



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

July 28, 2016

2016 Interim No. 3

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Friday, August 5, 2016

Administrative Rules Review Committee
9:00 a.m., Room 116, Statehouse

Monday, August 29, 2016

Health Policy Oversight Committee
12:30 p.m., Room 116, Statehouse

Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Senator Wally Horn

Vice-Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Friday, August 5, 2016, 9:00 a.m.

LSA Contacts: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.

Agenda: To be announced.

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

Healthy Policy Oversight Committee

Co-Chairperson: Senator Amanda Ragan

Co-Chairperson: Representative David E. Heaton

Location: Room 116, Statehouse

Date & Time: Monday, August 29, 2016, 12:30 p.m.

LSA Contacts: Patty Funaro, Legal Services, (515) 281-3040; Ann Ver Heul, Legal Services, (515) 281-3837.

Agenda: To be announced

Internet Site: <https://www.legis.iowa.gov/committees/committee?ga=86&groupID=24165>

LEGISLATIVE COUNCIL

July 12 2016

Chairperson: Speaker Linda Upmeyer

Vice-Chairperson: Senator Michael E. Gronstal

Committees. The Legislative Council approved recommendations reported by the Service Committee and the Studies Committee, and received an annual report from the Fiscal Committee and the Tax Expenditure Committee. See briefings in this issue for the Service and Studies committees.

LSA Contacts: Glen Dickinson, Legislative Services Agency, (515) 281-3566; Richard Johnson, Legal Services, (515) 281-3566; Susan Crowley, Legal Services, (515) 281-3430.

Internet Site: <https://www.legis.iowa.gov/committees/committee?ga=86&groupID=703>

SERVICE COMMITTEE OF THE LEGISLATIVE COUNCIL

July 12, 2016

Chairperson: Senator Michael E. Gronstal

Vice-Chairperson: Speaker Linda Upmeyer

Overview. The committee received information and made recommendations concerning the nonpartisan Legislative Services Agency and Office of Ombudsman which were subsequently approved by the Legislative Council.

Personnel Reports and Budgets. The Legislative Services Agency and Office of Ombudsman personnel reports were received and the committee recommended the approval of proposed promotions and agency budgets for FY 2016-2017.

LSA Contacts: Glen Dickinson, Legislative Services Agency, (515) 281-3566; Richard Johnson, Legal Services, (515) 281-3566; Ed Cook, Legal Services, (515) 281-3994.

Internet Site: <https://www.legis.iowa.gov/committees/committee?groupID=662>

STUDIES COMMITTEE OF THE LEGISLATIVE COUNCIL

July 12, 2016

Chairperson: Senator Michael E. Gronstal

Vice-Chairperson: Speaker Linda Upmeyer

Overview: The Studies Committee considered mandates in statute and proposals for 2016 Interim studies contained in other requests, and recommended the actions listed in this briefing. The recommendations were subsequently approved by the Legislative Council.

2016 Interim Studies. Studies were authorized for the 2016 Interim with the indicated number of members and meeting days to address the following topics:

Statutory Committees

- **Fiscal Committee** (Iowa Code §§2.45(2) and 2.46)
Charge: The committee is a permanent legislative committee under the Legislative Council. Duties include examining budget and expenditure matters, directing the administration of performance audits and visitations, and studying the operation of state government and making recommendations regarding reorganization to the General Assembly.
Members: 5 Senate/5 House
Meeting Days: 2 days, 1 following an October 2016 meeting of the Revenue Estimating Conference, and 1 following a December 2016 meeting of the Revenue Estimating Conference. Meeting dates to be approved by legislative leadership.
- **Tax Expenditure Committee** (Iowa Code §§2.45(5) and 2.48, 2016 Iowa Acts, HF 2459 §4)
Charge: The committee is a permanent legislative committee under the Legislative Council. Duties include approving annual estimates of the cost of tax expenditures by December 15 each year, and performing a scheduled review of specified tax credits so that each credit is reviewed at least every five years. The sixth scheduled review is in 2016.
Members: 5 Senate/5 House
Meeting Days: 2 days
- **Health Policy Oversight Committee** (Iowa Code §2.45(6) and 2016 Iowa Acts, HF 2460 §97)
Charge: The committee is a permanent legislative committee under the Legislative Council. Duties include providing continuing oversight for Medicaid managed care, ensuring effective and efficient administration of the

(Studies Committee of the Legislative Council continued from page 3)

program, addressing stakeholder concerns, monitoring programs costs and expenditures, and making recommendations to the General Assembly.

