

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**KIMBERLY LOEFFLER AND AZUCENA
LEMUS,**

Plaintiff and Appellant,

v.

TARGET CORPORATION,

Defendant and Respondent.

S173972

On Appeal from an Order by the Court of Appeal,
Second Appellate District, Division Three, Case No. B199287,
Affirming Order Sustaining Demurrer

**APPLICATION OF THE CALIFORNIA STATE BOARD OF EQUALIZATION
FOR LEAVE TO FILE SUPPLEMENTAL *AMICUS CURIAE* BRIEF IN
SUPPORT OF RESPONDENT TARGET CORPORATION
AND SUPPLEMENTAL LETTER BRIEF**



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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June 29, 2011

Hon. Tani Cantil-Sakauye, Chief Justice
Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Loeffler et al. v. Target Corp.*
Los Angeles County Superior Court Case No. BC36004
Second Dist. Ct. of Appeal No. B199287
Supreme Court No. S173972

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, Rule 8.520, subdivision (d)(1), *amicus curiae* California State Board of Equalization (SBE) submits this letter brief to bring to the Court's attention a new appellate court decision from the state of Connecticut in support of Defendant/Respondent Target Corporation in this case, namely *Blass v. Rite Aid of Connecticut, Inc.* (Conn. 2011) 127 Conn.App. 569 [16 A.3d 737] (hereafter *Blass II*). Even though briefing has been completed, SBE hereby requests that this Court include this decision in the cases briefed. The Supreme Court's Web site indicates that the above-referenced *Loeffler* case has been fully briefed since May of 2010. The *Blass II* opinion was not issued until March 29, 2011. The SBE recognizes, of course, that as an out-of-state case, *Blass II* is not binding precedent upon this Court. Nevertheless, the SBE respectfully offers this decision as persuasive and relevant authority.

As in the action before this Court, the *Blass* case involved the question of whether unfair business practices laws could be used to adjudicate sales tax disputes. In *Blass II*, the Appellate Court of Connecticut resolved the question by applying reasoning very similar to that advanced by Respondent and its supporting *amici*. Specifically, the *Blass II* court adopted the decision of the trial court as a correct statement of the law, stating that, "because the [trial] court's thorough and well[-]reasoned memorandum of decision correctly and concisely addresses the issues raised in the present appeal, we adopt it as a proper statement of the law and applicable facts on the issues. See *Blass v. Rite Aid of Connecticut, Inc.*, 51 Conn. Sup. 622, 16 A.3d 855, 2009 Conn. Super. LEXIS 2263 (2009) [hereafter *Blass I*]. It would serve no useful purpose for this court to engage in further discussion of the issues." (*Blass II, supra*, 16 A.3d at p. 739.) Accordingly, for economy of expression, further references to the *Blass* opinion herein are inclusive of the trial court's memorandum of decision. A document containing a copy in Word format of the *Blass*

opinion (i.e., both the appellate (*Blass II*) and trial court (*Blass I*) decisions) is attached to this letter for the Court's ease of reference.

The *Blass* opinion discusses two major areas that are involved in *Loeffler*: (1) exhaustion of administrative remedies; and (2) whether a state's unfair business practices statutes impose duties on retailers that are separate from the duties imposed by the sales tax statutes. For the following reasons, the analysis of the *Blass* court should be adopted by this Honorable Court.

(1) Exhaustion of Administrative Remedies. The plaintiff in *Blass* claimed that she should be excused from any requirement that she exhaust her administrative remedies. The *Blass* opinion, however, dismissed this argument, stating in relevant part:

As for the plaintiff[']s claim that she should be excused from exhaustion of her administrative remedies under the above[-]described provision of the Sales Tax Act, it is readily apparent that the only reason for this assertion is her understandable desire to fund this claim through the attorney's fees and punitive damages provision of CUTPA [i.e., the Connecticut Unfair Business Practices Act], which have no express counterparts under the Sales Tax Act itself. The plaintiff[']s desire for other or greater relief than that provided by law, however, affords her no basis for claiming that the remedies provided by the Legislature are inadequate; [citation]; and of course the plaintiff has no experiential basis for so claiming since she has never attempted to invoke those administrative remedies.

(*Blass I, supra*, 16 A.3d 855, 862.)

As discussed in SBE's *amicus* brief, Plaintiffs/Appellants (Plaintiffs) in this action have numerous statutory and non-statutory avenues for relief that they could employ. Revenue and Taxation Code section 6901.5 contemplates that customers may contact the SBE with their complaints for investigation and resolution. Furthermore, under the SBE's inherent authority with respect to the sales and use tax law, customers have for many years been contacting the SBE with questions and complaints concerning retailers' tax reimbursement collection practices. In addition, customers can and do frequently contact the SBE Board Member for their respective districts with their inquiries and even sometimes lobby the Legislature for relief. Plaintiffs in this case, however, did not pursue any of these avenues.

The Court of Appeal below correctly held that the Legislature has not provided for a private cause of action for consumers to seek refunds of tax reimbursement. The Plaintiffs' efforts to eschew the relief available to them, and instead seek a remedy not expressly allowed by the Legislature, must fail here as it did in *Blass*.

(2) Application of Unfair Business Practices Statutes. The *Blass* opinion gives three reasons why retailers should not be subject to duties under both the sales tax act and the unfair business practices statutes. First, if the Connecticut legislature had wanted to subject retailer/taxpayers both to penalties under the sales tax statutes and in civil actions based on other statutes, it could easily have done so; but the Connecticut legislature did not do so. (*Blass I, supra*, 16 A.3d at p. 863.) Second, the improper collection of taxes, whether negligent or intentional, does not constitute an unfair or deceptive act or practice in the conduct of any trade or commerce under the language of the Connecticut unfair business practices law. (*Ibid.*) We

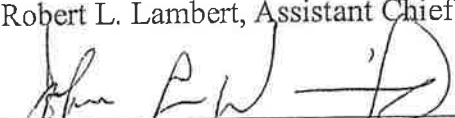
note that the *Blass* court's reasoning was strikingly similar to that advanced by the SBE and other *amici* in this case, including that the over-collection of tax raises a retailer's prices and thus works against its economic interest, and not in its favor. (See *ibid.*)

Third, Connecticut law expressly excludes from the definition of an unfair business practice all transactions or actions otherwise permitted under law as administered by any regulatory board or officer under statutory authority of the state or the United States. (*Blass I, supra*, 16 A.3d at p. 634.) As adduced in SBE's briefs, this Court came to the same conclusion regarding California's unfair business practices laws in *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163 [83 Cal.Rptr.2d 548]. In *Blass*, the court concluded that Rite-Aid's actions were "of this very sort" (i.e., actions permitted under law). (*Blass I, supra*, 16 A.3d at p. 864.) Here, SBE argues that, as the Second District Court of Appeal found below in this case, Target's actions in paying sales taxes and collecting tax reimbursements in the transactions at issue also were "of this very sort."

