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April 19, 2013

Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
SUPREME COURT OF CALIFORNIA
350 McAllister Street
San Francisco, California 94102-4797

Re: *Loeffler v. Target Corporation*
No. S173972

Dear Chief Justice Cantil-Sakauye and Associate Justices:

On behalf of Target Corporation, this letter responds to this Court's April 11, 2013 request for supplemental briefs regarding the doctrine of primary jurisdiction.

The doctrine of primary jurisdiction does not apply to this case. As this Court recognized in *Jonathan Neil & Assoc. v. Jones* (2004) 33 Cal.4th 917, 931-932, primary jurisdiction "applies where a claim is originally cognizable in the courts, and comes into play 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; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views."

As explained in the briefs already filed in this action, section 32 of article XIII of the California Constitution deprives the courts of jurisdiction over tax issues except as to those matters for which the Legislature expressly creates a judicial remedy. Because the Legislature has not created a judicial a remedy for the claims asserted in this case, there is no claim cognizable in the courts. And because the primary jurisdiction doctrine can apply only where there is *secondary* jurisdiction in the courts (that is, after the regulatory agency has spoken), it is clear that the doctrine does not apply here.

SUPREME COURT
FILED

APR 22 2013

Frank A. McGuire Clerk
Deputy

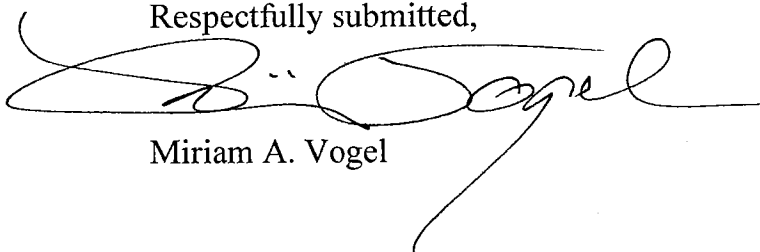
Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
SUPREME COURT OF CALIFORNIA
April 19, 2013
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If this Court disagrees and decides there is or might be a “claim originally cognizable in the courts” for a refund of sales tax reimbursement collected by a retailer and paid over to the State Board of Equalization, that “claim” unquestionably would be within the special competence of the State Board of Equalization. As discussed extensively in Target’s Answer Brief on the Merits and in the State Board of Equalization’s Amicus Brief, the Board — and only the Board — is authorized to determine the propriety of the particular sales tax at issue.

The State Board of Equalization is charged with administering and enforcing the sales tax statutes. (Rev. & Tax. Code, §§ 7051-7060.)¹ Among other things, the Board enacts sales tax regulations (§ 7051), reviews sales tax returns and reports (§§ 6481, 7055), and audits retailers for compliance with the sales tax laws (§ 7054). Given the Legislature’s decision to *not* create alternative procedures for sales tax reimbursement claims, it is difficult to imagine any issue being more squarely within the special competence of an administrative agency.

Should this Court determine that the doctrine of primary jurisdiction could apply to this matter, Target has not waived the issue. Throughout these proceedings — in the trial court, in the Court of Appeal, and in this Court — Target has steadfastly maintained that the Legislature vested all issues concerning sales tax in the State Board of Equalization, and that only the Board is authorized to determine which sales are subject to a sales tax. These arguments preserved Target’s rights vis-à-vis the “primary jurisdiction” doctrine. (*Bussard v. Minimed, Inc.* (2003) 105 Cal.App.4th 798, 806-807,)

Respectfully submitted,



Miriam A. Vogel

cc: Per attached proof of service.

¹ All statutory references are to the Revenue and Taxation Code.

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 555 West Fifth Street, Los Angeles, California 90013-1024. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 19, 2013, I served a copy of:

TARGET CORPORATION'S SUPPLEMENTAL BRIEF REGARDING THE DOCTRINE OF PRIMARY JURISDICTION

- 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, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 555 West Fifth Street, Los Angeles, California 90013-1024 in accordance with Morrison & Foerster LLP's ordinary business practices.

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Executed at Los Angeles, California, April 19, 2013.

C. Bibeau



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California Supreme Court Case No. S173972

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California Supreme Court Case No. S173972

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