Members: 5 Senate/5 House

Meeting Days: 2 days, 1 prior to and 1 following the November 8 general election.

- **Iowa Commission on Interstate Cooperation** (Iowa Code §§28B.1 and 28B.2)

Charge: Carry forward Iowa's participation as a member of the Council of State Governments; encourage and assist the friendly contact between officials and employees of this state and officials and employees of other states, the federal government, and local governments, and encourage cooperation in the adoption of compacts and uniform laws. The commission has been appointed in accordance with a resolution of the Legislative Council.

Members: 5 Senate/5 House

Meeting Days: As approved by legislative leadership.

Other Interim Studies

- **Violence in Iowa Study Committee**

Charge: Examine the causes and impacts of, and possible remedies for, increased levels of violence in Iowa, including, but not limited to developing more accurate and useful measurements of violent crime beyond annual crime statistics; identifying root causes of violence including conducting biographical research of offenders to determine common traits such as substance abuse, mental and physical health issues, educational background, and familial influence; reviewing existing Iowa criminal code provisions, sentencing guidelines, and incarceration, probation, and parole trends to determine frequency of use, effectiveness, and whether changes or enhancements are needed; and identifying any other "cause and effect" variables arising through research. The committee may receive input from agencies and entities including, but not limited, to the Department of Public Safety, the Department of Transportation, the judicial branch, the Attorney General's Office, the Criminal and Juvenile Justice Planning Agency, and representatives from law enforcement agencies, educational institutions, business and labor organizations, community and faith organizations, and other interested groups. The committee shall submit recommendations, if deemed appropriate, to the General Assembly by January 1, 2017.

Members: 5 Senate/5 House

Meeting Days: 1 day following the November 8 general election.

- **Prescription Pain Medications Study Committee**

Charge: Evaluate Iowa's response to the national prescription pain medication crisis from both a public health perspective and a law enforcement perspective. The committee shall assemble information which may include, among other topics, evaluating the number of prescription pain medications issued in Iowa and upward and downward trends; the number of deaths annually from prescription pain medication overdoses and illegal drugs, underreporting of this information for older Iowans, the accuracy of such information, and the need for development of a framework for reporting and disseminating accurate statistics; the extent to which the medical community is following protocols to assist addicted individuals to reduce reliance and slowly withdraw from addiction, and the role of pharmacists in reporting possible addiction; the impact of pain medication scheduling; Iowa's ability to meet the medical needs of a growing aging population; available treatment models including in correctional settings; alternative pain management programs; the potential budgetary impact if medical needs are unmet and addicts are sentenced to jail or a correctional setting; and employment opportunity limitations for Iowans with chronic pain issues. The committee may receive input from agencies and entities including, but not limited to, the Department of Public Health, the Department of Public Safety, the Board of Pharmacy, the Department of Corrections, the State Medical Examiner, and representatives from the medical community, community-based corrections, law enforcement agencies, and employers. The committee shall submit recommendations, if deemed appropriate, to the General Assembly by January 1, 2017.

Members: 5 Senate/5 House

Meeting Days: 1 day following the November 8 general election.

- **Civil and Criminal Forfeiture Laws Study Committee**

Charge: Review Iowa's current laws on asset forfeiture contained in Iowa Code chapter 809A and related legislation introduced during the 2016 Legislative Session, and submit recommendations, if deemed appropriate, to the General Assembly by January 1, 2017.

Members: 5 Senate/5 House

(Studies Committee of the Legislative Council continued from page 4)

Meeting Days: 1 day following the November 8 general election.

- **Industrial Hemp Program Study Committee**

Charge: Evaluate the potential for and logistics of establishing an industrial hemp program in Iowa, including but not limited to the economic and environmental impact of establishing the program and regulatory aspects relating to industrial hemp production, and submit recommendations, if deemed appropriate, to the General Assembly by January 1, 2017.

Members: 3 Senate/3 House

Meeting Days: 1 day following the November 8 general election.

