State & Local Tax Advisory ■

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California Supreme Court Holds in *Target* That Consumers May Not Sue Under Consumer Protection Laws for Damages Resulting from Excessive Sales Tax Collection

Last week, in a closely watched class action case—*Loeffler v. Target Corporation*[1]—involving a claim for a refund of allegedly improperly collected sales taxes brought under California's consumer protection laws, the California Supreme Court held that the refund scheme created by the California tax code provides the exclusive remedy for a dispute over the applicability of the state sales tax to retail transactions. Consequently, the court dismissed a suit under California's Unfair Competition Law (UCL) and Consumer Legal Remedies Act (CLRA) by consumers seeking to recover a refund of erroneously collected sales taxes. The court's holding closely followed the logic and policy reasoning outlined in an amicus brief filed in the case by Alston & Bird.

Background

A group of California consumers sued Target Corporation under the UCL and CLRA, claiming that Target erroneously charged sales taxes on purchases of hot to-go coffee. The plaintiffs alleged that the coffee was not subject to sales tax under an exemption for take-out food. By charging tax on the sales, the plaintiffs contended, Target engaged in "unlawful, unfair and fraudulent business acts" and "falsely and illegally represented to members of the general public that it had the legal right to charge the sales tax."[2] Target responded that remedies for wrongly collected taxes are permitted only as authorized by the California Legislature in the tax code.[3] Moreover, Target argued that the California Constitution prohibits injunctions against the collection of sales tax.[4]

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1 *Loeffler v. Target Corp.*, Slip. Op., No. S173972 (Cal. May 1, 2014).

2 *Target*, at 3 (majority opinion).

3 *Id.* at 5.

4 *Id.*

Both the trial court and the California Court of Appeal held for Target. The Court of Appeal believed that the Legislature had given the California Board of Equalization ("the Board") the authority to enforce the sales tax law, and allowing consumer suits determining the taxability of retail sales would undermine the Board's authority.[5] In addition, the Court of Appeal found that the state constitutional prohibition on tax collection actions prevented the plaintiffs from using the UCL or the CLRA to settle a sales tax dispute.[6]

The Holding

In a 4–3 decision written by Chief Justice Tani Cantil-Sakauye, the California Supreme Court affirmed the Court of Appeal, holding that the scheme of taxation and refund set up by the Legislature in the tax code prevented the plaintiff's suit under the UCL and CLRA. The plaintiff's suit, if resolved, would require a determination as to the taxability of the to-go coffee. Such questions are "committed in the first instance to the Board, subject to judicial review under the restrictions and procedures provided by the tax code."[7] Thus, a cause of action under the UCL and CLRA cannot be reconciled with the mechanisms of the tax code.[8]

Under California sales tax law, retailers bear the burden of sales taxation.[9] Retailers remit tax to the state based on their gross sales, but they do not collect sales tax from purchasers. Instead, retailers have the option of passing the cost of the sales tax on to customers in the form of a sales tax reimbursement. Because retailers are the taxpayers under sales tax law, only they may seek refunds for overpayment of taxes. In addition, under a provision in the California tax code, if a retailer collects excessive sales tax reimbursements from customers, it has the option of refunding the money or remitting it to the Board.[10] If the retailer remits the reimbursement to the Board, its liability for the taxes ends—it has entered a "safe harbor."[11]

The court in *Target* found that the safe-harbor provision for the remittance of excess sales tax reimbursements was sufficient to prohibit the plaintiff's use of the UCL in this case. The court admitted that the scope of the UCL is broad, permitting "tribunals to enjoin ongoing wrongful business conduct in whatever context such activity might occur."[12] However, a court may not sustain a cause of action under the UCL in situations where specific legislation dictates that an action does not lie. In other words, the UCL "may not be used to invade 'safe harbors' provided by other statutes."[13] Because Target had remitted its sales tax collections to the state under the safe harbor, the plaintiffs could not then use the UCL to attack that action as unlawful. The court also found that use of the UCL and CLRA would significantly undermine the ability of the state taxing authorities to resolve disputes about the taxability of transactions in the way that the Legislature

5 *Id.* at 9.

6 *Id.* at 10.

7 *Id.* at 13.

8 *Id.*

9 *Id.* at 17; Cal. Rev. & Tax Code § 6051; Cal. Civ. Code § 1656.1.

10 Cal. Rev. & Tax Code § 6901.5.

11 *Target*, at 40 (majority opinion).

12 *Id.* at 48 (quoting *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 181 (1999)).

13 *Id.*

intended.[14] Under the tax code, the taxability of a sale is challenged first through review by the Board and then by judicial review. Using consumer statutes to adjudicate taxability would eliminate the Board from the process, abrogating the authority the Legislature gave it.

However, in the past, the California Supreme Court has allowed actions to compel a retailer to claim a refund, which it must then refund to customers.[15] The court suggested that such a remedy may have been available to the plaintiffs in *Target*, but the plaintiffs did not seek it.[16]

Analysis and Conclusion

The importance of the *Target* decision is its clear statement that plaintiffs—and enterprising plaintiffs' attorneys—may only use the mechanisms provided by the tax code to seek a remedy for their sales tax claims in California; customers who believe they have been subject to excessive sales tax collections have no direct cause of action in California to seek damages for such over-collection.[17] Though the court did not rely on it in its holding, the conclusion in *Target* is in accordance with the "primary jurisdiction" doctrine, which stands for the proposition that where the legislature has delegated or otherwise designated an administrative agency to interpret and apply a portion of the jurisdiction's laws—such as the tax code—courts should not interfere with the authority of that agency.[18] As plaintiffs grow increasingly aggressive in using non-tax causes of action to seek relief for issues in the area of taxation, businesses and their counsel should be vigilant in raising the types of arguments that ultimately yielded a dismissal in *Target*.

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[14] *Id.* at 51–52.

[15] *Id*. at 59-60 (citing *Javor v. SBE*, 12 Cal. 3d 790 (1974)).

[16] *Id.*at 60.

[17] *Id*. at 29.

[18] *See*, e.g., *U.S. ex rel. Wall v. Circle C Construction, LLC.*, 697 F.3d 345, 352 (6th Cir. 2012) ("The primary jurisdiction doctrine is a rule of judicial construction which allows courts to refer a matter to the relevant agency whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body.") (citation omitted).

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