a)(iii) to make individuals and corporations with a net income or sales of over \$1 million liable under the False Claims Act for knowingly and illegally failing to file tax returns that cost the state or local government at least three hundred fifty thousand dollars in lost revenue.

JUSTIFICATION: In 2013 the New York False Claims Act was amended to expand liability to persons who defraud the state or local governments by knowingly concealing or knowingly and improperly avoiding obligations to pay money to the State or a local government. However, a loophole exempted wealthy and individuals and businesses that knowingly conceal or knowingly and improperly avoid tax obligations by not filing any tax returns at all. Due to this omission, such individuals and businesses are liable under the New York False Claims Act for knowingly filing false tax returns, but not liable for knowingly and illegally failing to file any tax returns at all. This legislation remedies that oversight by repealing this tax fraud loophole, so that wealthy individuals and large corporations are as liable for knowingly not filing tax returns as they are for knowingly filing false tax returns and statements.

PRIOR LEGISLATIVE HISTORY:

New Bill

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

To be Determined.

EFFECTIVE DATE:

This act shall take effect immediately.

S 8872 HOYLMAN Same as A 11066 Rules (Weinstein)

ON FILE: 08/03/20 State Finance Law

TITLE....Relates to the liability of a person who makes or uses a false record or statement material to an obligation to pay money to the state or a local government under the tax law

08/03/20 REFERRED TO RULES

A11066 Rules (Weinstein) Same as S 8872 HOYLMAN

State Finance Law

TITLE....Relates to the liability of a person who makes or uses a false record or statement material to an obligation to pay money to the state or a local government under the tax law

10/07/20 referred to ways and means

STATE OF NEW YORK

8872

IN SENATE

August 3, 2020

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law, in relation to the liability of a person who makes or uses a false record or statement material to an obligation to pay money to the state or a local government under the tax law, or who conceals or improperly avoids or decreases an obligation to pay money to the state or a local government under the tax law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 189 of the state finance law is amended by adding a
2 new subdivision 1-a to read as follows:

3 1-a. Any person who, in accordance with the criteria set forth in
4 subdivision four of this section:

5 (a) makes, uses, or causes to be made or used, a false record or
6 statement material to their own obligation to pay money to the state or
7 a local government under the tax law, or an obligation of a subsidiary,
8 partnership, corporation or entity that they control; or

9 (b) conceals or improperly avoids or decreases their own obligation to
10 pay money to the state or a local government under the tax law, or an
11 obligation of a subsidiary, partnership, corporation or entity that they
12 control; shall be liable for damages, including consequential damages,
13 which the state or local government sustains because of the act of that
14 person. For purposes of this section, consequential damages includes
15 interest owed pursuant to the tax law.

16 § 2. Paragraph (b) of subdivision 3 of section 188 of the state
17 finance law, as amended by chapter 379 of the laws of 2010, is amended
18 to read as follows:

19 (b) require no proof of specific intent to defraud, provided, however
20 that acts occurring by mistake or as a result of mere negligence are not
21 covered by this [~~article~~] definition.

22 § 3. Paragraph (a) of subdivision 4 of section 189 of the state

23 finance law, as amended by section 8 of part A of chapter 56 of the laws
24 of 2013, is amended to read as follows:

1 (a) This section shall apply to claims, records, [~~or~~] statements or
2 obligations made under the tax law only if (i) the net income or sales
3 of the person against whom the action is brought equals or exceeds one
4 million dollars for any taxable year subject to any action brought
5 pursuant to this article; (ii) the damages pleaded in such action exceed
6 three hundred and fifty thousand dollars; and (iii) the person is
7 alleged to have violated paragraph (a), (b), (c), (d), (e), (f) or (g)
8 of subdivision one of this section; provided, however, that nothing in
9 this subparagraph shall be deemed to modify or restrict the application
10 of such paragraphs to any act alleged that relates to a violation of the
11 tax law.

12 § 4. This act shall take effect immediately and shall apply to all
13 false claims, records, statements and obligations concealed, avoided or
14 decreased on, prior to, or after such effective date.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8872

SPONSOR: HOYLMAN

TITLE OF BILL: An act to amend the state finance law, in relation to the liability of a person who makes or uses a false record or statement material to an obligation to pay money to the state or a local government under the tax law, or who conceals or improperly avoids or decreases an obligation to pay money to the state or a local government under the tax law.

