

NO. S173972

IN THE SUPREME COURT OF CALIFORNIA

KIMBERLY LOEFFLER, et al.,
Plaintiffs and Appellants,

v.

TARGET CORPORATION,
Defendant and Respondent.

SUPREME COURT
FILED

AUG 08 2011

Frederick K. Ohlrich Clerk

**APPLICATION OF PLAINTIFFS-APPELLANTS FOR LEAVE
TO FILE RESPONSE TO SUPPLEMENTAL *AMICUS CURIAE*
BRIEF BY CALIFORNIA STATE BOARD OF EQUALIZATION**

On Appeal from an Order by the Court of Appeal,
Second Appellate District, Division Three, Case No.
B199287, Affirming Order Sustaining Demurrer

JOSEPH J. M. LANGE
(Cal. Bar No. 128115)
Law Office of Joseph J. M. Lange
222 N. Sepulveda Blvd., Ste. 2000
El Segundo, CA 90245
Telephone: (310) 414-1880
Facsimile: (310) 414-1882

JEFFREY A. KONCIUS
(Cal. Bar No. 189803)
Kiesel Boucher & Larson LLP
8648 Wilshire Boulevard
Beverly Hills, CA 90211
Telephone: (310) 854-4444
Facsimile: (310) 854-0812

LESLIE A. BAILEY
(Cal. Bar No. 232690)
VICTORIA W. NI
(Cal. Bar No. 212443)
ARTHUR H. BRYANT
(Cal. Bar No. 208365)
Public Justice, P.C.
555 Twelfth Street, Ste. 1620
Oakland, CA 94607
Telephone: (510) 622-8150
Facsimile: (510) 622-8155

Counsel for Plaintiffs/Appellants

August 8, 2011

Hon. Tani Cantil-Sakauye, Chief Justice
Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Loeffler, et al. v. Target Corporation*
Supreme Court No. S173972

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, Rule 8.520(f)(7), Plaintiffs-Appellants respectfully request permission to file this letter brief in response to the supplemental *amicus curiae* brief filed by the State Board of Equalization (the "Board") and accepted by this Court on July 8, 2011.

In the case submitted by the Board as supplemental authority, *Blass v. Rite Aid of Connecticut, Inc.* (2011) 127 Conn. App. 569, 16 A.3d 737 ("*Blass II*"), *aff'd* (2009) 51 Conn. Supp. 622, 16 A.3d 855 ("*Blass I*"), a Connecticut appellate court affirmed a trial court's decision dismissing a consumer's claims that a retailer had improperly charged her sales tax. The court held that the trial court lacked jurisdiction over the case because the consumer had failed to exhaust the administrative remedies available to her under the Connecticut tax code. The Board argues that this Court should adopt the reasoning of the *Blass* decisions on two points: "(1) exhaustion of administrative remedies; and (2) whether a state's unfair business practices statutes impose duties on retailers that are separate from the duties imposed by the sales tax statutes." Board Supp. Br. 2.

The *Blass* decisions are irrelevant and unpersuasive in this case on both points because of the fundamental differences between the Connecticut laws at issue in *Blass* and the California laws at issue here.

1. Unlike Connecticut Consumers, California Consumers Have No Administrative Remedies to Exhaust When It Comes to Sales Tax.

a.) Connecticut law

Connecticut's sales tax law differs materially from that of California in two significant and material ways. First, both the sales tax paid by the retailer to the state and the sales tax reimbursement paid by the consumer to the retailer are commonly referred to as "tax." Conn. Gen. Stat. Ann. § 12-408(2)(A) ("tax reimbursement" shall be "termed 'tax' in this and the following subsections"). That is because both the obligation to pay sales tax and the obligation to pay sales

WEST COAST OFFICE
555 Twelfth Street, Suite 1620
Oakland, CA 94607
510.622.8150 FAX 510.622.8155

NATIONAL HEADQUARTERS
1825 K Street, NW, Suite 200
Washington, DC 20006
202.797.8600 FAX 202.232.7203

WEB SITE
www.publicjustice.net

Chief Justice Cantil-Sakauye
Associate Justices
August 8, 2011

tax reimbursement are mandatory under Connecticut's tax law. *Id.* §§ 12-408(1)-(2); *see also Sullivan v. United States* (1969) 395 U.S. 169, 171, 89 S. Ct 1648, 23 L. Ed. 2d 182 (Connecticut retailers are "required" to pass amount of sales tax on to consumers). There is thus usually no need to distinguish between sales tax and sales tax reimbursement because both are obligations imposed by the state. As the *Blass* trial court explained:

The Sales Tax Act is a comprehensive set of statutes which establish, inter alia, the *obligation of consumers to pay sales tax* on certain tangible goods and services [and] the *obligation of retailers to collect such taxes on behalf of the State*

Blass I, 16 A.3d at 860 (citing Conn. Gen. Stat. Ann. § 12-425) (emphasis added).

