



NEWS RELEASE

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Public Justice Challenges California Decision Immunizing Companies for Charging 'Sales Tax' on Tax-Exempt Items

At Public Justice's urging, the California Supreme Court has granted review of an extraordinary appeals court ruling that the state Constitution bars consumers from suing companies for charging "sales taxes" on tax-exempt items.

The plaintiffs in *Loeffler v. Target Corporation* allege that Target, the retail giant, violated tax law when it imposed sales tax reimbursement charges on their purchases of hot coffee "to go" from Target stores in California because California's Tax Code exempts these purchases from taxation. The plaintiffs claim that Target's practice violated California's Unfair Competition Law (UCL) and Consumers Legal Remedies Act (CLRA) -- consistently recognized by courts as among the strongest consumer protection laws in the country.

Target argued and the Court of Appeal held that the consumers' claims are barred by a provision of the California Constitution that bars courts from hearing lawsuits by taxpayers "against this State or any officer thereof to prevent or enjoin the collection of any tax" and requires them to seek tax refunds after payment instead. But that provision does not apply to this case because Target is not the "State or any officer thereof," and consumers are not "taxpayers" here. Under sales tax law, retailers are the ones who pay sales tax to the state and then they may pass the cost of the tax on to consumers in the form of "sales tax reimbursement" charges. (Technically, while the consumers' receipt says "sales tax," Target actually charged them for sales tax reimbursement.) That's why California courts have routinely heard consumers' lawsuits against retailers for wrongfully charging sales tax reimbursement in the past.

The Public Justice briefs demonstrate that California's Constitution in no way bars an action by a non-taxpayer against a private, non-governmental party for illegally charging so-called taxes on a tax-exempt item. In order to extend the Constitution's protections to Target, the Court would essentially have to rewrite the Constitution and the Tax Code. Consumers would then be left without any meaningful remedy for a large category of unfair practices.

"California's Constitution does not give businesses free reign to impose unlawful charges on their customers with impunity just by claiming the charge is related to a tax," said Public Justice Staff Attorney Leslie Bailey, lead counsel on appeal. "We believe the Supreme Court will see

through Target's argument and reaffirm that the consumer protection laws were designed to address precisely this kind of conduct."

In addition to Bailey, the plaintiffs are represented on appeal by Public Justice's Vicky Ni and Arthur Bryant, with assistance from Paul Bland. Co-counsel are Joseph Lange and Jeffrey Koncius of Lange & Koncius in El Segundo, California.

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Public Justice is America's public interest law firm, supported by – and calling on -- a nationwide network of more than 3,000 of the nation's top lawyers to pursue precedent-setting and socially significant litigation. It has a wide-ranging litigation docket in the areas of consumer rights, worker safety, civil rights and liberties, toxic torts, environmental protection, and access to the courts. Public Justice is the principal project of the Public Justice Foundation, a not-for-profit membership organization headquartered in Washington, DC, with a West Coast office in Oakland, California. The Public Justice web site address is www.publicjustice.net.