For the foregoing reasons, the SBE requests that this Court adopt reasoning consistent with that of the Appellate Court of Connecticut and as set forth in the SBE's amicus brief, and rule in favor of Respondent Target Corporation in this appeal.

Sincerely,

CALIFORNIA STATE BOARD OF
EQUALIZATION
Legal Department
Randy Ferris, Acting Chief Counsel
Robert L. Lambert, Assistant Chief Counsel


By JOHN WAID, Tax Counsel IV

Attachments:

- (1) *Blass v. Rite Aid of Connecticut, Inc.* (2011) 16 A.3d 737.
- (2) *Blass v. Rite Aid of Connecticut, Inc.* (2009) 16 A.3d 855.

JW:ds

cc: Ms. Kristine Cazadd (MIC:73)
Ms. Randy Ferris (MIC:83)
Ms. Christine Bisauta (MIC:82)
Mr. Robert Lambert (MIC:82)
Mr. Jeffrey Graybill (MIC:82)

ATTACHMENT 1

PAMELA BLASS v. RITE AID OF CONNECTICUT, INC.

HDCV095026554S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF HARTFORD AT
HARTFORD

51 Conn. Supp. 622; 16 A.3d 855; 2009 Conn. Super. LEXIS 2263

August 7, 2009, Decided

August 7, 2009, Filed

SUBSEQUENT HISTORY: Affirmed. *Blass v. Rite Aid of Connecticut, Inc.*, 127 Conn. App. 569, 16 A.3d 737, A.3d (2011).

Affirmed by, Adopted by *Blass v. Rite Aid of Connecticut, Inc.*, 127 Conn. App. 569, 16 A.3d 737, 2011 Conn. App. LEXIS 168 (2011)

DISPOSITION: Motion Granted.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant retailer filed a motion to dismiss plaintiff customer's complaint, which asserted violations of the Connecticut Sales and Use Taxes Act (Sales Tax Act), Conn. Gen. Stat. § 12-407(b)(8)(B), and the Connecticut Unfair Trade Practices Act (CUTPA), Conn. Gen. Stat. § 42-110b et seq. Plaintiff sought to represent a class of person from whom defendant miscollected sales tax from on purchases wherein the customer used coupons.

OVERVIEW: Plaintiff claimed that defendant's practice of charging sales tax on the gross sales prices of a customer's purchases before subtracting the full face value of coupons therefrom, constituted the miscollection of sales tax on the coupons, which were exempt from sales taxation under the Sales Tax Act, Conn. Gen. Stat. § 12-407(b)(8)(A), and constituted an unfair and deceptive trade practice under CUTPA. Defendant's motion to dismiss was premised on the trial court lacking subject matter jurisdiction because plaintiff's failed to exhaust her administrative remedies for miscollection of sales tax under the Sales Tax Act, Conn. Gen. Stat. § 12-425, and Conn. Gen. Stat. § 12-422. The court agreed with defendant, finding that the Sales Tax Act, Conn. Gen. Stat. § 12-425, was specifically designed to afford a remedy for the very type of injury of which plaintiff complained of regarding the miscollection of sales tax by defendant. The court further held that CUTPA did not apply to a tax miscollection case.


OUTCOME: The court granted defendant's motion to dismiss.


CORE TERMS: sales tax, administrative remedies, claimant, tax act, retailer, refund, notice, overpayment, exhaust, protest, coupon, unfair, tangible personal property,

proposed disallowance, quotation marks omitted, miscollection, collection, consumer, futile, sales price, face value, deceptive, redress, mail, exhaustion doctrine, subject matter jurisdiction, judicial review, exhaustion, prescribed, collected


LEXISNEXIS® HEADNOTES


Hide


Tax Law > State & Local Taxes > Administration & Proceedings > Judicial Review 


Tax Law > State & Local Taxes > Administration & Proceedings > Taxpayer Protests 


Tax Law > State & Local Taxes > Sales Tax > Imposition of Tax 

HN1  Conn. Gen. Stat. § 12-422 allows taxpayers dissatisfied with the Connecticut Commissioner of Revenue Services' decision under Conn. Gen. Stat. § 12-425 to appeal to a Connecticut Superior Court. [More Like This Headnote](#)


Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Jurisdiction 


Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Motions to Dismiss 

Evidence > Procedural Considerations > Burdens of Proof > Allocation 


HN2  Any defendant wishing to contest the court's jurisdiction may do so by filing a motion to dismiss. Conn. Gen. Prac. Book, R. Super. Ct. § 10-31. A motion to dismiss properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. When a court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light. In that regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. A motion to dismiss raises the question of whether a jurisdictional flaw is apparent on the record or by way of supporting affidavits. The plaintiff bears the burden of proving subject matter jurisdiction whenever and however raised. [More Like This Headnote](#)


Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies 

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Exhaustion of Remedies 


HN3  The doctrine of exhaustion of administrative remedies is grounded in a policy of fostering an orderly process of administrative adjudication and judicial review in which a reviewing court will have the benefit of the agency's findings and conclusions. The doctrine of exhaustion furthers the salutary goals of relieving the courts of the burden of deciding questions entrusted to an agency in advance of possible judicial review. Where there is a mechanism in place for adequate judicial review, the exhaustion doctrine requires that the government agency to which the administrative decision-making responsibility has been delegated be afforded the opportunity to determine whether it has jurisdiction or authority to act in a particular situation. Therefore, when the legislature, as part of a comprehensive statutory scheme to regulate a particular aspect of human activity, prescribes particular remedies for particular statutory violations and establishes a particular procedure for pursuing them, a person seeking redress for such a statutory violation must pursue such remedies through such procedures before resorting to the courts. [More Like This Headnote](#)


Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies 

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Exhaustion of Remedies 


HN4  There are two exceptions to the exhaustion of administrative remedies doctrine. The first exception applies in situations where the administrative remedy is futile or inadequate. An administrative remedy is futile or inadequate if the agency is without authority to grant the requested relief. It is futile for a plaintiff to seek a remedy only when that action could not result in a favorable decision and invariably would result in further judicial proceedings. The second exception applies in circumstances where the conduct complained of violates not only the statute whose alleged violation the administrative remedy is intended to remedy but separate rights of or duties owed to the plaintiff under other statutes or other law. [More Like This Headnote](#)


Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies 


Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Exhaustion of Remedies 

HN5  A court considering the merits of an exhaustion claim must carefully examine both the plaintiff's complaint and the statute prescribing the administrative remedy he is claimed not to have exhausted. The question presented by that examination is whether the issues raised in the complaint are the very issues


which the administrative remedy statute was intended to test and resolve. If they are, the remedy must ordinarily be exhausted before the plaintiff can file an action in court. [More Like This Headnote](#)


[Tax Law > State & Local Taxes > Sales Tax > Definitions](#) 

[Tax Law > State & Local Taxes > Sales Tax > Imposition of Tax](#) 

HN6  The Connecticut Sales and Use Taxes Act, Conn. Gen. Stat. § 12-408(1), provides, in part, that a tax is hereby imposed on all retailers at the rate of six percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or from the rendering of any services constituting a sale in accordance with Conn. Gen. Stat. § 12-407(a)(2). The term gross receipts is defined by § 12-407(9)(A) to mean the total amount for which tangible personal property is sold by a retailer, excluding the full face value of any coupon used by a purchaser to reduce the price paid to a retailer for an item of tangible personal property, whether or not the retailer will be reimbursed for such coupon, in whole or in part, by the manufacturer of the item of tangible personal property or by a third party. [More Like This Headnote](#)


[Tax Law > State & Local Taxes > Administration & Proceedings > Credits, Overassessments & Refunds](#) 


[Tax Law > State & Local Taxes > Sales Tax > Imposition of Tax](#) 

HN7  The Connecticut Sales and Use Taxes Act, Conn. Gen. Stat. § 12-425, provides that a person who has overpaid sales tax may pursue a refund of the amount of his overpayment by filing a written claim therefor with the Connecticut Commissioner of Revenue Services not later than three years from the end of the month for which such overpayment was made. The statute provides that such claim shall state the specific grounds upon which it is made, and that failure to file a timely claim in the form prescribed by the statute shall constitute a waiver of any demand against the State on account of overpayment. The Commissioner is empowered by the statute to determine whether such claim is valid and, if so, shall notify the State Comptroller of the amount of the refund to which the claimant is entitled. If, however, the Commissioner determines that the claim is not valid, in whole or in part, he shall mail notice of the proposed disallowance to the claimant in the manner prescribed for a notice of deficiency assessment. Within sixty days thereafter, the claimant may file with the Commissioner a written protest in which he sets forth the grounds therefor. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

Tax Law > State & Local Taxes > Administration & Proceedings > Credits, Overassessments & Refunds 


Tax Law > State & Local Taxes > Administration & Proceedings > Taxpayer Protests 

Tax Law > State & Local Taxes > Sales Tax > Imposition of Tax 

HN8  In response to a protest under the Connecticut Sales and Use Taxes Act, Conn. Gen. Stat. § 12-425, the Connecticut Commissioner of Revenue Services shall reconsider the proposed disallowance and may order a hearing on the question. Ultimately, the Commissioner shall finally determine the protest and mail written notice of his determination to the claimant. That determination shall become final unless the plaintiff appeals from it to a Connecticut Superior Court. The statute thus establishes a detailed yet simple procedure by which any consumer who claims to have overpaid sales tax on tangible goods or services must seek a refund of such overpayment tax or forever waive her right to do so. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


Tax Law > State & Local Taxes > Administration & Proceedings > Credits, Overassessments & Refunds 


Tax Law > State & Local Taxes > Administration & Proceedings > Taxpayer Protests 


Tax Law > State & Local Taxes > Sales Tax > Imposition of Tax 


HN9  See Conn. Gen. Stat. § 12-425.

Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue 


Tax Law > State & Local Taxes > Administration & Proceedings > Judicial Review 

Tax Law > State & Local Taxes > Sales Tax > Imposition of Tax 


HN10  The Connecticut Sales and Use Taxes Act, Conn. Gen. Stat. § 12-425, expressly affords any person aggrieved by the decision of the Connecticut Commissioner of Revenue Services on a request for relief under Conn. Gen. Stat. § 12-425 the right to appeal to a Connecticut Superior Court. An appeal from the Commissioner's determination under Conn. Gen. Stat. § 12-425, in turn, is governed by Conn. Gen. Stat. § 12-422 (2009). [More Like This Headnote](#)


Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue 


Tax Law > State & Local Taxes > Administration & Proceedings > Judicial Review 


HN11  See Conn. Gen. Stat. § 12-422 (2009).


Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies 


Tax Law > State & Local Taxes > Administration & Proceedings > Judicial Review 


Tax Law > State & Local Taxes > Sales Tax > Imposition of Tax 


HN12  By affording an aggrieved applicant for a refund of miscallected sales tax an appeal to a Connecticut Superior Court, and proving that such appeal will be a preferred case in which the court may grant such relief as may be equitable, Conn. Gen. Stat. § 12-422 (2009) makes clear the intention of the legislature to require all persons who wish to obtain refunds of overpaid sales tax to utilize such statutory procedures to obtain the full measure of relief to which they are equitably entitled by reason of the overpayment. A plaintiff's failure to exhaust such remedies before bringing suit for miscallection of sales tax in any other kind of legal proceeding is a defect in the subject-matter jurisdiction of the Court. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies 


Antitrust & Trade Law > Consumer Protection > Deceptive Acts & Practices > State Regulation 

Tax Law > State & Local Taxes > Administration & Proceedings > Taxpayer Protests 


HN13  The Connecticut Legislature has outlined a comprehensive remedial process for tax miscallection. Invoking a separate statutory procedural prescription, such as the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b et seq., threatens to disrupt the administrative process that already occupies the field of tax miscallection. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

Antitrust & Trade Law > Consumer Protection > Deceptive Acts & Practices > State Regulation 