Second, and more importantly, Connecticut consumers have standing to submit claims for a refund of sales tax reimbursement charges collected by a retailer directly to the Connecticut Department of Revenue Services (DRS):

The [Tax Code] . . . establishes a detailed yet simple procedure by which any consumer who claims to have overpaid sales tax on tangible goods or services must seek a refund of such overpayment tax or forever waive her right to do so. It is apparent from the examination of this statute that it was specifically designed to afford a remedy for the very type of injury of which the plaintiff here complains.

Blass I, 16 A.3d at 861 (referring to Conn. Gen. Stat. Ann. § 12-425). Thus, a Connecticut consumer seeking a refund of an illegally or erroneously collected sales tax reimbursement charge indisputably can file a claim for a refund directly with the DRS. *Id.* Furthermore, if a Connecticut consumer receives an adverse administrative decision, the consumer may seek reconsideration and judicial review of that decision. *Id.*; Conn. Gen. Stat. Ann. § 12-425(5).

To assist consumers in filing administrative claims, the DRS has promulgated a "Sales and Use Tax Refund Policy" outlining the procedures by which they may submit sales tax refund claims. Ct. Dept. of Revenue Servs., *Policy Statement 98(5)* (1998), available at <http://www.ct.gov/drs/cwp/view.asp?a=1511&q=267332>.¹ The policy directly states that "[t]he Department will accept refund claims filed by purchasers," and describes the documentation consumers must submit to support their refund claims, including a form certifying that the retailer will not also seek a refund for the same amount. *Id.*

Given that Connecticut's sales tax statutory scheme provides consumers specific administrative procedures by which to seek refunds of improperly collected sales tax reimbursement, it stands to reason that they must exhaust those administrative remedies as a prerequisite to suit.

¹ For the Court's convenience, a copy of DRS Policy Statement 98(5) is attached to this letter.

b.) California law

In California, unlike in Connecticut, “sales tax” and “sales tax reimbursement” have completely different meanings.² While retailers are required by the state to pay sales tax, a consumer’s payment of sales tax reimbursement is not a matter of state concern. Rather, retailers are permitted—but not required by law—to pass the cost of sales tax on to their customers by imposing sales tax reimbursement charges on taxable transactions. Cal. Civ. Code § 1656.1; Cal. Code Regs. § 1700(a)(1).³

Consistently with this, and as the Court of Appeal here held, California consumers who want their money back for wrongfully imposed sales tax reimbursement charges have no access to administrative procedures. *Loeffler v. Target Corp.* (2009) 93 Cal. Rptr. 3d 515, 518, 173 Cal. App. 4th 1229 (“Because they are not the taxpayers, plaintiffs cannot file a claim [with the Board] for a sales tax refund . . .”). Unlike Connecticut, California does not impose any obligations on consumers with respect to sales tax. And because the state has no tax relationship with consumers, California consumers have no standing to file an administrative claim with the Board and no administrative remedies. *See* Appellants’ Opening Br. on the Merits (AOB) 10–11, 30–33; Reply Br. 8–9. Significantly, California’s Tax Regulations do not even mandate that all tax-related matters be routed first through the Board. Instead, they expressly preserve the rights of consumers to pursue refunds of sales tax reimbursement charges from retailers through other means. 18 Cal. Code Regs. § 1700(b)(6).

The Board continues to be unable to identify a single formal administrative procedure for nontaxpayers under the California Tax Code—and certainly fails to point to any remedy that in any way compares to the formal process in Connecticut. Rather, the Board repeats its mantra that consumers may informally contact the Board or its members with a complaint, or lobby the legislature for relief. For the reasons stated in Plaintiffs’ Reply Brief (at 29–30) and Answering Brief to *Amici* (at 32–35), the ability of California consumers to complain to the Board does not amount to a remedy and does not make consumer protection laws unnecessary.

In sum, unlike Connecticut consumers, California consumers have no statutory procedure by which they can seek a refund of wrongfully collected sales tax reimbursement from the state—and thus no administrative remedies to exhaust. The courts in *Blass I* and *II* held that a plaintiff who alleges a retailer’s practices violate Connecticut tax law must first exhaust her administrative remedies with the taxing agency before seeking court intervention. *Blass* is an unremarkable application of the doctrine of exhaustion where there are administrative procedures to exhaust. *See, e.g., Mendillo v. Board of Education* (1998) 246 Conn. 456, 466, 717 A.2d 1177, 1183 (“The doctrine of exhaustion is grounded in a policy of fostering an orderly process of administrative adjudication and judicial review in which a reviewing court will have the benefit of the agency’s findings and conclusions.”) (citation omitted).

