

State FCAs Should Cover Local Fund Misuse, State Tax Fraud

By **Kenneth Levine** (March 7, 2025)

Cases involving alleged fraud in connection with the use of municipal funds and the awarding of state tax credits highlight the need for expansion of the state False Claims Act in New Jersey and in other states to encourage whistleblowers to come forward with information about fraud for these types of cases.[1]

The federal FCA was enacted during the U.S. Civil War to combat rampant fraud against the Union army, and is sometimes referred to as "Lincoln's Law." [2] New Jersey and at least 28 other states, [3] the District of Columbia [4] and New York City [5] have versions of the FCA to recover on fraud on state or other nonfederal funds.



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State permutations of the FCA, including New Jersey's, follow the federal structure by awarding treble damages for fraud, imposing high penalties for each false statement submitted and giving private citizens whistleblowers, known as relators, 15% to 30% of any recovery by the government, as well as attorney fees.

For example, if a whistleblower tip under a federal or state FCA law led to a successful \$10 million recovery for the government, the whistleblower would receive an award of between \$1.5 million and \$3 million. The highest award to date was granted to whistleblower Michael Bawduniak in 2022, after a False Claims Act suit he brought against Biogen Inc., in the U.S. District Court for the District of Massachusetts, settled for \$900 million. [6]

Since 1986, when the federal law was substantially modernized, the federal government has recovered more than \$78 billion. [7] States with similar laws have recovered hundreds of millions of dollars over the years. [8]

The New Jersey FCA is missing two key provisions for combating fraud (1) on the misuse of funds sourced solely by the town, county or other municipality, and (2) in connection with state tax filings. Some states, including New York, have already corrected such omissions.

Technical amendments to the New Jersey FCA enacted in 2023 to qualify the state for extra recovery in Medicaid fraud cases, however, missed the opportunity to do so. [9] In the FCA unit of the New Jersey Attorney General's Office where I worked, I saw many cases hampered by the absence of these two provisions.

Fraud Involving Misuse of Local or Municipal Funds

The New Jersey FCA applies exclusively to claims involving state funds, where "the State provides or has provided any portion of the money, property, or services requested or demanded." [10] Limiting application of the New Jersey FCA to "the state" in this way means that whistleblowers do not receive compensation for coming forward with information about the fraudulent misuse of local town or municipal funds where the state did not provide any portion of the funds involved.

New Jersey's limitation excludes a lot of local funds from whistleblower incentives and state enforcement under the act — including more than \$32 billion a year in money collected in local property tax that funds New Jersey's school districts, and municipal and county

governments.[11]

Incentivizing whistleblowers to come forward with information about fraud solely involving local funds, and empowering the state with new authority to pursue false claims of this type, would be especially appropriate for New Jersey, where 565 local governments that include mayors, school boards and city councils wield significant economic power over publicly-funded contracts, and where local fraud is notorious.[12]

Indeed, on Feb. 7, Salvatore Bonaccorso, the longtime mayor of Clark Township, New Jersey was sentenced after pleading guilty to official misconduct and forgery for using employees on the town payroll to operate his landscaping and underground storage tank removal businesses.[13]

Other states have corrected this problem. The New York FCA has been extended to cover funds spent or used "on the state or a local government's behalf" or to advance "a state or local government program or interest." [14]

Similarly, the California FCA covers funds "spent or used on a state or any political subdivision's behalf or to advance a state or political subdivision's program or interest." [15]

Fraud Involving State or Local Taxes

When New Jersey and other states modeled the text of their FCAs on the federal statute, they included a provision in the federal law that explicitly exempts tax claims. The New Jersey FCA, like many other states, adopted the federal tax bar in Title 31 of the U.S. Code, Section 3729(d), in its own law, excluding from coverage claims, records or statements "made in connection with State tax laws." [16]

At the federal level, the tax bar makes sense because the Internal Revenue Service has a separate and well-established whistleblower program, with its own financial incentives for whistleblowers who report federal tax fraud. [17]

But New Jersey — and many other states — lacks an equivalent incentive program within their state tax department for combating fraud on the state tax system.

For New Jersey and other states that still have the tax bar, there can be gaping and arbitrary discrepancies in what is covered and not covered by the acts. In New Jersey, for instance, a company submitting a false form to improperly obtain a state grant could be liable under the New Jersey FCA, while the same company submitting a false form to fraudulently obtain a state tax credit could not be liable.