SUMMARY OF SPECIFIC PROVISIONS: Section 1 of the bill adds a new subdivision 1-a to section 189 of the State Finance Law ("Liability for certain acts") to create liability under New York's False Claims Act for any individual or business with a net income or sales of one million dollars or more who: (1) makes, uses, or causes to be made or used, a false record or statement material to their own obligation to pay taxes owed to the State or a local government, or an obligation of a subsidiary, partnership, corporation or entity that they control; or (2) conceals or improperly avoids or decreases their own obligation to pay taxes owed to the State or a local government, or an obligation of a subsidiary, partnership, corporation or entity that they control; where such taxes owed exceed \$350,000. In such instances, the individual or business would be liable for damages, including interest owed on the unpaid tax obligations.

Section 2 of the bill clarifies the definition of "knowing and knowingly" found in section 188 of the State Finance Law for the purposes of the False Claims Act.

Section 3 of the bill amends paragraph (a) of subdivision 4 of section 189 of the State Finance Law to clarify that the section applies to obligations made under the tax law under certain specified circumstances.

Section 4 of the bill is the effective date.

JUSTIFICATION: The New York False Claims Act (Article 13 of the State Finance Law) is a powerful and effective civil fraud-fighting and whistleblowing tool, providing a cause of action that may be brought by the Attorney General, a local government, or a private citizen in a qui tam suit for false claims that have been submitted to New York State or a local government. Amendments to the New York False Claims Act adopted in 2010 authorized claims based on knowingly-committed tax fraud where the person or business against whom the action is brought has an annual net income or sales of \$1 million or more, and the damages pleaded in the action exceed \$350,000.

This legislation would allow the New York False Claims Act to be used as a tool to recover large unpaid tax obligations based on false claims made by wealthy individuals or businesses without the statutory requirement that such false claims were made knowingly. Damages in such claims would be limited to the tax obligation owed, plus consequential damages including any interest owed on the unpaid obligation pursuant to New York State Tax Law, as opposed to the treble damages and statutory civil penalties found elsewhere in the New York False Claims Act. By doing so, the New York False Claims Act would become an important tool to complement tax enforcement efforts being undertaken by the New York State Department of Taxation & Finance, by allowing the Attorney General, local governments, and citizen whistleblowers to bring claims to recover taxes that were improperly unpaid to New York State or local governments by high income individuals and businesses without needing to clear the evidentiary hurdle of proving that such false claims were made knowingly.

PRIOR LEGISLATIVE HISTORY: None, new bill.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: To be determined.

EFFECTIVE DATE: This act shall take effect immediately and shall apply to all false claims, records, statements and obligations concealed, avoided or decreased on, prior to, or after such effective date.

State Finance Law

§ 189. Liability for certain acts. 1. Subject to the provisions of subdivision two of this section, any person who:

(a) knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(c) conspires to commit a violation of paragraph (a), (b), (d), (e), (f) or (g) of this subdivision;

(d) has possession, custody, or control of property or money used, or to be used, by the state or a local government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(e) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or a local government and, intending to defraud the state or a local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a local government knowing that the officer or employee violates a provision of law when selling or pledging such property;

(g) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or a local government; or

(h) knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or a local government, or conspires to do the same; shall be liable to the state or a local government, as applicable, for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, as adjusted to be equal to the civil penalty allowed under the federal False Claims Act, 31 U.S.C. sec. 3729, et seq., as amended, as adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note; Pub. L. No. 101-410), plus three times the amount of all damages, including consequential damages, which the state or local government sustains because of the act of that person.

2. The court may assess not more than two times the amount of damages sustained because of the act of the person described in subdivision one of this section, if the court finds that:

(a) the person committing the violation of this section had furnished all information known to such person about the violation, to those officials responsible for investigating false claims violations on behalf of the state and any local government that sustained damages, within thirty days after the date on which such person first obtained the information;

(b) such person fully cooperated with any government investigation of such violation; and

(c) at the time such person furnished information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

3. A person who violates this section shall also be liable for the costs, including attorneys' fees, of a civil action brought to recover any such penalty or damages.

4. (a) This section shall apply to claims, records, or statements made under the tax law only if (i) the net income or sales of the person against whom the action is brought equals or exceeds one million dollars for any taxable year subject to any action brought pursuant to this article; (ii) the damages pleaded in such action exceed three hundred and fifty thousand dollars; and (iii) the person is alleged to have violated paragraph (a), (b), (c), (d), (e), (f) or (g) of subdivision one of this section; provided, however, that nothing in this

subparagraph shall be deemed to modify or restrict the application of such paragraphs to any act alleged that relates to a violation of the tax law.