² *See* Appellants’ Opening Br. on the Merits (AOB) 8–11 (explaining California’s sales tax scheme in detail).

³ The fact that the collection of sales tax reimbursement in California is a matter of contract also demonstrates that it is a “business practice” that can be challenged as unfair, unlawful, or fraudulent. *See* Pls.’ Answer to *Amici* 41–42.

Chief Justice Cantil-Sakauye
Associate Justices
August 8, 2011

Where, as here, there are no such administrative procedures, the doctrine simply has no application. *See Agnew v. State Board of Equalization* (1999) 21 Cal. 4th 310, 320, 87 Cal. Rptr. 2d 423 (rejecting a claimed need to exhaust administrative remedies where administrative process could not have addressed issue before the Court). And, unlike in *Blass*, where the plaintiff's lawsuit "threaten[ed] to disrupt the administrative process that already occupies the field of tax miscollection," *Blass I*, 16 A.3d at 863, there is no available administrative process for California consumers to disrupt. *See* Pls.' Answering Br. to *Amici* 16-21; Br. of *Amici Curiae* Consumer Watchdog, Public Good, ConsumerAffairs.com, and National Ass'n of Consumer Advocates in Supp. of Pls. and Appellants 6-8.

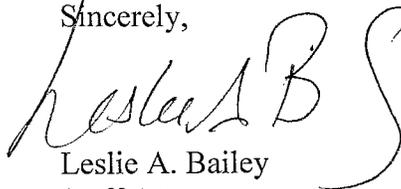
2. Unlike the Connecticut Laws at Issue in *Blass*, California's Consumer Protection Laws Are Broad and Contain No Exception for Wrongful Sales Tax Reimbursement Charges.

The Board also points out that Connecticut's consumer protection law "expressly excludes" from its coverage transactions subject to the regulatory authority of an administrative agency, and suggests that this Court should interpret California law in the same way. Board Supp. Br. 2-3; *Blass I*, 16 A.3d at 863 (citing Conn. Gen. Stat. Ann. § 42-110c(a)).

This argument is easily dismissed, given that California's consumer protection laws contain no such exclusion.⁴ To the contrary, California's Unfair Competition Law (UCL) provides that its remedies are "cumulative . . . to the remedies or penalties available under all other laws of this state." Cal. Bus. & Prof. Code § 17205. The California Legal Remedies Act, (CLRA), likewise, provides that its remedies are "not exclusive," but instead are "in addition to any other procedures or remedies . . . in any other law." Cal. Civ. Code § 1752. And as this Court has held, class actions under the state consumer protection laws "supplement the efforts of law enforcement and regulatory agencies." *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313, 93 Cal.Rptr.3d 559. Finally, as Plaintiffs explained in their Answering Brief to *Amici* (at 3642), any argument that the wrongful collection of sales tax reimbursement is not a "business practice" subject to challenge under unfair business practice laws is not properly before the Court and has no merit.

For the foregoing reasons and those stated in Plaintiffs' other briefs, this Court should reject the reasoning of *Blass v. Rite Aid of Connecticut, Inc.*

Sincerely,



Leslie A. Bailey
Staff Attorney
Public Justice
Counsel for Plaintiffs/Appellants

⁴ *See* AOB 33-38.

ATTACHMENT



DEPARTMENT OF REVENUE SERVICES

[Home](#)[About Us](#)[Forms](#)[Publications](#)[Contact Us](#)

Kevin B Sullivan
Commissioner

FAQs Taxpayer
Answer Center



[GOOGLE TRANSLATOR](#)

HOW DO I...?

TOP DOWNLOADS

WHAT'S NEW

INDIVIDUALS

BUSINESSES

PRACTITIONERS

E-SERVICES

PROGRAMS & SERVICES

OTHER SITES

RESEARCH LIBRARY

DRS NEWS

ARREST SUMMARY

CIGARETTE & TOBACCO

NEW ADDITIONS

PENALTY WAIVER

TOP 100

BOTTLE DEPOSITS



STATE OF CONNECTICUT DEPARTMENT OF REVENUE SERVICES

25 Sigourney Street
Hartford CT 06106-5032

This Policy Statement has been cited in [PS 2001\(1\)](#)

PS 98(5)

Sales and Use Tax Refund Policy

PURPOSE: The purpose of this Policy Statement is to explain the Department's policies on issuing refunds of sales and use taxes.

EFFECTIVE DATE: Effective upon issuance and applicable to all open tax periods, except that the procedures for filing protests of refund disallowances are applicable to refund claims filed on or after July 1, 1997.