Antitrust & Trade Law > Private Actions > Injuries & Remedies > State Regulation 


HN14  The Connecticut Unfair Trade Practices Act (CUTPA), Conn. Gen. Stat. § 42-

110b et seq., seeks to protect consumers from deceptive acts or practices in the conduct of trade or commerce. Conn. Gen. Stat. § 42-110b. The purpose of CUTPA is to protect the public from unfair practices in the conduct of any trade or commerce, and whether a practice is unfair depends upon the finding of a violation of an identifiable public policy. The Connecticut Legislature has expressly stated that in construing CUTPA, the courts shall be guided by interpretations of the Federal Trade Commission Act, 15 U.S.C.S. § 45(a)(1). Conn. Gen. Stat. § 42-110b(b). A plaintiff may bring a CUTPA claim that is predicated upon the public policy embodied in another statute, irrespective or whether that conduct in question is expressly prohibited by the letter of the statute, so long as the claim is consistent with the regulatory principles established by the underlying statute. [More Like This Headnote](#)

Antitrust & Trade Law > Consumer Protection > Deceptive Acts & Practices > State Regulation 


Tax Law > State & Local Taxes > Administration & Proceedings > Credits, Overassessments & Refunds 

Tax Law > State & Local Taxes > Administration & Proceedings > Taxpayer Protests 

HN15  The miscollection of taxes, whether negligent or intentional, does not constitute an unfair or deceptive act or practice in the conduct of any trade or commerce under the language of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b et seq., or the CUTPA or the Federal Trade Commission Act, 15 U.S.C.S. § 45(a)(1). A retailer gains no personal benefit from the overcollection of taxes. In fact, such activity only increases the retailer's prices, working against its economic interest. When a retailer overcharges sales tax, the customer's overall purchase price increases. Customers charged more per transaction are more likely to reduce purchases made from the retailer or, more harmful still, to shop at competing stores. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

Administrative Law > Agency Rulemaking > State Proceedings 

Antitrust & Trade Law > Consumer Protection > Deceptive Acts & Practices > State Regulation 

HN16  The Connecticut Unfair Trade Practices Act (CUTPA), Conn. Gen. Stat. § 42-110c(a), expressly excludes from CUTPA all transactions or actions otherwise permitted under law as administered by any regulatory board or officer under statutory authority of the State of Connecticut or the United States. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

COUNSEL: Steven E. Arnold and Peter M. Van Dyke, for the plaintiff.

Charles L. Howard and Laurie A. Sullivan, for the defendant.

JUDGES: [***1] Michael R. Sheldon v, J.

OPINION BY: Michael R. Sheldon v

OPINION

[**857] [*622] MEMORANDUM OF DECISION ON MOTION TO DISMISS

SHELDON v, J. This case arises out of a retail sales transaction on May 15, 2008, in which the defendant, Rite Aid of Connecticut, Inc. v("Rite Aid"), collected \$ 0.24 in sales tax from the plaintiff, Pamela Blass, on [*623] the \$ 3.96 gross sales price of four items valued at \$ 0.99 apiece before subtracting the full face value of two \$ 1.00 coupons she had submitted in partial payment for the purchase. The plaintiff, who seeks to represent herself and a class of similarly situated Rite Aid customers in this matter, claims that Rite Aid's practice of charging sales tax on the gross sales prices of customers' purchases before subtracting the full face value of coupons therefrom, constitutes the miscollection of sales tax on coupons, which are exempt from sales taxation under the Connecticut Sales and Use Taxes Act ("Sales Tax Act"), Conn. Gen. Stat. § 12-407(a)(8)(B), and thus, allegedly, an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act ("CUTPA"), General Statutes § 42-110a et seq.

FOOTNOTES

¹ No class has yet been certified.

The defendant has moved this Court under § 10-30 of the Connecticut Practice Book [***2] to dismiss this case for lack of subject matter jurisdiction. As grounds for the Motion, the defendant claims that the plaintiff has failed to exhaust her administrative remedies for mis-collection of sales tax under relevant provisions of the Sales Tax Act, more particularly General Statutes § 12-425² [**858] and § 12-422.³ The defendant has supported its Motion with a memorandum of law.

FOOTNOTES

² See footnote 4.

³ General Statutes § 12-422 ^{HN1} allows taxpayers dissatisfied with the Commissioner of Revenue Services' decision under § 12-425 to appeal to the Superior Court for the judicial district of New Britain.

The plaintiff opposes the defendant's Motion on two grounds: first, that the exhaustion doctrine is assertedly inapplicable to her claim because the remedy afforded to her by the cited provisions of the Sales Tax Act is "futile or inadequate"; and second, that notwithstanding the availability of that administrative remedy, CUTPA furnishes her an independent basis for pursuing relief [*624] in this action for a separate legal injury of the sort that that remedy was not designed to redress.

STANDARD OF REVIEW

^{HN2} Any defendant wishing to contest the court's jurisdiction may do so by filing a motion to dismiss. *Practice Book* § 10-31. "A motion [***3] to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Filippi v. Sullivan*, 273 Conn. 1, 8, 866 A.2d 599 (2005). "When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) *Id.* "A motion to dismiss raises the question of whether a jurisdictional flaw is apparent on the record or by way of supporting affidavits." *Herzog Foundation, Inc. v. University of Bridgeport*, 41 Conn.App. 790, 793, 677 A.2d 1378 (1996) on other grounds, 243 Conn. 1, 699 A.2d 995 (1997). "[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 265 Conn. 423, 430, 829 A.2d 801 (2003) [***4].

ANALYSIS

^{HN3} The doctrine of exhaustion of administrative remedies "is grounded in a policy of fostering an orderly process of administrative adjudication, and judicial review in which a reviewing court will have the benefit [*625] of the agency's findings and conclusions." *Concerned Citizens of Sterling v. Sterling*, 204 Conn. 551, 557, 529 A.2d 666 (1987). "The doctrine of exhaustion furthers the salutary goals of relieving the courts of the burden of deciding questions entrusted to an agency . . . in advance of possible judicial review." (Internal quotation marks omitted.) *Id.* "[W]here . . . there is a mechanism in place for adequate judicial review, the exhaustion doctrine requires that the government agency to which the administrative decision-making responsibility has been delegated be afforded the opportunity to determine whether it has jurisdiction or authority to act in a

particular situation." *Francini v. Zoning Board of Appeals*, 228 Conn. 785, 794, 639 A.2d 519 (1994). Therefore, when the legislature, as part of a comprehensive statutory scheme to regulate a particular aspect of human activity, prescribes particular remedies for particular [*859] statutory violations and establishes [***5] a particular procedure for pursuing them, a person seeking redress for such a statutory violation must pursue such remedies through such procedures before resorting to the courts.