(b) The attorney general shall consult with the commissioner of the department of taxation and finance prior to filing or intervening in any action under this article that is based on the filing of false claims, records or statements made under the tax law. If the state declines to participate or to authorize participation by a local government in such an action pursuant to subdivision two of section one hundred ninety of this article, the qui tam plaintiff must obtain approval from the attorney general before making any motion to compel the department of taxation and finance to disclose tax records.

4 § 8. Subdivisions 1 and 4 of section 189 of the state finance law, as
5 amended by chapter 379 of the laws of 2010, are amended to read as
6 follows:

7 1. Subject to the provisions of subdivision two of this section, any
8 person who:

9 (a) knowingly presents, or causes to be presented a false or fraudu-
10 lent claim for payment or approval;

11 (b) knowingly makes, uses, or causes to be made or used, a false
12 record or statement material to a false or fraudulent claim;

13 (c) conspires to commit a violation of paragraph (a), (b), (d), (e),
14 (f) or (g) of this subdivision;

15 (d) has possession, custody, or control of property or money used, or
16 to be used, by the state or a local government and knowingly delivers,
17 or causes to be delivered, less than all of that money or property;

18 (e) is authorized to make or deliver a document certifying receipt of
19 property used, or to be used, by the state or a local government and,
20 intending to defraud the state or a local government, makes or delivers
21 the receipt without completely knowing that the information on the
22 receipt is true;

23 (f) knowingly buys, or receives as a pledge of an obligation or debt,
24 public property from an officer or employee of the state or a local
25 government knowing that the officer or employee violates a provision of
26 law when selling or pledging such property; ~~or~~

27 (g) knowingly makes, uses, or causes to be made or used, a false
28 record or statement material to an obligation to pay or transmit money
29 or property to the state or a local government; or

30 (h) knowingly conceals or knowingly and improperly avoids or decreases
31 an obligation to pay or transmit money or property to the state or a
32 local government, or conspires to do the same; shall be liable to the
33 state or a local government, as applicable, for a civil penalty of not
34 less than six thousand dollars and not more than twelve thousand
35 dollars, plus three times the amount of all damages, including conse-
36 quential damages, which the state or local government sustains because
37 of the act of that person.

38 4. (a) This section shall apply to claims, records, or statements made
39 under the tax law only if (i) the net income or sales of the person
40 against whom the action is brought equals or exceeds one million dollars
41 for any taxable year subject to any action brought pursuant to this
42 article; ~~and~~ (ii) the damages pleaded in such action exceed three
43 hundred and fifty thousand dollars; and (iii) the person is alleged to
44 have violated paragraph (a), (b), (c), (d), (e), (f) or (g) of subdivi-
45 sion one of this section; provided, however, that nothing in this
46 subparagraph shall be deemed to modify or restrict the application of
47 such paragraphs to any act alleged that relates to a violation of the
48 tax law.

49 (b) The attorney general shall consult with the commissioner of the
50 department of taxation and finance prior to filing or intervening in any
51 action under this article that is based on the filing of false claims,
52 records or statements made under the tax law. If the state declines to
53 participate or to authorize participation by a local government in such
54 an action pursuant to subdivision two of section one hundred ninety of
55 this article, the qui tam plaintiff must obtain approval from the attor-

1 ney general before making any motion to compel the department of taxa-
2 tion and finance to disclose tax records.

3 § 9. Subparagraphs (d) and (e) of subdivision 2 of section 190 of the
4 state finance law, paragraph (d) as amended by chapter 379 of the laws
5 of 2010, paragraph (e) as amended by section 39 of part C of chapter 58
6 of the laws of 2007, are amended to read as follows:

7 (d) If the state notifies the court that it intends to file a
8 complaint against the defendant and thereby be substituted as the plain-
9 tiff in the action, or to permit a local government to do so, such
10 complaint, whether filed separately or as an amendment to the qui tam
11 plaintiff's complaint, must be filed within thirty days after the
12 notification to the court. For statute of limitations purposes, any such
13 complaint filed by the state or a local government shall relate back to
14 the filing date of the complaint of the qui tam plaintiff, to the extent
15 that the cause of action of the state or local government arises out of
16 the conduct, transactions, or occurrences set forth, or attempted to be
17 set forth, in the [~~prior~~] complaint of the qui tam plaintiff.

18 (e) If the state notifies the court that it intends to intervene in
19 the action, or to permit a local government to do so, then such motion
20 [~~for intervention~~] to intervene, whether filed separately or as an
21 amendment to the qui tam plaintiff's complaint, shall be filed within
22 thirty days after the notification to the court. For statute of limita-
23 tions purposes, any complaint filed by the state or a local government,
24 whether filed separately or as an amendment to the qui tam plaintiff's
25 complaint, shall relate back to the filing date of the complaint of the
26 qui tam plaintiff, to the extent that the cause of action of the state
27 or local government arises out of the conduct, transactions, or occur-
28 rences set forth, or attempted to be set forth, in the complaint of the
29 qui tam plaintiff.