New York, Illinois, Rhode Island and the District of Columbia have all changed their FCAs to fill this gap and provide incentives for information on state tax fraud. [18]

To date, New York has seen the most significant benefits to eliminating the tax bar. In 2018, New York brought in \$330 million after settling allegations that Sprint Communications Inc. knowingly failed to collect and remit state and local sales taxes owed on its flat-rate wireless calling plans. [19]

And in 2021, New York brought in another \$105 million in a settlement with the hedge fund manager Thomas E. Sandell of claims involving the avoidance of state and city taxes on earned management and performance fees. [20]

The District of Columbia received another noteworthy settlement in this area in June 2024, when Michael J. Saylor and his company MicroStrategy Inc. agreed to pay \$40 million to resolve a tax fraud lawsuit alleging that he evaded paying district income taxes.[21]

The fact that New York has eliminated the tax bar is particularly problematic for New Jersey because many businesses operate in both states. In 2014, whistleblower Leonard Campagna filed separate state FCA claims in New York and New Jersey alleging that Post Integrations Inc. failed to pay state taxes for out-of-state credit card transactions.

In 2017 and 2018, appellate courts in New York and New Jersey separately ruled that the New Jersey case had to be dismissed because of the tax bar,[22] while the New York case could proceed,[23] ultimately leading to a settlement only in New York.

With more than \$5 billion collected each year in New Jersey state taxes,[24] it is clearly in New Jersey's interest to incentivize coming forward with these types of fraud claims.

The criminal case against George E. Norcross III, which the Superior Court dismissed on Feb. 26, involved allegations about the misuse of state tax credits for developments in Camden.[26]

Similarly, in 2020, a state audit identified hundreds of millions of dollars in potential fraud in connection with tax incentive grants issued by the New Jersey Economic Development Authority.[27] Under the current New Jersey FCA, allegations of this type would not fall under the statute.

Critics of any removal of the tax bar from state FCA laws raise two main concerns: (1) Eliminating the tax bar would broaden the whistleblower incentives too far, leading to a flood of cases, including baseless claims by whistleblowers who are not knowledgeable about the often-nuanced area of tax law; and (2) allowing whistleblowers to move forward with tax fraud cases without government intervention could lead to inconsistent enforcement of the tax laws.[28]

Concerns like these are legitimate, but could be addressed directly in any amendments while maintaining the benefits of the whistleblower incentives. New York, for instance, has a \$1 million threshold for tax claims, ensuring that only significant tax frauds are reported.[29]

Any revisions of a state FCA could also include added authority for the state to act as a gatekeeper to prevent whistleblower tax fraud cases from proceeding if the state deems them meritless or inconsistent with its tax policies.

Conclusion

Fraud involving public funds, whether federal, state or local, undermines faith in government institutions and robs those institutions of critical resources. The FCA has proven to be an immensely powerful and useful mechanism for identifying and combating that fraud.

New Jersey and many other states would greatly benefit from refining their current FCA laws to encourage whistleblowers to come forward with information about fraud on the use of municipal, town or county funds, and fraud on the state tax system.

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[1] N.J.S.A. § 2A:32C-1 to -18.

[2] <https://www.justice.gov/civil/false-claims-act#:~:text=Many%20of%20the%20Fraud%20Section's,during%20the%20American%20Civil%20War.>

[3] [https://oig.hhs.gov/fraud/state-false-claims-act-reviews/.](https://oig.hhs.gov/fraud/state-false-claims-act-reviews/)

[4] <https://code.dccouncil.gov/us/dc/council/code/sections/2-381.02.>

[5] [https://www.nyc.gov/site/law/public-resources/new-york-city-false-claims-act.page.](https://www.nyc.gov/site/law/public-resources/new-york-city-false-claims-act.page)

[6] [https://www.prnewswire.com/news-releases/largest-ever-266-4-million-whistleblower-award-in-biogen-false-claims-act-suit-301634323.html#:~:text=BOSTON%2C%20Sept.,nearly%20\\$200%20million%20in%202021\).](https://www.prnewswire.com/news-releases/largest-ever-266-4-million-whistleblower-award-in-biogen-false-claims-act-suit-301634323.html#:~:text=BOSTON%2C%20Sept.,nearly%20$200%20million%20in%202021).)

[7] <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024#:~:text=PANDEMIC%20FRAUD&text=During%20fiscal%20year%202024%2C%20the,allegations%20of%20pandemic%2Drelated%20fraud.>

[8] [https://casetext.com/analysis/the-new-jersey-false-claims-act-a-decade-of-data-reveal-147m-recovered-by-the-garden-state?sort=relevance&resultsNav=false&q=\(%27The%20New%20Jersey%20FCA%20A%20Decade%20Of%20Data%20Reveal%20\\$147m%20Recovered%20By%20The%20Garden%20State%27\).](https://casetext.com/analysis/the-new-jersey-false-claims-act-a-decade-of-data-reveal-147m-recovered-by-the-garden-state?sort=relevance&resultsNav=false&q=(%27The%20New%20Jersey%20FCA%20A%20Decade%20Of%20Data%20Reveal%20$147m%20Recovered%20By%20The%20Garden%20State%27))

[9] <https://legiscan.com/NJ/text/A5584/id/2839107.>

[10] N.J.S.A. § 2A:32C-2.