^{HN4} ¶ There are two exceptions to the exhaustion doctrine, understood as aforesaid. The first exception applies in situations where the administrative remedy is "futile or inadequate." An administrative remedy is futile or inadequate if "the agency is without authority to grant the requested relief." *Neiman v. Yale University*, 270 Conn. 244, 259, 851 A.2d 1165 (2004). It is futile for the plaintiff to seek a remedy only when that action could not result in a favorable decision and invariably would result in further judicial proceedings. *Id.* The second exception applies in circumstances where the conduct complained of violates not only the statute whose alleged violation the administrative remedy is intended to remedy but separate rights of or duties owed to the plaintiff under other [*626] statutes or other law. To the degree that the plaintiff seeks redress for alleged violation of such a separate right or duty instead of for violation of the statute for which the administrative remedy is provided, no purpose is served by requiring [***6] her to exhaust that remedy prior to suing on the separate breach of duty.

Against this background, ^{HN5} ¶ a Court considering the merits of an exhaustion claim must carefully examine both the plaintiff's complaint and the statute prescribing the administrative remedy he is claimed not to have exhausted. *Savoy Laundry, Inc. v. Stratford*, 32 Conn.App. 636, 640, 630 A.2d 159 (1993). The question presented by this examination is whether the issues raised in the complaint are the very issues which the administrative remedy statute was intended to test and resolve. *Id.*, 641. If they are, the remedy must ordinarily be exhausted before the plaintiff can file an action in court.

In this case, as previously noted, the plaintiff has based her CUTPA claim against the defendant upon a single alleged violation of the Sales Tax Act, to wit: the defendant's alleged collection from her of \$ 0.24 in sales tax on the gross sale price of four items valued at \$ 0.99 apiece before subtracting the full face value of two \$ 1.00 coupons from the price. Such conduct, she claims, caused her injury by miscalculating from her the sum of \$ 0.12 in sales tax that she should not have been required to pay under General Statutes § 12-408 (1).

Section 12-408(1) [***7] ^{HN6} ¶ provides, in relevant part that "a tax is hereby imposed on all retailers at the rate of six per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or from the rendering of any services constituting a sale in accordance with subdivision (2) of subsection (a) of section 12-407.

[*627] As used in this statute, the term "gross receipts" is defined by § 12-407(a)(9)(A) to mean "the total amount of the sales price from retail sales of tangible personal property by a retailer," excluding "the full face value of any coupon used by a purchaser to reduce

the price paid to the retailer for an item of tangible personal property, whether or not the retailer will be reimbursed for such coupon, in whole or in part, by the manufacturer of the item of tangible personal property or by a third party" General Statutes § 12-407(a)(8)(B).

Similarly, the term "sales price," as used in the foregoing definition and in § 12-407 (a) (8) (A), is defined to mean "the total amount for which tangible personal property [**860] is sold by a retailer," excluding "the full face value of any coupon used by a purchaser to reduce the price paid to a retailer for an item of tangible personal [***8] property, whether or not the retailer will be reimbursed for such coupon, in whole or in part, by the manufacturer of the item of tangible personal property or by a third party. . . ." General Statutes § 12-407(a)(8)(B).

Read together, claims the plaintiff, the foregoing statutes conclusively establish that the defendant miscollected sales tax from her in the amount of \$ 0.12.

In light of this particular claim of injury, the questions presented under the exhaustion doctrine, as the parties have disputed it on this Motion, are threefold: first, whether the administrative remedy which the defendant claims the plaintiff should have exhausted before filing this action was intended, by the legislature to serve as the primary or exclusive means of redressing this particular type of injury; second, if it was, whether that remedy has become so futile or inadequate as to relieve the plaintiff of what-would otherwise be her obligation to exhaust it before filing suit; and third, whether or not the conduct complained of also violated other rights of the plaintiff or duties owed to her under CUTPA, for [*628] which she should not be prevented from seeking relief in this forum because the unexhausted administrative remedy was not intended to redress [***9] them.

The administrative remedy here invoked by the defendant is set forth in § 12-425, which is an integral part of the Sales Tax Act. General Statutes § 12-406 et seq. The Sales Tax Act is a comprehensive set of statutes which establish, inter alia, the obligation of consumers to pay sales tax on certain tangible goods and services, the obligation of retailers to collect such taxes on behalf of the State and to remit them to the Department of Revenue Services ("DRS"), the power of the Commissioner of Revenue Services ("Commissioner") to promulgate and enforce administrative regulations governing the payment collection and remission of sales taxes and otherwise to enforce all obligations arising under the Act.

Section 12-425 ^{HN7} provides that a person who has overpaid sales tax may pursue a [**861] refund of the amount of [*629] his overpayment by filing a written claim therefor with the Commissioner of Revenue Services not later than three years from the end of the month for which such overpayment was made. The statute provides that such claim shall state the specific grounds upon which it is made, and that failure to file a timely claim in the form prescribed by the statute shall [***10] constitute a waiver of any demand against the State on account of overpayment. The Commissioner is empowered by the statute to determine whether such claim is valid and, if so, shall notify

the State Comptroller of the amount of the refund to which the claimant is entitled. If, however, the Commissioner determines that the claim is not valid, in whole or in part, he shall mail notice of the proposed [*630] disallowance to the claimant in the manner prescribed for a notice of deficiency assessment. Within sixty days thereafter, the claimant may file with the Commissioner a written protest in which he sets forth the grounds therefor. ^{HNS} In response to such a protest, the Commissioner shall reconsider the proposed disallowance and may order a hearing on the question. Ultimately, the Commissioner shall finally determine the protest and mail written notice of his determination to the claimant. That determination shall become final unless the plaintiff appeals from it to this Court. The statute thus establishes a detailed yet simple procedure by which any consumer who claims to have overpaid sales tax on tangible goods or services must seek a refund of such overpayment tax or forever waive her right [***11] to do so. It is apparent from the examination of this statute that it was specifically designed to afford a remedy for the very type of injury of which the plaintiff here complains.