LSA Contacts: Richard Nelson, Legal Services, (515) 242-5822; Andrew Ward, Legal Services, (515) 725-2251.

Internet Site: <https://www.legis.iowa.gov/committees/committee?ga=86&groupID=703>

ADMINISTRATIVE RULES REVIEW COMMITTEE

July 12, 2016

Chairperson: Senator Wally Horn

Vice-Chairperson: Representative Dawn Pettengill

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT, *Renewable Fuel Infrastructure Program, 6/8/16 IAB, ARC 2577C, ADOPTED.*

Background. These rules expand the Renewable Fuel Infrastructure Program for retail motor fuel sites by allowing funds to be used for the storing and dispensing of E-15 fuel. The rules also establish a minimum size for a renewable fuel pump decal and update label requirements for ethanol flex fuels. The requirements include replacing the current "Cleaner Air for Iowa" sticker with a new "American Ethanol" sticker. The new decals must be in place by January 1, 2018.

Changes were made to the noticed language, including language that specified that the label includes the name of the renewable fuel and language relating to labels requiring the use of flex fuel cars.

Commentary. Discussion centered on whether labeling requirements for gas pumps contained in these rules conflict with labeling regulations of the Federal Trade Commission (FTC) and the Environmental Protection Agency. Committee members expressed concern regarding the possibility of such a conflict. One committee member received informal guidance from FTC personnel prior to the meeting indicating that rules conflict with and are preempted by federal regulations. Such concerns were also raised by Ms. Kellie Paschke on behalf of the Petroleum Marketers and Convenience Stores of Iowa and Mr. David Scott on behalf of the American Petroleum Institute. They stated that violation of the federal regulations can result in significant financial penalties.

Department representatives Ms. Margaret Thomson and Mr. Matt Gronewald responded that the labels described in the rules are different from the labels governed by federal regulations. They stated that the department does not believe the rules conflict with federal regulations. They suggested that there may be some confusion regarding which specific labels these rules pertain to. They also stated that some of the confusion may relate to certain sample labels that were shared with committee members. They explained that the labels shared with committee members were obtained through a public records request and have not been approved by the department for distribution. Committee members asked the representatives if the department had discussed the possible conflict with the FTC or the Iowa Attorney General's Office, and they stated that the department had not.

In addition to Ms. Paschke and Mr. Scott, public comment was also heard from Mr. Bob Hemesath on behalf of the Iowa Corn Growers Association (ICGA), Mr. Grant Menke and Mr. Monte Shaw of the Iowa Renewable Fuels Association, and Mr. Jim Pirolli on behalf of Kum & Go. Mr. Hemesath expressed support for the rules and explained that the ICGA had requested the change from the current "Cleaner Air for Iowa" sticker to a new "American Ethanol" sticker. He also asserted that it would be problematic for the ethanol industry in Iowa if the rules do not move forward, as grant funding would be delayed and ICGA members would not be able to plan effectively for the future in light of the resulting regulatory uncertainty. Mr. Menke and Mr. Shaw also expressed support for the rules. Mr. Shaw questioned the guidance received from the FTC regarding the rules and asserted that the FTC does not have regulatory authority over this matter. Mr. Pirolli offered suggestions as to the minimum requirements the rules should contain.

Other topics discussed included the sale of E-85 fuel, including certain statutory changes relating to E-85 that the department plans to pursue in the 2017 Legislative Session; whether the State Fire Marshal currently has regulatory authority relating to this rulemaking; storage and blending of E-15 in nonsummer months; and whether it is appropriate for

(Administrative Rules Review Committee continued from page 5)

gas pump labels to be approved by a three-person state board as they currently are.

Action. A motion for a session delay on this rulemaking failed by a 4-6 vote. A motion for a 70-day delay failed by a 5-5 vote. A motion for a session delay on Item 13 of this rulemaking failed by a 5-5 vote. (All three motions required seven votes to pass.)

