

STATE & LOCAL TAX ALERT

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May 7, 2014

California Supreme Court Victory for Retailers on Excess Sales Tax Reimbursement

On May 1, 2014, the California Supreme Court ruled 4-3 that state consumer protection laws do not provide recourse to customers on excess sales tax reimbursements. See *Loeffler v. Target Corp.*, Cal. Sup. Ct. No S173972 (5/1/14). The issue at hand was whether customers could challenge sales tax determinations made by a retailer in Court based on state consumer protection laws, in particular the California Unfair Competition Law (“CUCCL”) and the Consumer Legal Remedies Act (“CLRA”). The California Supreme Court affirmed a lower Court decision that only the retailer has recourse to seek a determination as to whether a particular transaction is subject to California sales tax if sales tax was collected and remitted to the State.

Target Corporation charged California sales tax on the sale of hot coffee to-go that was separately priced and its customers brought suit against Target under state consumer protection law for what they deemed was excess sales tax reimbursement. Generally, the sale of hot beverages to-go that are separately priced are exempt from California sales tax. The sales tax collected by Target was then remitted to the State.

The California Supreme Court determined that under current sales tax law in California, the only remedy to seek proper treatment of a transaction once sales tax has been remitted to the State is for the retailer to submit a claim of refund. Only the retailer has recourse in this situation with respect to the treatment of a transaction where sales tax has already been remitted to the State and those other than the retailer cannot rely on state consumer protection laws to seek a determination on the taxability of a particular transaction. The Court did however note customers do have the option under certain circumstances to bring suit against the retailer for possible excess sales tax reimbursement.

Green Hasson Janks Recommendation

This case, while a victory for retailers, brings together two areas of California law that are not often addressed concurrently: state consumer protection laws and state tax law. Taxpayers now more than ever need to ensure the proper taxability of their sales from a sales tax perspective to avoid the potential that their customers will seek legal recourse to the extent that a taxpayer has excessively charged sales tax on a particular transaction. Taxpayers with unique or complicating transactions should consult with their tax advisors to ensure that they are properly treating these sales for sales tax purposes. &

Contact Us:

Akash Sehgal
Director
310.873.1622
asehgal@greenhassonjanks.com

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