Insights: Publications

# 5 Key Takeaways | State False Claims Acts: Knowing What They Are and How to Avoid Them

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Kilpatrick's Jordan Goodman recently presented on the topic of “State False Claims Acts: Knowing What They Are and How to Avoid Them” at the annual 2024 IPT Sales Tax Symposium in Grapevine, Texas. The discussion provided an overview of tax class actions and false claim act rules that stand to disrupt a sales and use tax department. The session covered preemptive mitigation techniques, defense strategies, and examples of potential challenges and case law.

Jordan's key takeaways from the presentation include:

1. This session provided an overview of the false claim act that can disrupt a sales and use tax department.

2. The existence of Tax Qui Tam Suits and Class actions puts a tremendous pressure on tax departments. If an invoice understates the tax on a transaction, the company can be sued under a qui tam or whistleblower suit. If the invoice overstates the tax, the company can be sued under consumer protection laws via a class action suit. Perfection is necessary to avoid being sued.

3. Qui Tam actions are brought by an informer called a Relator under a whistleblower statute that establishes a penalty for the commission or omission of a certain act including false statements. These penalties may be recovered in a civil action with a certain percentage going to the Relator and the rest going to the offended state or local jurisdiction.

4. The elements of a successful qui tam action include a defendant making or using a false statement to avoid or reduce payment owed to the state. The defendant knew or should have known statement was false with knowledge being actual, but also includes deliberate ignorance or reckless disregard. It is important to note that specific intent to defraud is not required.

5. Defenses to a qui tam action include, but are not limited to:

- No collection obligation (e.g., no nexus) or obligation to pay,
- Ambiguous law or regulatory guidance,
- Reliance on sound legal theory,
- Improper parties,
- Relator not an original source of the information,
- Conflicts between false claims acts and other areas of law (e.g., state constitution/tax provisions),
- Failure to state claim: No knowledge, no false statement, no claim submitted to state, and
- Government had knowledge.

For more information, please contact

Jordan Goodman: jgoodman@ktslaw.com

## Related People



Jordan M. Goodman
t 312.606.3225
jgoodman@ktslaw.com