

California Supreme Court – Customers may not use consumer protection laws to challenge a retailer's sales tax determination

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In brief

In a 4-3 decision, the California Supreme Court held that the reach of state consumer protection laws does not extend to sales tax disputes. The court found that customers have no judicial recourse against a retailer to challenge sales tax determinations because only the retailer, who is the taxpayer, can seek an official determination of whether sales tax is actually owed. The tax code, to the exclusion of consumer protection laws, provides the exclusive means by which disputes over the taxability of a retail sale may be resolved. However, the court suggested that consumers may file suit to compel retailers to seek refunds before the Board with such refunds conditioned on being remitted to the customers. [[Loeffler v. Target Corp.](#), Cal. Sup. Ct. No S173972 (5/1/14)]

In detail

Under California law, retailers are primarily responsible for remitting sales tax to the state on taxable transactions. Retailers may collect from customers a 'sales tax reimbursement,' which retailers generally remit to the state to satisfy their sales tax liability.

For the years at issue, Target charged its customers sales tax reimbursement on all sales of hot coffee even though, arguably, not all such coffee was subject to sales tax. Target did not seek a determination by the Board of Equalization as to whether hot coffee 'to go' was

subject to sales tax. Instead, Target paid to the Board all sales tax reimbursement collected on sales of hot coffee. Customers sued Target in state court alleging violations of California's Unfair Competition Law (UCL) and the Consumer Legal Remedies Act (CLRA). Target prevailed at the trial court on demurrer and the appellate court affirmed. The customers appealed to the California Supreme Court.

Tax code provides the exclusive means for disputing a taxable retail sale

The court examined the 'comprehensive administrative scheme' provided by California to resolve sales tax questions. Under these procedures, the resolution of a sales tax law question is rendered first by the Board and subject to judicial review following the exhaustion of administrative procedures.

Once a retailer, who is considered the taxpayer, has remitted a customer's sales tax reimbursement to the Board, the sole legal avenue available

for determining the proper application of sales tax is for the retailer to submit a claim for refund to the Board. There is no provision in the tax code that allows a non-taxpayer to dispute the application of sales tax.

Consumer protection litigation may not be used to challenge the taxability of retail sales

The UCL allows consumers to challenge 'wrongful business conduct.' The CLRA makes unlawful certain 'unfair methods of competition and unfair or deceptive acts.' The customers in this case asserted that Target's practice of charging sales tax reimbursement on all purchases of hot coffee violated both the UCL and the CLRA.

The court held that the customers were precluded from using the UCL or CLRA to challenge a retailer's collection of sales tax reimbursement. When a consumer claim is dependent on the resolution of a taxability question, a consumer protection

lawsuit is inconsistent with the method established by the legislature, which provides that the Board has the primary role for ascertaining whether a transaction is subject to sales tax. Customers have no private right of action against retailers regarding the taxability of retail sales.

A CLRA or UCL cause of action cannot be reconciled with the primary decision-making role that the tax code vests in the Board with respect to tax issues. Accordingly, these consumer protection acts cannot be used by customers to challenge sales tax determinations.

Court suggests customer action

The court acknowledged that courts have allowed customers to bring an action requiring retailers to seek a sales tax refund from the Board, which would be the party ultimately reviewing and granting the refund. Such a proceeding would be conditioned on any excess sales tax reimbursement provided to the

retailer to be refunded to the customer.

However, the particulars of such an action remain uncertain. Because the customers in this case did not avail themselves of this process, the 'exact showing required of consumers to demonstrate their entitlement' to this remedy was not considered by the *Target* court.

The takeaway

While this case is a win for retailers, it illustrates how sensitive customers can be regarding small sales tax charges and how what appears to be simple tax issue can be fairly nuanced and complicated depending on the exact circumstances (e.g., sale of food products in California). The decision is a good reminder for retailers to carefully review and confirm the appropriate tax treatment of their sales transactions to avoid potential controversy with their customers.

Let's talk

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