



Iowa General Assembly

2016 Legal Updates

Legislative Services Agency – Legal Services Division

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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, a briefing should not be interpreted as advocating any particular course of action.*

EXCESS COLLECTION OF SALES TAX BY RETAILERS

Filed by the Iowa Supreme Court

June 10, 2016

Bass v. JC Penney Company, Inc.

No. 15-0334

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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 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.

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