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Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Denying Sales Tax Return To Calif. Consumers

Law360, New York (June 12, 2009) -- In a case of first impression, the California Court of Appeal has held that consumers do not have private right of action against retailers for the reimbursement of sales tax under California consumer protection statutes. *Loeffler & Lemus v. Target Corp.*, 2009 Cal. App. LEXIS 739, No. B199287 (May 19, 2009).

Relying on the “paramount policies” of ensuring that governmental entities can properly engage in fiscal planning, the Loeffler court held that tax refund claims against retailers are preempted by Section 32 of Article XIII of the California Constitution which prohibits injunctions against the collection of state taxes and provides that tax refunds may only be recovered in the manner provided by the Legislature.

Thus, Loeffler significantly restricts consumer class actions seeking the return of sales taxes claimed to have been improperly collected by retailers.

Loeffler alleged that Target improperly charged her sales tax on “to go” coffee in violation of Section 6359 of the California Revenue and Taxation Code and related regulations.

She asserted class claims for violation of Section 6359, for unfair and unlawful business practices under California’s Unfair Competition Law (Business & Professions Code §§ 17200 et seq.) and for violation of the California Consumers Legal Remedies Act (Civil Code § 1750, et seq.).

The trial court sustained Target’s demurrer (California’s form of a motion to dismiss a pleading) without leave to amend. The Second Appellate District affirmed, reasoning that under California’s statutory scheme, only retailers have standing to sue for sales tax refunds.

Indeed, although retailers commonly refer to “sales tax” on invoices to the customer, the California sales tax is actually imposed on retailers for the privilege of selling tangible

personal property. Cal. Rev. & Tax. Code § 6051. Retailers commonly seek sales tax reimbursements from their customers.

The court reasoned that California's comprehensive system for seeking refunds of sales tax requires that the retailer, not the ultimate customer, exhaust its administrative remedies by filing a claim for refund with the California Board of Equalization ("BOE").

Thus, "plaintiffs cannot maintain a suit for a sales tax refund because the filing of a claim with the Board is a prerequisite to such a suit." Loeffler, 2009 Cal. App. LEXIS 739, * 20.

The court further reasoned that the Legislature has not provided a private cause of action for customers to seek a refund of sales tax reimbursements because neither the statutory language nor legislative history affirmatively indicates such intent.

To the contrary, the Revenue and Taxation Code and related regulations set forth a detailed regulatory scheme for the BOE's adjudication of sales tax disputes, and for the reimbursement of excess sales tax reimbursements collected.

The court concluded that this comprehensive regulatory scheme implies the unavailability of private claims, including claims under California's consumer protection statutes.

The court rejected Loeffler's argument that the California Constitution was not implicated because Loeffler was not seeking "an injunction against the collection of sales taxes."

Noting that Section 32 must be broadly construed to further the policy of ensuring adequate fiscal planning, the court held that "Because the collection of sales tax by the state from a retailer and the collection of sales tax reimbursement by a retailer from a customer are intertwined, an injunction against the collection of sales tax reimbursement or a refund of sales tax reimbursement may affect the state's sales tax revenues. Loeffler, 2009 Cal. App. LEXIS 739, * 28.

The court similarly rejected Loeffler's claim that dismissal of his complaint would leave California consumers that paid excess sales tax reimbursements without a remedy, noting that consumers had indirect remedies.

For example, if a retailer prevails upon a Claim for Refund to the BOE, the retailer must refund the sales tax it is refunded to customers who paid the sales tax reimbursements. Id. at * 36, citing *Decorative Carpets Inc. v. State Board of Equalization* (1962) 58 Cal.2d 252, 255.

Further, the BOE can, on its own initiative or in response to a customer complaint, examine a retailer's tax returns or conduct an audit of the retailer's books and records. Id.

Further, while ruling that there is no private cause of action for a refund of excess sales tax reimbursements, consumers may still sue if the BOE has determined that the retailer collected excess sales taxes.

Under these circumstances, a consumer may seek an injunction compelling the retailer to seek refunds from the BOE and to reimburse its customers to avoid the unjust enrichment of the retailer. *Id.* at * 24, citing *Javor v. State Board of Equalization* (1974) 12 Cal.3d 790, 797.

--By Michael A. Geibelson and David Martinez, Robins Kaplan Miller & Ciresi LLP

Michael Geibelson and David Martinez are both partners with Robins Kaplan Miller & Ciresi in the firm's Los Angeles office.

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