STATUTORY AUTHORITY: Conn. Gen. Stat. §12-39s; §12-415; §12-418; §12-425, as amended by 1997 Conn. Pub. Acts 243, §56; and Conn. Gen. Stat. §12-431, as amended by 1997 Conn. Pub. Acts 243, §31.

RELEVANT LAW:

Conn. Gen. Stat. §12-39s(b) provides that if the Commissioner of Revenue Services determines that any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Commissioner may either credit the amount against tax amounts then due and payable, or may refund it. The statute provides further that if a person is required to collect tax from another person and has collected the tax from the other person, any amount credited or refunded by the Commissioner shall be credited or refunded to the other person.

Conn. Gen. Stat. §12-425 sets out the specific procedures and requirements for refunds of sales and use taxes. No refund or credit will be allowed unless a claim is filed with the Commissioner within three years from the last day of the month next succeeding the period for which the overpayment was made. However, if the refund or credit relates to tax paid for an assessment made under §12-415 or §12-416, the refund claim must be made within six months after the assessment becomes final. Every claim must be in writing and must state the specific grounds on which the claim is founded.

Thus, a written refund claim that is timely and that states the specific legal and factual reasons for the claim will be considered properly filed for purposes of the statute. However, the Department will require additional documentation to substantiate a refund claim. These additional requirements are described in this Policy Statement.

There is no statutory provision for interest to be paid by the Department on sales and use tax refunds.

WHO MAY SUBMIT SALES AND USE TAX REFUND CLAIMS:

- The Department will accept refund claims filed by retailers on behalf of their purchasers, when the retailers can prove that they have collected the tax from the purchasers and remitted it to the Department, and when the retailers refund the tax to their purchasers as provided in this Policy Statement.
- The Department will accept refund claims filed by purchasers: (a) when purchasers have self-assessed use tax and have not paid sales tax to retailers or (b) when purchasers have paid sales tax to retailers and have receipts for tax paid and submit copies of **Form AU-524, Assignment of Retailer's Rights for Refund**, signed by retailers to which they paid tax, certifying that tax was collected from the purchasers and remitted to the Department, and that the retailers waive their right to claim refunds of the same amounts.

REFUND CLAIMS BY RETAILERS: Retailers may submit refund claims on behalf of purchasers using the following procedures:

A. When the Retailer is not Under Audit. A retailer that is not under audit must file its refund claim in writing with the Audit Division, Refunds, Clearance and Adjustments Unit, 25 Sigourney Street, Hartford, CT 06106.

1. Required Documentation.

- The retailer must provide proof that it collected the sales tax from its purchasers and remitted the tax to the Department. Proof will consist of copies of invoices to purchasers showing that tax was charged, and information satisfactory to the Department showing that the sales tax charged was reported on the retailer's sales and use tax returns and that the tax was paid to the Department.
- The retailer must submit amended sales and use tax returns for the periods with respect to which the refund is claimed.
- The retailer must prove that the sales were not subject to sales and use taxes or that sales tax was otherwise paid in error. This proof may consist of properly completed exemption certificates, where appropriate.

2. Refunds by Retailers to Purchasers. If the Department determines that a retailer's documentation is adequate, and that a refund claim should be allowed:

- The retailer must prove that it has refunded the tax to its purchasers before the Department will issue a refund or credit to the retailer. This proof will consist of canceled checks from the retailer or receipts showing that the refund amounts have been credited to the purchasers' accounts against amounts currently due and payable by the purchasers to the retailer.
- Alternatively, the retailer must provide the Department with copies of letters or memoranda issued to its purchasers in which it promises either to refund the tax to them; or, for current, active customers of the retailer, to credit the refund amounts against amounts due from the purchasers.
- If the retailer has not refunded the tax to its purchasers before the Department issues the refund to the retailer, then within 120 days after the Department issues the refund the retailer must prove that it has refunded or credited the refund amounts to its purchasers. This proof will consist of canceled checks from the retailer to the purchasers, or receipts showing that the refund amounts have been credited to the purchasers' accounts against amounts currently due and payable by the purchasers to the retailer.
- A retailer must immediately return to the Department any amounts not refunded or credited to the retailer's purchasers within 120 days after the Department issues a refund. Retailers are subject to audit, and will be assessed under Conn. Gen. Stat. §12-415 for amounts not properly refunded to purchasers or returned to the Department.

B. When the Retailer is Under Audit. A retailer that is under audit must file its refund claim in writing with the Audit Division's Revenue Examiner assigned to the audit.