FOOTNOTES

⁴ General Statutes § 12-425 provides in full as follows: ^{HNS} Overpayments and refunds. (1) Claim limitation period. No refund shall be allowed unless a claim therefor is filed with the commissioner within three years from the last day of the month succeeding the period for which the overpayment was made, or, with respect to assessments made under sections 12-415 and 12-416, within six months after the assessments become final. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the commissioner within such period, or unless the credit relates to a period for which a waiver is given pursuant to subsection (g) of section 12-415.

"(2) Conditions; sales tax reimbursement No credit or refund of any amount paid pursuant to section 12-411 shall be allowed on the ground that the storage, acceptance, consumption or other use of the services or property is exempted under subdivision (1) of section 12-413, unless in addition to the [***12] overpayment for which the claim is filed the claimant also has reimbursed the claimant's vendor for the amount of the sales tax imposed upon the claimant's vendor with respect to the sale of the property and paid by the vendor to the state.

"(3) Form and content of claim. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

"(4) Effect of failure to file claim. Failure to file a claim within the time prescribed in this section constitutes a waiver of any demand against the state on account of overpayment.

"(5) Determination of validity. Notice of action. (A) The commissioner, upon receipt of such claim for refund, shall determine whether such claim is valid and, if so, shall notify the State Comptroller of the amount of such refund and the State Comptroller shall draw an order on the State Treasurer for payment of such refund. If the commissioner determines that such claim is not valid, either in whole or in part, he shall mail notice of the proposed disallowance to the claimant in the manner prescribed for service of notice of a deficiency assessment. Sixty days after the date on which it is mailed, a notice of proposed disallowance shall [***13] constitute a final disallowance except only for such amounts as to which the claimant has filed, as provided in subparagraph (B) of this subdivision, a written protest with the commissioner.

"(B) On or before the sixtieth day after the mailing of the proposed disallowance, the claimant may file with the commissioner a written protest against the proposed disallowance in which the claimant sets forth the grounds on which the protest is based. If a protest is filed, the commissioner shall reconsider the proposed disallowance and, if the claimant has so requested, may grant or deny the claimant or the claimant's authorized representatives an oral hearing.

"(C) The commissioner shall mail notice of his determination to the claimant, which notice shall set forth briefly the commissioner's findings of fact and the basis of decision in each case decided in whole or in part adversely to the claimant.

"(D) The action of the commissioner on the claimant's protest shall be final upon the expiration of one month from the date on which he mails notice of his action to the claimant unless within such period the claimant seeks judicial review of the commissioner's determination pursuant to section 12-422."

Importantly, [***14] moreover, the Sales Tax Act ^{HN10} expressly affords any person aggrieved by the decision of the Commissioner on a request for relief under § 12-425 the right to appeal to this Court. An appeal from the Commissioner's determination under § 12-425, in turn, is governed by General Statutes § 12-422, which provides in relevant part as follows: ^{HN11} "Any taxpayer aggrieved because of any order, decision, determination or disallowance of the Commissioner of Revenue Services under section . . . 12-425 may, within one month after service upon the taxpayer of notice of such order, decision, determination or disallowance, take an appeal therefrom to the superior court, for the judicial [**862] district of New Britain, which shall be accompanied by a citation to the Commissioner of Revenue Services to appear before said court. . . . Such appeals shall be *preferred cases*, to be heard, unless cause appears to the contrary, at the first session, by the court or by a committee appointed by it. *Said court may grant such relief as [**631] may be equitable* and, if such tax has been paid prior to the granting of such relief, may order the Treasurer to pay the amount of such relief, with interest at [***15] the rate of two-thirds of one per cent per month or fraction thereof, to the aggrieved taxpayer" (Emphasis added.) General Statutes § 12-422

^{HN12} By affording an aggrieved applicant for a refund of miscollected sales tax an appeal to this Court, and proving that such appeal will be a "preferred case" in which the court "may grant such relief as may be equitable," this statute makes clear the intention of the legislature to require all persons who wish to obtain refunds of overpaid sales tax to utilize such statutory procedures to obtain the full measure of relief to which they are equitably entitled by reason of the overpayment. A plaintiff's failure to exhaust such remedies before bringing suit for miscollection of sales tax in any other kind of legal proceeding is a defect in the subject matter jurisdiction of this Court.

As for the plaintiff's claim that she should be excused from exhaustion of her administrative remedies under the above described provision of the Sales Tax Act, it is readily apparent that the only reason for this assertion is her understandable desire to fund this claim through the attorney's fees and punitive damages provision of CUTPA, which have no express counterparts [***16] under the Sales Tax Act itself. The plaintiff's desire for other or greater relief than that provided by law, however, affords her no basis for claiming that the remedies provided by the Legislature are inadequate; *Savoy Laundry, Inc. v. Stratford*, supra, 32 Conn. App. 640; and of course the plaintiff has no experiential basis for so claiming since she has never attempted to invoke those administrative remedies. In short, there is simply no basis for claiming, as the plaintiff must prove to invoke the "futile or inadequate" exception to the rule, that the Commissioner, in the first instance, or this [**632] Court, on a subsequent appeal, is

incapable of granting the relief made available by law for the injury here claimed. Indeed, it quite clearly appears that the contrary is true, especially since the Court on appeal is empowered, without limitation, to grant "whatever relief as may be equitable" in the circumstances presented.

This brings us finally to the plaintiffs argument that she should not be required to exhaust her administrative remedies under the Sales Tax Act because the injury she complains of violated a separate legal duty owed to her by the defendant under CUTPA, which [***17] the unexhausted administrative remedies here at issue were not designed or intended to redress. If such a separate duty was violated, no purpose would be served by requiring her to exhaust her administrative remedies, for the Legislature could not be found to have created those remedies for the purpose of redressing those conceptually independent legal wrongs. For the following reasons, the Court concludes that the argument has no merit.

There are three reasons why the plaintiffs invocation of CUTPA is inappropriate for tax miscollection. First, as stated in the foregoing analysis, the plaintiff must seek *one* remedy as she has alleged *one* harm. ^{HN13} The Legislature has outlined a comprehensive remedial process for tax miscollection. Invoking a separate statutory procedural prescription, such as CUTPA, [**863] threatens to disrupt the administrative process that already occupies the field of tax miscollection. The Legislature most likely did not want to subject retailers that act on behalf of the State when collecting taxes *both* to penalties under the Sales Tax Act *and* to civil actions based on other statutes. Had the Legislature wanted, retailers to answer to consumers for the miscollection of taxes, [***18] it could easily have conferred that right upon them in the Sales Tax Act statute itself, which it did not.

