

PUBLIC JUSTICE
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SUPREME COURT
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APR 26 2013

April 26, 2013

Frank A. McGuire Clerk

Deputy

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

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APR 26 2013

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

CLERK SUPREME COURT

Dear Chief Justice Cantil-Sakauye and Associate Justices:

While the parties agree that primary jurisdiction is inapplicable here, Target's factual assertions that there is a "mechanism for Plaintiffs to obtain a decision by the State Board of Equalization"—and even "remedies Plaintiffs could have pursued with the Board"—demand a response. Target letter of Apr. 24, 2013 at 2. These claims are pure conjecture and are directly contradicted by the available facts and authority.

First, Target and the Board have already conceded that non-taxpayers such as Plaintiffs do not have any mechanism by which to file a claim before the Board. Target's Answering Brief 17; Board *Amicus* Brief 3 (contrasting consumers paying sales tax reimbursement with "use tax taxpayers and federal purchasers in sales tax transactions, *both of whom already have available administrative remedies*") (emphasis added). Because they lack standing to file a claim before the Board, it follows that they cannot obtain a decision on such a claim. As Plaintiffs explained previously, the Board has no legal obligation to respond to random complaints from non-taxpayers. Pls.' Opening Br. on the Merits 9-11, 39-46; Reply Br. 29-30. (In contrast, the Tax Code requires the Board to act on refund claims by retailers within six months or be subject to suit. *See* Cal. Rev. & Tax Code § 6934.)

Second, Target has failed to cite a shred of evidence showing that non-taxpayers such as Plaintiffs can obtain any other "remedies" from the Board. For example, Target contends that Plaintiffs can "complain to the [Board] and obtain refunds." Target's Br. on the Merits 23. But the only resource Target cites in support of this bold claim turns out to be a 12-page document, last updated in 2008, that is a far cry from proving that a complaint process for non-taxpayers

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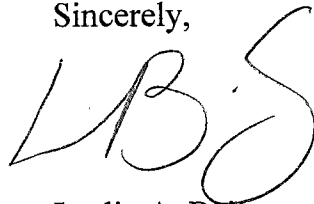
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exists. Rather, it contains one-sentence answers to a handful of questions such as, “I bought a sweater and paid the store extra to gift-wrap it. Why was the gift-wrapping charge taxed?” Pls.’ Resp. to Target’s *Amici* at 32 & n. 11. Likewise, the only authority Target cites for its broad claims about extensive resources for consumers are not actually for consumers at all, but for *taxpayers* wishing to “obtain a seller’s permit” or take care of other needs that they, not their customers, might have. Pl.’s Response to *Amici* at 32 n. 11; *see generally id.* at 32-35 (debunking other supposed mechanisms by which consumers can obtain remedies from the Board).

Lastly, Target’s claim that Plaintiffs have the “remedy” of contesting the “facial validity of existing Board regulations” on sales tax reimbursement is mystifying given that Plaintiffs do not contest the validity of any of the Board’s regulations. Rather, Plaintiffs’ claims depend upon the validity of those regulations, and Plaintiffs have always contended that the Board’s regulations are clear and leave no doubt that Target’s imposition of sales tax reimbursement on the transactions at issue in this case was unlawful. *See Pl.’s Response to Amici* at 35.

In sum, Plaintiffs strongly urge the Court not to accept Target’s factual claims about Plaintiffs’ “remedies” before the Board at face value.

Sincerely,

A handwritten signature in black ink, appearing to read 'LBA', written in a cursive style.

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

PROOF OF SERVICE

I, Kathleen Morris, declare as follows:

I am employed in the County of Alameda, State of California. I am over the age of eighteen and not a party to the within action. My business address is 555 12th Street, Suite 1230, Oakland, California, 94607.

On April 26, 2013, I served the foregoing document described as: Letter Brief Addressing the Primary Jurisdiction Doctrine on the interested parties in this action as follows:

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[X] BY MAIL: By placing a true copy thereof enclosed in a sealed envelope addressed as above, with postage thereon fully prepaid in the United States mail, at Oakland, California. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, it would be deposited with the US Postal Service on the same day with postage thereon fully prepaid at Oakland, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this affidavit. CCP § 1013a(3).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 26, 2013, at Oakland, California.



Kathleen Morris