1. Required Documentation.

- The refund claim must be filed before the Department issues **Form AU-100, Tax Determination Report**. Any refund claim filed after the Department issues **Form AU-100** will not be considered by the Revenue Examiner, and must be filed in writing with the Refunds, Clearance and Adjustments Unit of the Audit Division.
- A retailer under audit must submit to the Revenue Examiner the same information and documentation required of retailers not under audit (see above). However, the retailer need not file amended sales and use tax returns, since the refund, if allowed, will be incorporated into the audit.

2. Refunds by Retailers to Purchasers. If the Revenue Examiner determines that a retailer's documentation is adequate, and that a refund should be allowed:

- The retailer must provide to the Revenue Examiner the same documentation and proof

that tax has or will be refunded or credited to purchasers that is required of retailers not under audit (see above).

- No audit projections for retailers. Refund claims filed by retailers on behalf of purchasers must be accompanied by fully detailed documentation with respect to every sale. The Department will not project or otherwise estimate such refunds using sampling methods.
- No interest offsets for retailers. The Department will not use refunds issued to retailers on behalf of purchasers to offset audit assessments for purposes of reducing interest or penalties on such assessments.

C. Calculation Errors. A retailer may sometimes make calculation errors or otherwise erroneously overpay tax, where the retailer has not incorrectly charged tax to its purchasers. If this occurs, the retailer should amend its sales and use tax returns, and if the Department confirms that errors were made, sales tax will be refunded to the retailer. If the retailer has claimed the refund during an audit, a refund of tax overpaid because of a calculation error may be used to offset the audit assessment for purposes of reducing the interest or penalty on the assessment.

REFUND CLAIMS BY PURCHASERS: Purchasers may submit refund claims using the following procedures:

A. When the Purchaser is not Under Audit. A purchaser that is not under audit must file its refund claim in writing with the Audit Division, Refunds, Clearance and Adjustments Unit, 25 Sigourney Street, Hartford, CT 06106.

1. When the Purchaser has Paid Tax to a Retailer.

a. Required Documentation.

- The purchaser must prove that it paid tax to a retailer registered to collect Connecticut sales and use taxes. This proof will consist of receipts or invoices from retailers, canceled checks or other information satisfactory to the Department showing that the retailer billed and received the tax.
- The purchaser must prove that the purchases were not subject to sales and use taxes or that sales and use taxes were paid in error. This proof may consist of properly completed exemption certificates, where appropriate.
- The purchaser must prove that the retailer remitted the tax to the Department, and satisfy the Department that the retailer will not independently seek a refund of the same tax for which the purchaser is requesting a refund.

b. Certification Requirement. This proof will consist of a completed **Form AU-524, Assignment of Retailer's Rights for Refund**, or subsequent form issued by the Department. **Form AU-524** provides detailed information about the purchaser's purchases from the retailer, and requires the retailer to certify under penalties of false statement (a) the accuracy of the information, (b) that the retailer paid the tax it collected to the Department, and (c) that the retailer disclaims any interest in the refund and assigns its right to the refund to the purchaser.

- The Department will not consider any claim for refund from a purchaser that paid tax to a retailer unless the purchaser provides a completed **Form AU-524** from the retailer to which the purchaser paid the tax.
- The only exception to the requirement of a **Form AU-524** from a retailer is if the retailer is out of business.

2. When the Purchaser has not Paid Tax to a Retailer.

- When the purchaser has not paid tax to a retailer, but has self-assessed use tax on purchases, the purchaser must prove that it paid tax to the Department. This proof will consist of copies of the purchaser's tax returns and canceled checks, with invoices or receipts for the purchases and worksheets that correlate to the amount of use tax paid with the returns.
- The purchaser must prove that the purchases were not subject to sales and use taxes, or that use tax was otherwise paid in error.

B. When the Purchaser is Under Audit. A purchaser that is under audit must file its refund claim in writing with the Audit Division's Revenue Examiner assigned to the audit.

1. Required Documentation.

- The refund claim must be filed before the Department issues **Form AU-100, Tax Determination Report**. Any refund claim filed after the Department issues **Form AU-100** will not be considered by the Revenue Examiner, and must be filed in writing with the Refunds, Clearance and Adjustments Unit of the Audit Division.
- A purchaser under audit must submit to the Revenue Examiner the same information and documentation required of purchasers not under audit (see above). However, the purchaser need not file amended sales and use tax returns, since the refund, if allowed, will be incorporated into the audit.