[*633] Second, the application of CUTPA is inappropriate because that law ^{HN14} seeks to protect consumers from "deceptive acts or practices *in the conduct of any trade or commerce.*" (Emphasis added.) General Statutes § 42-110b (a). "The purpose of CUTPA is to protect the public from unfair practices in the conduct of any trade or commerce, and whether a practice is unfair depends upon the finding of a violation of an identifiable public policy." (Internal quotation marks omitted.) *Eder Bros., Inc. v. Wine Merchants of Connecticut, Inc.*, 275 Conn. 363, 380, 880 A.2d 138 (2005). The Legislature has expressly stated that in construing CUTPA the courts shall be guided by interpretations of the Federal Trade Commission Act (FTCA), 15 U.S.C. 45(a)(1). General Statutes § 42-110b(b). Accordingly, our Supreme Court has held: "(A) plaintiff may bring a CUTPA claim that is predicated upon the public policy embodied in another statute, irrespective or whether that conduct in question is expressly prohibited by the letter of that statute, so long as the claim is consistent with the regulatory principles established by the underlying statute." [***19] (Emphasis added; internal quotation marks omitted.) *Eder Bros., Inc. v. Wine Merchants of Connecticut, Inc.*, supra, 381.

^{HN15} The mis-collection of taxes, whether negligent or intentional, does not constitute an unfair or deceptive act or practice in the conduct of any trade or commerce under the language of CUTPA or the FTCA. A retailer gains no personal benefit from the over

collection of taxes. In fact, such activity only increases the retailer's prices, working against its economic interest. When a retailer overcharges sales tax, the customer's overall purchase price increases. Customers charged more per transaction are more likely to reduce purchases made from the retailer or, more harmful still, to shop at competing stores. Likewise, the defendant's action in this case was not commercial because when it collected the [*634] plaintiff's money for taxes, it did so as an agent of the State. There is no allegation that the defendant kept any of the mis-collected taxes for itself. On the contrary, the plaintiff concedes that all the taxes collected from her were remitted to the Commissioner, further supporting the notion that the plaintiffs true and only claim is against the State, not the defendant.

Third, § 42-110c(a) ^{HN16} expressly excludes from CUTPA all "[t]ransactions or actions otherwise permitted [***20] under law as administered by any regulatory board or officer acting under statutory authority of the [S]tate or of the United States" The defendant's actions are of this very sort. It collects taxes for the State under the regulatory authority of the Commissioner. Should the defendant violate any provision of the Sales Tax Act, it is subject to the regulatory authority of the Commissioner. Section 42-110c(a) thus appears to be a preemptive move by the Legislature to exempt from CUTPA all conduct that is subject to other comprehensive regulatory schemes. For example, in *Connelly v. Housing Authority*, 213 Conn 354, 361, 567 A.2d 1212 (1990) the Connecticut Supreme Court upheld [**864] a summary judgment, denying the plaintiffs CUTPA action against a municipal housing authority because its relevant conduct was regulated by the United States Department of Housing and Urban Development ("HUD"), and thus was excluded from the scope of the statute under § 42-110c(a). Although the *Connelly* Court recognized that municipal housing authorities typically engage in commercial activities, such as the leasing and renting of apartments, that fall within the purview of CUTPA, "the actions of the defendant, [***21] a creature of statute, are expressly authorized and pervasively regulated by both the state department of housing and HUD." Id.

The foregoing analysis is entirely consistent with similar claims that have been dismissed for failure to [*635] exhaust remedies in this state and in other jurisdictions. In *Peruta v. Emcon Cheshire, Ltd.*, Superior Court, judicial district of New Britain, Docket No. CV-05-4004390-S (June 8, 2006) (41 Conn. L. Rptr. 552, 2006 Conn. Super. LEXIS 1934), Judge Shaban dismissed a similar claim for lack of subject matter jurisdiction because the plaintiffs had failed to exhaust their administrative remedies. There, the plaintiffs alleged that the defendant had improperly collected sales tax on their purchase of certain food items allegedly exempt from sales taxation. There, as here, the plaintiffs claimed that the defendant's actions violated CUTPA, specifically because it had negligently miscollected the tax. The Court ruled that after "review[ing] the pleadings . . . regardless of how the defendant has characterized its motion and structured its request for action by the court, the plaintiffs have failed to exhaust their administrative remedies relative to their claim." Id.

Other states have reached the same conclusion when improper sales tax collection has been challenged under consumer protection [***22] laws similar to CUTPA. A

California appellate court upheld a trial court's dismissal of a class action lawsuit against Target, Inc., for improperly collecting sales tax on "take-out" hot coffee, in alleged violation of the state's unfair competition law. *Loeffler v. Target Corp.*, 173 Cal.App.4th 1229, 93 Cal. Rptr. 3d 515 (2009). The *Loeffler* Court rejected the plaintiffs attempt to use consumer remedy laws to adjudicate what it concluded was in "reality a tax refund case." *Id.* at 1247. It found that the plaintiffs success in such an action would undermine, the policy which gives the tax revenue board an opportunity to correct any mistakes through process, outlined in California's sales tax act, thereby avoiding, the costs of litigation and the undue expenditure of judicial resources. *Id.* The Massachusetts Supreme Judicial Court has also upheld a trial court's decision to dismiss a class action lawsuit against [*636] Dell, Inc., based on allegedly improper sales tax collection under the State's unfair or deceptive practices act, because "[w]here a party's actions are motivated by legislative mandate," the unfair or deceptive practices act does not apply. *Feeney v. Dell, Inc.*, 454 Mass. 192, 212, 908 N.E.2d 753 (2009) [***23] The Court there stated that the plaintiffs claim was not commercial in nature because it was based on a component of the transaction--the collection of taxes--which is not motivated by "business or personal reasons,"; *id.*; and thus fell outside the purview of the statute.

CONCLUSION

For the reasons set forth above, the defendant's Motion to Dismiss is GRANTED.

ATTACHMENT 2

PAMELA BLASS v. RITE AID OF CONNECTICUT, INC.

