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2nd Circuit Upholds Dismissal of Class Action Against Dunkin’ Donuts for Overcharging Sales Tax

The 2nd Circuit Court of Appeals has affirmed the dismissal of a class action case against Dunkin’ Donuts and New York franchisees for charging customers sales tax on pre-packaged coffee because the plaintiffs’ sole remedy is to seek a refund of the tax from the New York taxing authority.¹ This decision can be viewed as a victory for retailers who inadvertently charge sales tax on exempt items and pay the tax to the state. Additionally, many other states have similar sales tax refund remedy rules and this decision may be useful in defending consumer class actions for overcharging sales tax in those states as well.

This New York case involved claims that franchisees charged sales tax on an exempt item – pre-packaged coffee. While food and beverage items sold for immediate consumption in restaurants or prepared hot and ready to eat are subject to sales tax, such items not served hot, ready to eat, and for consumption off-premises are exempt. So although the cup of coffee a customer purchases at a Dunkin’ Donuts restaurant is subject to sales tax, the purchase of a pre-packaged bag of coffee to brew at home is not. The plaintiffs in this consumer class action case alleged that the overcharging of sales tax violated the state’s deceptive trade practices act. Similar class actions have been filed around the country in recent years. These class actions put the retailer between the hammer of the state tax agency if they do not charge enough tax and the anvil of the class action plaintiff’s firm for charging too much.

In *Estler*, the District Court dismissed the class action, citing New York law stating that the sole remedy for overcharging sales tax is to file a refund claim with the state’s Department of Taxation. The plaintiffs appealed to the 2nd Circuit, arguing that they were seeking relief under the state’s deceptive trade practice law, not merely seeking a refund of the tax. The 2nd Circuit affirmed the dismissal, holding that the sales tax refund statute clearly states that the refund procedure is the sole and exclusive remedy.

¹ *Estler et al. v. Dunkin’ Brands Inc. et al.*, case number 16-3762, U.S. Court of Appeals for the 2nd Circuit.

Many, but not all states have statutes similar to New York's, stating that a consumer's exclusive remedy for being overcharged sales tax is to seek a refund from the state tax agency. For these states, this case is likely to help when defending retailers against class actions for charging too much tax; however, for this defense to hold up, it is critical that the retailer can prove that all of the sales tax that was collected has been timely paid over to the state.

Although this precedent is good news for retailers in many states, it is also important for them to perform regular reviews of their sales tax procedures to make certain that they are correctly charging or exempting tax on all of their goods and services - not just the products, but also for ancillary charges like extended warranties, delivery, and installation. For the states that do not have a similar exclusive administrative refund remedy statute, such a review is just as, if not more important. A careful review of sales taxability will be worthwhile, save time, and be helpful in avoiding problems in the future.

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