2. Audit Projections and Offsets. If the Revenue Examiner determines that a purchaser's

documentation is adequate, and that a refund should be allowed:

- **No audit projections when tax paid to retailer.** Refund claims by purchasers of tax paid to retailers must be accompanied by fully detailed documentation with respect to every sale. The Department will **not** project or otherwise estimate such refunds using sampling methods.
- **Audit projections allowed for self-assessed use tax.** Refund claims by purchasers of self-assessed use tax that was paid directly to the Department may be projected over the audit using sampling methods, if the Revenue Examiner is satisfied that the sampling method accurately reflects the correct refund. If the Department does project a refund of self-assessed use tax, the purchaser must waive its right to any other refunds of self-assessed use tax with respect to the same audit period.
- **Interest offsets when tax paid to retailers.** The Department will allow purchasers that have paid tax to retailers to use refunds to offset audit assessments for purposes of reducing interest or penalties on such assessments.
- **Interest offsets allowed for self-assessed use tax.** The Department will allow purchasers that have self-assessed use tax to use refunds to offset audit assessments for purposes of reducing interest or penalties on such assessments.

REFUNDS OF USE TAX PAID ON MOTOR VEHICLES, SNOWMOBILES, VESSELS AND AIRCRAFT: Conn. Gen. Stat. §12-431(a), as amended by 1997 Conn. Pub. Acts 243, §31, provides that purchasers of motor vehicles, snowmobiles, vessels and aircraft other than from licensed motor vehicle dealers or lessors, snowmobile dealers, licensed marine dealers or retailers of aircraft will not pay sales tax to the sellers, but must pay use tax on such items, unless the purchases are exempt under the statute.

Conn. Gen. Stat. §12-431(b) and Conn. Agencies Regs. §12-431(b)-1 provide that the value of a motor vehicle in the current month's N.A.D.A. Official Used Car Guide, Eastern Edition, is presumed to be the total purchase price of the vehicle. When the motor vehicle is registered, the Department of Motor Vehicles will collect use tax on the greater of the N.A.D.A. book value or the amount paid for the motor vehicle. If the purchaser can prove to the satisfaction of the Commissioner that the purchase price was lower than the N.A.D.A. book value, the purchaser may claim a refund of the excess use tax paid, using **CERT-106, Claim for Refund of Use Tax Paid on Motor Vehicle Purchased from Other than a Motor Vehicle Dealer**, and following the instructions on the form.

A purchaser claiming any other refund of use tax paid on the purchase of a motor vehicle, or a refund of use tax paid on the purchase of a snowmobile, vessel or aircraft, must file the claim with the Audit Division, Refunds, Clearance and Adjustments Unit, 25 Sigourney Street, Hartford, CT 06106.

TIME LIMITS FOR FILING REFUND CLAIMS: Conn. Gen. Stat. §12-425(1) has two different time limits for filing refund claims. A refund claim is considered to be "filed" on the date the claim is postmarked or hand delivered and date stamped by the Department.

In general, a refund claim must be filed within three years from the last day of the month next succeeding the period for which the refund claim is made. For example, a refund claim filed on July 31, 1998, may apply to tax paid with respect to the monthly or quarterly return for the period ending June 30, 1995. Tax periods held open by waiver under Conn. Gen. Stat. §12-415(8) will also be held open for purposes of filing refund claims.

If a refund claim relates to tax paid for an assessment made under Conn. Gen. Stat. §12-415 or §12-416, the claim must be filed within six months after the assessment becomes final. Section 12-418 provides that an assessment becomes final 60 days after service of the notice of assessment on the taxpayer, unless a petition for reassessment (protest) is filed. If a protest is filed, the assessment becomes final one month after service on the taxpayer of the Department's final determination of the protest. For example, a refund claim that relates to tax paid for an assessment under Conn. Gen. Stat. §12-415 must be filed within 60 days plus six months from the date of the first billing of the audit assessment. However, if the taxpayer pays the tax and protests the assessment, the refund claim must be filed within seven months (one month plus six months) from the date of the Appellate final determination letter.

A taxpayer filing a refund claim with respect to tax paid for an assessment made under Conn. Gen. Stat. §12-415 or §12-416 must file it in writing with the Audit Division, Refunds, Clearance and Adjustments Unit, 25 Sigourney Street, Hartford, CT 06106.

DISALLOWANCE OF REFUND CLAIMS: Conn. Gen. Stat. §12-425(5), as amended by 1997 Conn. Pub. Acts 243, §56, sets out the procedures to be followed by the Department and taxpayers in connection with the disallowance of refund claims.

The Department's notice of disallowance of a refund claim will be in writing and will be mailed to the taxpayer. Service of the notice is complete at the time of deposit in the United States post office or mail box.

In the case of a refund disallowance by the Refunds, Clearance and Adjustments Unit of the Audit Division, the taxpayer may file a written protest of the disallowance, setting forth the grounds on which the protest is based, within 60 days of the Department's mailing of the notice of disallowance to the taxpayer.