ENVIRONMENTAL PROTECTION COMMISSION, *Iowa Antidegradation Implementation Procedure, 6/8/16 IAB, ARC 2579C, NOTICE*

Background. The Environmental Protection Commission (EPC) and the Department of Natural Resources (DNR) received a petition for rulemaking on April 25, 2016, from the Iowa Association of Municipal Utilities (IAMU), the Iowa League of Cities (League), and the Iowa Association of Business and Industry (ABI). The petition asked EPC to modify the process used by DNR in making cost benefit analyses for its Iowa Antidegradation Implementation Procedure. Specifically, the petition requested that EPC replace a flexible cost-benefit comparison with a bright-line rule for determining when to allow for less degrading wastewater treatment alternatives. The new rule would state that “[a]lternatives costing less than 115 percent of the base cost of the minimum level of pollution control are considered economically efficient.”

Commentary. According to DNR representative Mr. Jon Tack, the general idea of the antidegradation process is to require entities to prove why they cannot decrease pollution discharge when they seek to increase their discharge or create a new discharge of pollution. Mr. Tack stated the current rule does not describe a mechanism for monetizing the environmental benefit of this process. He further explained that petitioners sought clarity after a recent court ruling against DNR for failing to correctly implement the process regarding a wastewater treatment project in Clarion, Iowa. Mr. Tack noted that DNR and EPC expect to make changes to this rulemaking based on the comments received. In response to a question from a committee member, Mr. Tack stated that environmental groups seem to be opposed to this rulemaking because they view it as harmful to Iowa’s water quality and expect it would undermine the nutrient reduction strategy efforts. He disagreed with those assessments. Mr. Tack responded affirmatively to a committee member question about whether this rulemaking would reduce the likelihood of lawsuits against small towns.

Raising concerns about the proposed rulemaking were Ms. Debbie Neustadt of the Sierra Club’s Iowa Chapter, Mr. Josh Mandelbaum of the Environmental Law and Policy Center, and Ms. Susan Heathcote of the Iowa Environmental Council. Ms. Neustadt stated that the antidegradation requirements create an environmental “safety net” that the state needs. She believes the proposed rule would consider only the cost of changes rather than environmental benefits, thus endangering the environment. She described the new standard as a “high wall” to protecting the environment. Mr. Mandelbaum and Ms. Heathcote both expressed concern about the process used to create this rulemaking since their organizations were not included in the process. Mr. Mandelbaum also raised a concern about whether this rule would be inconsistent with federal regulations.

Mr. Tim Whipple, representing IAMU, spoke in favor of the rule, as did Ms. Jessica Harder on behalf of ABI and Mr. Dennis Miller for the League. Mr. Whipple noted that as a result of the court’s decision, Clarion was required to spend \$3.2 million beyond what had been anticipated. Ms. Harder stated that this revised rule will bring the antidegradation standard back to how people believed it worked before the Clarion case. Mr. Miller explained that the League’s interest is to provide its member communities with certainty—and understanding of the antidegradation process. He pointed out that in other states, this process is determined by a mathematical equation, making it simpler to achieve objective standards. Mr. Miller also explained that because of the petition-for-rulemaking process, DNR’s hands were tied in terms of who to include in the conversation up to this point.

Action. No action taken.

UTILITIES DIVISION, *Telecommunications Services, 6/8/16 IAB, ARC 2569C, NOTICE.*

Background. These proposed rules provide various updates to the division’s rules on services provided by telephone utilities.

Commentary. Division representatives Mr. Cecil Wright and Ms. Jennifer Johnson explained that this rulemaking resulted from the division’s five-year review of its rules pursuant to Iowa Code §17A.7(2). Ms. Johnson noted that this rulemaking is intended to create a technology-neutral standard for the various types of voice communication services, including Voice over Internet Protocol (VoIP).

Public comment was heard from State Consumer Advocate Mr. Mark Schuling. He expressed concern regarding the division’s decision to deregulate VoIP without receiving a specific statutory directive to do so or going through the pro-

(Administrative Rules Review Committee continued from page 6)

cess for deregulation provided in the division's rules. He also expressed concern regarding the proposed elimination of the requirement that telephone utilities annually produce printed telephone directories. He further expressed concern regarding the proposed replacement of specific service quality standards for local exchange carriers, including mandatory time periods for restoring lost service, with general standards that do not include time limits.

Public comment was also heard from Mr. Kevin Condon on behalf of the Iowa Communications Alliance. He asserted that the division's technology-neutral standard for VoIP and other types of voice communication services is not actually neutral and expressed hope that the proposed standard will be made more consistent before the rules are adopted.