30 § 9-a. Subdivision 4 of section 190 of the state finance law, as added
31 by section 39 of part C of chapter 58 of the laws of 2007, is amended to
32 read as follows:

33 4. Related actions. When a person brings a qui tam action under this
34 section, no person other than the attorney general, or a local govern-
35 ment attorney acting pursuant to subdivision one of this section or
36 paragraph (b) of subdivision two of this section, may intervene or bring
37 a related civil action based upon the facts underlying the pending
38 action[~~, unless such other person has first obtained the permission of~~
39 ~~the attorney general to intervene or to bring such related action];~~
40 provided, however, that nothing in this subdivision shall be deemed to
41 deny persons the right, upon leave of court, to file briefs amicus curi-
42 ae.

43 § 9-b. Subdivisions 6 and 7 of section 190 of the state finance law,
44 as added by section 39 of part C of chapter 58 of the laws of 2007, are
45 amended to read as follows:

46 6. Awards to qui tam plaintiff. (a) If the attorney general elects to
47 convert the qui tam civil action into an attorney general enforcement
48 action, or to permit a local government to convert the action into a
49 civil enforcement action by such local government, or if the attorney
50 general or a local government elects to intervene in the qui tam civil
51 action, then the person or persons who initiated the qui tam civil
52 action collectively shall be entitled to receive between fifteen and
53 twenty-five percent of the proceeds recovered in the action or in
54 settlement of the action. The court shall determine the percentage of
55 the proceeds to which a person commencing a qui tam civil action is
56 entitled, by considering the extent to which the plaintiff substantially
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1 contributed to the prosecution of the action. Where the court finds that
2 the action was based primarily on disclosures of specific information
3 (other than information provided by the person bringing the action)
4 relating to allegations or transactions in a criminal, civil or adminis-
5 trative hearing, in a legislative or administrative report, hearing,
6 audit or investigation, or from the news media, the court may award such
7 sums as it considers appropriate, but in no case more than ten percent
8 of the proceeds, taking into account the significance of the information
9 and the role of the person or persons bringing the action in advancing
10 the case to litigation. Any such person shall also receive an amount for
11 reasonable expenses that the court finds to have been necessarily
12 incurred, reasonable attorneys' fees, and costs pursuant to article
13 eighty-one of the civil practice law and rules. All such expenses, fees,
14 and costs shall be awarded against the defendant.

15 (b) If the attorney general or a local government does not elect to
16 intervene or convert the action, and the action is successful, then the
17 person or persons who initiated the qui tam action which obtains
18 proceeds shall be entitled to receive between twenty-five and thirty
19 percent of the proceeds recovered in the action or settlement of the
20 action. The court shall determine the percentage of the proceeds to
21 which a person commencing a qui tam civil action is entitled, by consid-
22 ering the extent to which the plaintiff substantially contributed to the
23 prosecution of the action. Such person shall also receive an amount for
24 reasonable expenses that the court finds to have been necessarily
25 incurred, reasonable attorneys' fees, and costs pursuant to article
26 eighty-one of the civil practice law and rules. All such expenses, fees,
27 and costs shall be awarded against the defendant.

28 (c) With the exception of a court award of costs, expenses or attor-
29 neys' fees, any payment to a person pursuant to this paragraph shall be
30 made from the proceeds.

31 (d) If the attorney general or a local government does not proceed
32 with the action and the person bringing the action conducts the action,
33 the court may award to the defendant its reasonable attorneys' fees and
34 expenses if the defendant prevails in the action and the court finds
35 that the claim of the person bringing the action was clearly frivolous,
36 clearly vexatious, or brought primarily for purposes of harassment.

37 7. Costs, expenses, disbursements and attorneys' fees. In any action
38 brought pursuant to this article, the court may award [~~the attorney~~
39 ~~general, on behalf of the people of the state of New York, and~~] any
40 local government that participates as a party in the action[~~, and any~~
41 ~~person who is a qui tam plaintiff,~~] an amount for reasonable expenses
42 which the court finds to have been necessarily incurred, plus reasonable
43 attorneys' fees, plus costs pursuant to article eighty-one of the civil
44 practice law and rules. All such expenses, fees and costs shall be
45 awarded directly against the defendant and shall not be charged from the
46 proceeds, but shall only be awarded if [~~the state or~~] a local government
47 [~~or the qui tam civil action plaintiff~~] prevails in the