[11] [https://www.njspotlightnews.org/2024/02/average-annual-nj-property-tax-bill-near-10000-highest-annual-growth-rate-in-decade/#:~:text=Average%20annual%20property%2Dtax%20bill%20tops%20\\$9%2C800&text=The%20average%20New%20Jersey%20property,an%20NJ%20Spotlight%20News%20analysis\(%27The%20year-over-year%20increase%20helped%20raise%20more%20than%20\\$33%20billion%20from%20property%20owners%20that%20eventually%20went%20to%20school%20districts%20and%20municipal%20and%20county%20governments,%20according%20to%20the%20comprehensive%20data%20posted%20online%20Friday%20by%20the%20Department%20of%20Community%20Affairs.%27\).](https://www.njspotlightnews.org/2024/02/average-annual-nj-property-tax-bill-near-10000-highest-annual-growth-rate-in-decade/#:~:text=Average%20annual%20property%2Dtax%20bill%20tops%20$9%2C800&text=The%20average%20New%20Jersey%20property,an%20NJ%20Spotlight%20News%20analysis(%27The%20year-over-year%20increase%20helped%20raise%20more%20than%20$33%20billion%20from%20property%20owners%20that%20eventually%20went%20to%20school%20districts%20and%20municipal%20and%20county%20governments,%20according%20to%20the%20comprehensive%20data%20posted%20online%20Friday%20by%20the%20Department%20of%20Community%20Affairs.%27))

[12] <https://www.theguardian.com/us-news/2023/oct/08/bob-menendez-new-jersey-political-corruption-history.>

[13] State of New Jersey v. Salvatore F. Bonaccorso, case number 000165, in Clark

Municipal Court; https://www.nj.gov/oag/newsreleases23/2023-1120_Bonaccorso-complaint-summons_Redacted.pdf; Law360, Jan. 10, 2025, "NJ Mayor Cops To Using Town Employees to Run Private Biz"; <https://www.njoag.gov/ag-ex-clark-mayor-sentenced-for-abusing-town-resources-and-forging-documents-after-forfeiting-office-and-being-banned-for-life-from-public-employment/>; <https://www.njoag.gov/clark-township-mayor-pleads-guilty-for-using-town-employees-to-run-his-private-business-and-submitting-forged-documents-forfeits-office/>.

[14] N.Y. State Fin. Law § 188(1)(a).

[15] Cal. Gov't Code § 12650(b).

[16] N.J.S.A. § 2A:32C-2

[17] <https://www.irs.gov/compliance/whistleblower-office>.

[18] <https://www.whistleblowerllc.com/tax-bar-what-is-it-good-for/#:~:text=Several%20states%2C%20including%20New%20York,can%20receive%20a%20substantial%20award>.

[19] <https://ag.ny.gov/press-release/2018/ag-underwood-and-acting-tax-commissioner-manion-announce-record-330-million>.

[20] <https://ag.ny.gov/press-release/2021/attorney-general-james-and-nyc-corporation-counsel-johnson-announce-recovery-105>.

[21] <https://oag.dc.gov/release/attorney-general-schwalb-secures-40-million>.

[22] State ex rel. Campagna v. Post Integrations, Inc., 451 N.J. Super. 276, 166 A.3d 1177 (Super. Ct. App. Div. 2017).

[23] State of N.Y., City of N.Y., ex rel. Campagna v. Post Integrations, Inc., 2018 NY Slip Op 04827, 162 A.D.3d 592, 81 N.Y.S.3d 14 (App. Div. 1st Dept.).

[24] <https://www.nj.gov/treasury/news/2024/02142024.shtml>.

[25] State of New Jersey v. George Norcross, III, Superior Court of New Jersey, Law Division, Mercer County, Docket No. MER-24-001988; Indictment No. 24-06-00111-S; <https://newjerseymonitor.com/2024/11/25/state-blasts-bid-by-dem-power-broker-george-norcross-to-toss-racketeering-case/>; <https://www.njspotlightnews.org/2024/06/democratic-power-broker-boss-george-norcross-co-defendants-indicted-corruption-racketeering-charges-camden-nj-property-deals/>.

[26] <https://www.propublica.org/article/new-jersey-puts-578-million-in-controversial-tax-breaks-on-hold-after-investigation>.

[27] See <https://taxfoundation.org/blog/dc-false-claims-act-bill/>; <https://www.jdsupra.com/legalnews/a-recipe-for-bad-tax-policy-false-1882768/>.

[28] <https://ag.ny.gov/sites/default/files/2022-08/nyfca.pdf>.

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