Action. No action taken.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Friday, August 5, 2016, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

LEGAL UPDATES

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

SCHOOL AUTHORITY — SEARCH AND SEIZURE OF SCHOOL AND STUDENT PROPERTY

Filed by the Iowa Supreme Court

June 24, 2016

State v. Lindsey

No. 14-0773

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20160624/14-0073.pdf

Facts. A student, Mar'yo Lindsey, was injured while playing football for Dunkerton High School and, while waiting transport to the hospital via ambulance, requested that school officials give his school-issued equipment bag to a friend. Instead of giving the bag to the friend, Dunkerton School Superintendent James Stanton asked Head Football Coach Jonathan Steffen to take the bag back to Dunkerton High School, where Stanton retrieved it.

While moving the bag, Stanton heard the clunk of metal hitting the floor, a noise he felt certain was made by a gun. Lindsey had been suspended from school before for drug activity and school authorities also had knowledge that the student had a prior weapons charge. Stanton searched the equipment bag and found a backpack inside, which he also searched. The backpack contained a long-barreled handgun and what appeared to be marijuana and drug paraphernalia. Stanton called law enforcement and Lindsey was charged with possession of a firearm as a felon, carrying a weapon on school grounds, carrying a weapon, and possession of a controlled substance. Lindsey pled not guilty and filed a motion to suppress the evidence found in the equipment bag, claiming the search of his equipment bag violated his right to be free from unreasonable searches and seizures under the Iowa and United States Constitutions.

The district court denied the motion to suppress, relying primarily on the two-pronged framework established by the United States Supreme Court in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985): whether the search was justified at its inception and whether the scope of the search was reasonable. The district court determined the search was reasonable because of Lindsey's repeated requests that the equipment bag be given to a specific friend, and because of the distinctive metal clunk Stanton heard when the equipment bag hit the ground. The district court determined that the scope of the search was justified because the school's need to prevent the introduction of weapons into the school outweighed any expectation of privacy Lindsey may have had.

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Lindsey appealed and the case was transferred to the Court of Appeals, which affirmed the decision of the district court.

Holding. The Iowa Supreme Court (Court) affirmed the decision of the Court of Appeals.

Issue. Whether the search of Lindsey's equipment bag and the backpack within it was permissible under Article I, Section 8 of the Iowa Constitution and under the Fourth Amendment to the United States Constitution.

Analysis. Justice Appel, in writing for the four-member majority, noted that the primary issue in the case was whether reasonable suspicion existed at the inception of the search. The Court noted the paucity of case law relating to the constitutional rights of and protections for teachers and students until the latter part of the 20th century. Student protection from searches and seizures under the Fourth Amendment was not addressed until *T.L.O.* was filed in 1985. Under *T.L.O.*, the United States Supreme Court established that the Fourth Amendment applies to civil authorities, including school officials, but the United States Supreme Court also recognized that school officials have a substantial interest in maintaining discipline in the school and on school grounds. *T.L.O.* further established that: 1) the Fourth Amendment provides students with a limited expectation of privacy in the school setting, and 2) searches based upon individualized suspicion must be reasonable. Find the balance between the student's right to privacy and the school's need to maintain discipline is key. However, the majority noted that the *T.L.O.* standards are amorphous, and with *T.L.O.*, the United States Supreme Court moved away from a rule-based search and seizure jurisprudence toward a case-by-case method that will often turn on a careful and meticulous analysis of the facts of the case.

The majority identified subsequent United States Supreme Court decisions that established that student athletes and students participating in extracurricular activities have a diminished expectation of privacy because such activities are voluntary and, in the case of student athletes, because of the communal nature of group athletic activity. Therefore, for example, random drug testing of students participating in such activities does not violate students' rights to be free from unreasonable searches and seizures under the Fourth Amendment.