In the case of a refund disallowance by a Revenue Examiner when the taxpayer is under audit, the taxpayer may file a written protest of the disallowance, setting forth the grounds on which the protest is based, within 60 days of the Department's mailing of the written notice of disallowance to the taxpayer. (NOTE: In some cases, the notice of refund disallowance may be mailed to the taxpayer before an audit assessment bill is sent, thereby setting a different 60-day period within which to protest the refund disallowance than the period within which to protest the audit assessment.)

A taxpayer should address its protest of a refund disallowance to the Commissioner of Revenue Services, Appellate Division, 25 Sigourney Street, Hartford, CT 06106.

Within one month of the Department's mailing of a notice of final determination following a protest of a refund disallowance, the taxpayer may appeal the determination to the Superior Court, under the procedures set forth in Conn. Gen. Stat. §12-422.

THE "BUY CONNECTICUT" REFUND PROVISION: The "Buy Connecticut" provision, 1997 Conn. Pub. Acts 243, §48, contains special rules to be followed to obtain refunds of sales and use taxes paid on tangible personal property to be transported outside Connecticut by businesses for exclusive use outside the state. See **Special Notice 98(10)**, *The "Buy Connecticut" Provision*, for details.

EFFECT ON OTHER DOCUMENTS: This Policy Statement supersedes **Policy Statement No. 91-3**, *Procedures Followed in Allowing or Disallowing Claims for Refund of Sales and Use Taxes that Purportedly Have Been Overpaid*.

EFFECT OF THIS DOCUMENT: A Policy Statement is a document that explains in depth a current Department policy or practice affecting the liability of taxpayers. Unlike a Ruling, a Policy Statement does not apply a policy or practice to a specific set of facts but it may be referred to for general guidance by taxpayers. Unlike a Special Notice, it does not announce a new policy or practice in response to changes in state or federal laws or regulations or to judicial decisions.

FOR FURTHER INFORMATION: Please call the Department of Revenue Services during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday:

- **1-800-382-9463** (toll-free from within Connecticut), or
- **860-297-5962** (anywhere).
- **TDD/TT** (Telecommunications Device for the Deaf) users **only** call 860-297-4911 during business hours.

FORMS AND PUBLICATIONS: Forms and publications are available all day, seven days a week:

- **Internet:** preview and download forms and publications from the DRS web site: <http://www.ct.gov/drs>; or
- **Telephone:** use the phone number listed above and select **Option 2** from a touch-tone phone.

PS 98(5)
Sales and use taxes
Refunds
Issued 10/21/98

[Printable Version](#)

25 Sigourney St., Ste 2, Hartford, CT 06106-5032 / Phone: 860-297-5962

[Home](#) | [CT.gov Home](#) | [Send Feedback](#) | [Search](#) | [Login](#) | [Register](#)
State of Connecticut [Disclaimer](#), [Privacy Policy](#), and [Web Site Accessibility Policy](#). Copyright © 2002-2011 State of Connecticut.



PROOF OF SERVICE

Re: Case # S173972 – Loeffler v. Target Corp.

I, MARY KIDWELL, declare:

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within cause. My business address is 555 Twelfth Street, Suite 1620, Oakland, CA 94607.

On August 8, 2011, I served the following document(s) by the method indicated below:

**APPLICATION OF PLAINTIFFS-APPELLANTS FOR LEAVE TO FILE
RESPONSE TO SUPPLEMENTAL *AMICUS CURIAE* BRIEF BY
CALIFORNIA STATE BOARD OF EQUALIZATION**

[XX] **By U.S. Mail [Code Civ. Proc sec. 1013(a)]** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, to the following service list, for collection and mailing at 555 12th Street, Oakland, CA 94607 in accordance with the ordinary business practices of Public Justice, P.C.

I am readily familiar with Public Justice P.C.’s practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Public Justice P.C.’s business practice the document(s) described above will be deposited with the United State Postal Service on the same date that it (they) is (are) placed at Public Justice P.C. with postage thereon fully prepaid for collection and mailing.