AC 31563

APPELLATE COURT OF CONNECTICUT

127 Conn. App. 569; 16 A.3d 737; 2011 Conn. App. LEXIS 168

December 3, 2010, Argued
March 29, 2011, Officially Released

PRIOR HISTORY: [***1]

Appeal from Superior Court, judicial district of Hartford, Sheldon, J.
Blass v. Rite Aid of Connecticut, Inc., 51 Conn. Supp. 622, 16 A.3d 855, 2009 Conn.
Super. LEXIS 2263 (Conn. Super. Ct., Aug. 7, 2009)

CORE TERMS: sales tax, coupon, retailer, sale price, administrative remedies,
deducting, tangible personal property, Taxes Act, subject matter, failed to exhaust, price
paid, face value, calculated, charging, thorough, unfair, retail

COUNSEL: Peter M. Van Dyke ↘, for the appellant (plaintiff).

Charles L. Howard ↘, with whom was Laurie A. Sullivan ↘, for the appellee
(defendant).

JUDGES: Harper ↘, Beach ↘ and Bear ↘, Js. HARPER ↘, J.

OPINION BY: HARPER ↘

OPINION

[*570] [**738] HARPER ↘, J. The plaintiff, Pamela Blass, appeals from the judgment of the trial court, granting the motion of the defendant, Rite Aid of Connecticut, Inc., ↘ to dismiss her complaint alleging improper collection of sales tax in violation of the Sales and Use Taxes Act, General Statutes § 12-406 et seq., and a violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. The plaintiff claims that the trial court improperly concluded that it lacked subject matter jurisdiction over her claim because she failed to exhaust her administrative remedies. We disagree and affirm the judgment of the trial court.

The record, including the findings set forth in the trial court's memorandum of decision, reveals the following facts and procedural history that are relevant to our resolution of the

plaintiff's claim. On May 15, 2008, the defendant collected from the plaintiff twenty-four cents in sales tax. The sales tax was [***2] based on the gross purchase price of \$3.96 for four items costing ninety-nine cents each and was calculated prior to deducting the full value of two coupons the plaintiff had submitted, which were valued at \$1 each. On January 22, 2009, the plaintiff filed her complaint, seeking to represent [*571] herself and similarly situated plaintiffs in a class action lawsuit. ¹ It is undisputed that the plaintiff did not avail herself of any administrative remedies prior to filing her complaint. The plaintiff claimed that by charging her twenty-four cents in sales tax based on the pre-coupon total sale price of \$3.96, rather than charging her twelve cents in sales tax based on the postcoupon sale price of \$1.96, the defendant violated General Statutes §§ 12-408, 12-411, and 12-407 (a) (8) (A) and (9) (A). The plaintiff further alleged that by calculating sales tax before deducting the value of the coupons, and thereby collecting from her a larger amount of tax than allowed by law, ² the defendant engaged in an unfair and deceptive trade practice in violation of CUTPA. On February 5, 2009, the defendant filed a motion to dismiss on the ground that the court lacked subject matter over the claim because [***3] the plaintiff failed to exhaust her administrative remedies. The court, *Sheldon, J.*, granted the defendant's motion to dismiss on August 7, 2009. In its memorandum of decision, the court concluded that the Sales and Use Taxes Act provides an adequate administrative remedy that the plaintiff was required to exhaust before bringing her action to the trial court. Moreover, the court concluded that the plaintiff did not have recourse to an independent cause of action under [*572] CUTPA [**739] for the defendant's alleged miscalculation of sales tax.

FOOTNOTES

¹ At the time the motion to dismiss was granted, no class had been certified.

² General Statutes § 12-408 (1) provides in relevant part that "a tax is hereby imposed on all retailers at the rate of six per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail" The term "gross receipts," as it is used in § 12-408 (1), is defined in General Statutes § 12-407 (a)(9) (A) as "the total amount of the sales price from retail sales of tangible personal property by a retailer" The term "sales price" is defined as excluding "the full face value of any coupon used by a purchaser to reduce the price paid to [***4] a retailer for an item of tangible personal property" General Statutes § 12-407 (a)(8) (B). The basis of the plaintiff's claim is that these statutes require a retailer to calculate the sales tax as 6 percent of the price paid for the item after deducting the full face value of the coupons. The plaintiff alleges that the defendant calculated the sales tax before deducting the value of the

coupon in violation of the procedure set forth in these statutes.

On appeal, the plaintiff essentially renews the arguments made before the trial court. After a thorough review of the record, we conclude that the judgment of the trial court should be affirmed. Moreover, because the court's thorough and well reasoned memorandum of decision correctly and concisely addresses the issues raised in the present appeal, we adopt it as a proper statement of the law and applicable facts on the issues. See *Blass v. Rite Aid of Connecticut, Inc.*, 51 Conn. Sup. 622, 16 A.3d 855, 2009 Conn. Super. LEXIS 2263 (2009). It would serve no useful purpose for this court to engage in further discussion of the issues. See, e.g., *National Waste Associates, LLC v. Travelers Casualty & Surety Co. of America*, 294 Conn. 511, 515, 988 A.2d 186 (2010).

The judgment [***5] is affirmed.

DECLARATION OF SERVICE

Case Name: **Kimberly Loeffler and Azucena Lemus v. Target Corporation**

Case Number: Supreme Court Case No. S173972

I declare:

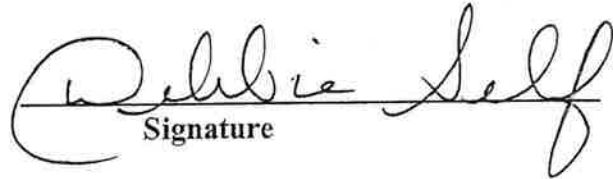
I am employed in the Office of the Board of Equalization, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 450 N Street, Sacramento, CA 95814.

On June 29, 2011, I served the attached **SUPPLEMENTAL BRIEF – CONNECTICUT COURT CASE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, to the attached list.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 29, 2011, at Sacramento, California.

Debbie Self

Declarant



Signature

SERVICE LIST (Page 1 of 2)
Loeffler, et. al. v. Target Corporation
 California Supreme Court, Case No. S173972
 Court of Appeal, Second Appellate District, Div. Three, Case No. B199287

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SERVICE LIST (Page 2 of 2)
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