The majority concluded that Lindsey's diminished expectation of privacy was not a factor in determining whether the search and seizure were reasonable under the circumstances; Lindsey's history and suspicious conduct provided school officials with reasonable suspicion and sufficient justification for search and seizure of the bags; and school officials used common sense in conducting a search that was not excessively intrusive in light of the objectives of the search. The majority determined that the parties litigated within the framework of federal case law, and although the parties did not present an independent standard under the Iowa Constitution, the Court may still apply the federal standard more stringently than the federal case law. The majority concluded that the standard of whether the search has a moderate chance of uncovering wrongdoing was met.

Special Concurrence. Justice Mansfield filed a special concurrence, joined by Justice Waterman, concurring the judgment and in the Court's opinion but disagreeing with the majority opinion that an argument under Article I, Section 8 of the Iowa Constitution had been preserved.

Dissent. Justice Wiggins argued that when the equipment bag was paced on the bus by the head coach, the bag was effectively seized within the meaning of the Fourth Amendment. The majority concluded that Lindsey's statements regarding the disposition of his equipment bag were designed not to prevent officials from taking action by asserting privacy concerns, but to control who possessed the bag in Lindsey's absence. Justice Wiggins observed that *T.L.O.* recognized that students may find it necessary to carry a variety of legitimate, noncontraband, but nevertheless, highly personal items on school grounds — including, Justice Wiggins opined, cell phones, tablets, and laptops. Further, he suggested that it would have been odd if Lindsey had not been concerned about his equipment bag. Justice Wiggins concluded that school officials lacked any reliable basis upon which to form a reasonable suspicion of wrongdoing, and that the majority failed to distinguish between Lindsey's repeated affirmative requests for the disposition of his equipment bag and the type of request a person must make in order for the majority to interpret such request to be an assertion of the right to be free from unreasonable search and seizure. Justice Wiggins concluded that the seizure was not justified, making the ensuing search unreasonable within the meaning of the Fourth Amendment, and the fruits of the search should have been suppressed. Justice Wiggins would reverse the judgment of conviction and remand for a new trial.

LSA Monitor: Kathy Hanlon, Legal Services, (515) 281-3847

**EXCESS COLLECTION OF SALES TAX BY RETAILERS
Filed by the Iowa Supreme Court
June 10, 2016**

(Legal Updates—Excess Collection of Sales Tax by Retailers continued from page 8)

Bass v. JC Penney Company, Inc.

No. 15-0334

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20160610/15-0334.pdf

Background Facts and Prior Proceedings. In April 2013, Emily Bass (taxpayer) placed an order on the JC Penney (JCP) Internet site and was charged Iowa sales tax on shipping and handling fees. Delivery charges are generally exempt from Iowa sales tax. The taxpayer requested a refund from JCP for the overpayment of sales tax and JCP complied. The taxpayer also demanded that JCP cease collecting sales taxes on shipping and handling fees for Iowa transactions. Over several years prior to this transaction, the Iowa sales tax treatment of these shipping and handling fees was the subject of internal review at JCP, communications between JCP and the Department of Revenue (IDR), and other refund requests from, and refunds to, Iowa consumers. JCP struggled with determining the taxability of these fees, and purportedly received uncertain or conflicting advice from IDR on the issue.

In August 2013, the taxpayer placed another order on the JCP Internet site and was again charged Iowa sales tax on shipping and handling fees. This time, the taxpayer filed a class action lawsuit against JCP on behalf of herself and all others similarly situated for unlawful collection of tax under the Iowa Streamlined Sales and Use Tax Act (SSUTA), and for several other claims. After the lawsuit was initiated, JCP remitted all the tax it collected in August 2013 to IDR. The district court granted JCP's motions for summary judgment on all claims. The taxpayer filed this appeal.

Issues:

1. Whether the SSUTA provides a private statutory cause of action against a retailer who improperly collects sales tax.
2. Whether the SSUTA bars claims against a retailer for the improper collection of sales tax when the retailer exercises its option to remit the collected tax to the IDR.

Analysis. Before considering the relevant issues, the Iowa Supreme Court (Court) briefly outlined the history of the Streamlined Sales and Use Tax Agreement (Agreement), Iowa's adoption of the SSUTA, and the relevant statutory provisions.

The Agreement is the product of the national Streamlined Sales Tax Project undertaken by several public and private stakeholders in an effort to standardize and streamline the administration of state sales tax. The legislative purpose codified in Iowa's adoption of the Agreement through the enactment of the SSUTA (Iowa Code chapter 423) is to simplify and modernize the collection of sales taxes and to reduce the burden of tax compliance.

