

Class Action Suits Should Exclude State and Local Transaction Taxes

Position: *Sellers are required by law to collect sales and use tax from purchasers and remit the tax to appropriate state and local tax agencies. With limited exceptions, it is inappropriate for persons outside the tax agency to initiate class action lawsuits claiming over-collection of the tax (class action suits) when the seller remits the tax it collects.*

Explanation: Because tax laws are complex and subject to differing interpretations, each state has established a revenue agency charged with administering tax laws and applying them uniformly to taxpayers. The state or local tax agency, not outside parties such as private litigants, should initiate taxpayer examinations and enforce the tax laws the agency administers. A state's law should be clear that private parties may not interfere with a tax agency's administration of the tax and enforcement of tax laws.¹

Class Action Tax Lawsuits: Any person who overpays a tax should be eligible for a refund of the tax if timely claimed. However, a person alleging tax was overcharged should first be required to make a request for a refund with either: 1) the seller that remitted the tax to the tax agency; or 2) directly with the tax agency, depending on the state's procedure for claiming refunds. This model has been endorsed in the American Bar Association's "Transaction Tax Overpayment Model Act" and the Streamlined Sales and Use Tax Agreement.²

The ABA has developed "guiding principles" that include (but are not limited to) the following:

- Because sellers are fulfilling a statutory mandate in collecting the tax on behalf of the taxing jurisdiction, the burdens on sellers should be kept as low as possible and sellers should not be subject to lawsuits for their efforts to comply with their statutory obligations.
- Sellers do not benefit from any over-collection when they remit in full the taxes collected to the taxing jurisdictions.
- Transaction tax laws are complex, and their application to various fact situations may be unclear.
- A taxing jurisdiction has a compelling interest in the fair and equitable interpretation of its transaction tax laws and should be an indispensable party in any litigation determining the proper application of those laws.

Class action tax lawsuits are frequently frivolous because the amount of the overpayment per customer is negligible. However, the litigation costs to the seller can be quite high, and a seller is often limited as to what compensation reimbursement it can obtain even when it successfully demonstrates it collected the correct amount of tax. Even if tax is erroneously collected, a seller should not be subject to a class action suit when it collected the tax in good faith and remitted the tax to a tax agency.

Class action lawsuits inappropriately impose a significant burden on sellers that are merely serving as the states' tax collectors—remitting any tax collected, erroneous or not, to the tax agency. Class action lawsuits also hinder efforts by sellers and tax agencies to take the steps necessary to ensure accurate collection of the tax. Except for enforcement of a provision requiring the seller to directly refund a tax to a customer that provides written documentation within a reasonable period of time (e.g., at least 60 days), the seller should be immune from facing a class action lawsuit related to tax collection.

¹ In addition to taxes, this policy statement also applies to transactional fees administered by other governmental agencies.

² The ABA Transaction Tax Overpayment Model Act is available at: http://www.americanbar.org/content/dam/aba/administrative/taxation/policy_resolution_with_report_model_transactional_tax_overpayment_act.authcheckdam.pdf. Section 325 of the Streamlined Sales and Use Tax Agreement is available at: <http://www.streamlinedsalestax.org/index.php?page=modules>.