Loeffler v. Target Corp. Service List

Miriam A. Vogel David McDowell Samantha Goodman MORRISON FOERSTER, LLP 555 West Fifth Street, Suite 3500 Los Angeles, CA 90013	<i>Attorneys for Defendant and Respondent Target Corp.</i>
Clerk of the Los Angeles Superior Court For The Hon. Michael L. Stern Dept. 62 111 North Hill Street Los Angeles, CA 90012	Case No. BC 360004
Clerk of the Court of Appeal Second Appellate District, Division Three 300 S. Spring Street, 2 nd Floor Los Angeles, CA 90013-1213	Case No. B199287

Loeffler v. Target Corp. Service List continued

<p>Steve Cooley OFFICE OF THE DISTRICT ATTORNEY County of Los Angeles 210 West Temple Street, Suite 18000 Los Angeles, CA 90012-3210</p>	
<p>Philip Jon Eskanazi HUNTON & WILLIAMS LLP 550 South Hope Street, Suite 2000 Los Angeles, CA 90071-2627</p>	<p><i>Attorneys for Amicus Curiae Albertson's Inc. in Supp. of Target</i></p>
<p>J. Bruce Henderson 4294 Kendall Street San Diego, CA 92109-5467</p>	<p><i>Attorney for Amicus Curiae Association of Concerned Taxpayers in Supp. of Pls. and Appellants</i></p>
<p>Albert Sheldon, Senior Assistant A.G. OFFICE OF THE ATTORNEY GENERAL 110 West "A" Street, Suite 1100 San Diego, CA 92101</p> <p>Frances Grunder, Senior Assistant A.G. Ronald A. Reiter, Supervising Deputy A.G. Alexandra Gordon, Deputy A.G. Consumer Law Section OFFICE OF THE ATTORNEY GENERAL 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004</p> <p>Joyce E. Hee, Deputy A.G. OFFICE OF THE ATTORNEY GENERAL 1515 Clay Street, Suite 2000 P.O. Box 70550 Oakland, CA 94612-0550</p>	<p><i>Attorneys for Amicus Curiae Attorney General of the State of California in Supp. of Appellants</i></p>
<p>Stephen H. Bennett, CPA LETWAK & BENNETT 26400 La Alameda #200 Mission Viejo, CA 92691</p>	<p><i>In Pro Per Amicus Curiae Stephen H. Bennett, CPA</i></p>
<p>John Lee Waid Tax Counsel IV STATE BOARD OF EQUALIZATION 450 N Street (MIC:82) Sacramento, CA 95814</p>	<p><i>Attorneys for Amicus Curiae California State Board of Equalization in Supp. of Target Corp.</i></p>

Loeffler v. Target Corp. Service List continued

Sharon J. Arkin THE ARKIN LAW FIRM 333 South Grand Avenue, 25 th Floor Los Angeles, CA 90071-3449	<i>Attorneys for Amicus Curiae</i> Consumer Attorneys of California
Harvey Rosenfield Pamela Pressley Todd Foreman CONSUMER WATCHDOG 1750 Ocean Park Boulevard, Suite 200 Santa Monica, CA 90405	<i>Attorneys for Amici Curiae</i> Consumer Watchdog, Public Good, and ConsumerAffairs.com
Richard Williams HOLLAND & KNIGHT LLP 633 West 5 th Street, 21 st Floor Los Angeles, CA 90071	<i>Attorneys for Amicus Curiae</i> CVC Pharmacy, Inc and CVC Caremark Corp. in Supp. of Target
Andrew Paris Ethan Millar Joann Wakana ALSTON & BIRD LLP 333 South Hope Street, 16th Floor Los Angeles, CA 90071	<i>Attorneys for Amicus Curiae</i> The DIRECTV Group, Inc.
Doug Mastroianni MASTROIANNI LAW FIRM 633 West Fifth Street, 28 th Floor Los Angeles, CA 90071	<i>Attorneys for Amicus Curiae</i> Jason Frisch in Supp. of Pls. and Appellants
Taras Kick Thomas Segal THE KICK LAW FIRM 900 Wilshire Boulevard, Suite 230 Los Angeles, CA 90017	<i>Attorneys for Amici Curiae</i> Michael McClain, Avi Feigenblatt and Gregory Fisher in Supp. of Pls. and Appellants
Barry Dion Keene 1047 56 th Street Sacramento, CA 95819-3915	<i>Attorney for Amicus Curiae</i> Former State Legislators William T. Bagley and Barry Keene in Supp. of Pls. and Appellants
Monique Olivier DUCKWORTH PETERS LEBOWITZ OLIVIER LLP 235 Montgomery Street, Suite 1010 San Francisco, CA 94104	<i>Attorney for Amicus Curiae</i> National Association of Consumer Advocates in Supp. of Pls. and Appellants

Loeffler v. Target Corp. Service List continued

Judith Esther Posner Margaret Anne Grignon REED SMITH, LLP 355 South Grand Avenue, Suite 2900 Los Angeles, CA 90071-1514	<i>Attorney for Amicus Curiae Rite Aid Corp. and Walgreens Co. in Supp. of Target</i>
--	---

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 8, 2011, Oakland, California.

Mary L Kidwell
MARY KIDWELL
PUBLIC JUSTICE, PC