Iowa Code section 423.45 governs the treatment of excess sales tax collected by a retailer and requires that such excess taxes be refunded to the consumer upon proper notification by the consumer or The IDR, but gives retailers the option of either returning the excess tax to the consumer or remitting the amounts to the IDR. The statute provides that "no cause of action shall accrue against a retailer for excess tax paid" until "proper notice has been given the retailer by the consumer or user." Iowa Code section 423.47 grants a consumer the right to seek a refund or credit from the IDR for overpayment of sales tax.

Private Statutory Cause of Action Under Iowa SSUTA. The taxpayer argued that the "no cause of action" language in Iowa Code section 423.45 expressly creates a private cause of action against JCP, and alternatively argued that a private cause of action should be implied based upon the "no cause of action" language in the statute. The Court reviewed the "no cause of action" language through the SSUTA's legislative purpose of simplification and modernization, and in doing so it found no express creation of a private cause of action. The "no cause of action" language was part of a uniform statute that participating states were required to enact in adopting the Agreement and is designed to ensure that retailers are entitled to notice before a cause of action, if any otherwise exists under state law, is commenced against a retailer. Also, the "negative or limiting" phrasing of the language was designed to limit potential claims under the uniform act, not create new ones.

The Court also rejected the taxpayer's argument that a private cause of action is implied by the "no cause of action" language after analyzing the SSUTA using a four-part test which considers (1) whether the plaintiff is a member of the class for whose special benefit the statute was created; (2) explicit or implicit legislative intent to either create or deny such a remedy; (3) whether a private cause of action is consistent with the underlying purpose of the statute; and (4) whether implication of a private cause of action will intrude into an area that the government has exclusive jurisdiction or which has been delegated exclusively to a state administrative agency. The Court noted that the SSUTA was enacted to streamline the tax collection process for the benefit of retailers, not consumers, and implying a private cause

(Legal Updates—Excess Collection of Sales Tax by Retailers continued from page 9)

of action would complicate, rather than simplify, that collection process. The Court found that the statute is clear and offers a retailer the choice of either refunding excess sales tax to the consumer or remitting the funds to the IDR and allowing the consumer to pursue administrative remedies against the IDR.

Non-SSUTA Causes of Action. The Court also considered the taxpayer's other statutory and common law claims against JCP, grouped into tax-related claims (excess collection of taxes) and non-tax-related claims (shipping and handling misrepresentations). With regard to the tax-related claims, the Court considered whether the administrative remedy against the IDR provided in Iowa Code section 423.47 (refund or credit of sales tax) is the exclusive remedy, thereby barring the taxpayer's other claims against JCP relating to the collection of excess taxes. The Court conceded that the relevant statutes do not expressly declare the administrative remedy to be exclusive, but found persuasive several past decisions which held that when the Legislature provides a comprehensive scheme for dealing with a particular kind of dispute, the statutory remedy is generally exclusive if it is adequate and accessible by the affected parties. The Court determined that the administrative remedy provided in Iowa Code section 423.47 was both adequate and accessible to the taxpayer. The Court opined that the orderly administration of the tax laws would be thwarted if consumers were able to bring claims against retailers who are acting as tax collectors on behalf of the state. The state is the party with the beneficial interest in the tax funds and the party tasked with resolving questions of taxability. The Court emphasized that its ruling on the tax-related claims was narrow, noting that the opinion did not address a scenario in which a retailer collects a tax, receives a consumer complaint, and then fails to refund the tax to the consumer or remit the tax to the IDR.

Finally, the Court affirmed the district court's dismissal of the taxpayer's non-tax-related claims that alleged JCP made material misrepresentations on its Internet site concerning shipping and handling charges.

Holding. The SSUTA does not create a private cause of action by a consumer against a retailer for the excess collection of sales tax. Also, the refund and credit provision against the IDR provided in Iowa Code section 423.47 is the exclusive remedy for a consumer seeking a refund of sales tax where the retailer has exercised its option to remit the collected taxes to the IDR pursuant to Iowa Code section 423.45.

LSA Monitor: Michael Mertens, Legal Services, (515) 281-3444.