California Supreme Court Clarifies Class Action Availability in Claims Against City for Refund of Tax Payments

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Summary:

In a decision that resolves conflicting interpretations of the California Constitution and state statutes, the California Supreme Court has held that under certain circumstances a taxpayer may file a class action against a municipal entity for the refund of a local tax. *Ardon v. City of Los Angeles*, 11 C.D.O.S. 9310, filed July 25, 2011 (*Ardon*). The decision adopts the holding in *City of San Jose v. Superior Court* (1974) 12 Cal. 3d.447 (*San Jo*se) that California Government Code Section 910 (Section 910) allows class action claims against local governments, and distinguishes a later decision, *Woosley v. State of California* (1992) 3 Cal. 4th 758 (*Woosley*), which held that California Constitution article XIII, section 32 prohibits class action tax refund claims unless authorized by the Legislature. The *Ardon* decision clarifies the status of some class action tax refund cases against local governments; the decision potentially makes it easier for taxpayers to challenge certain local tax impositions, but leaves open the possibility that a class action would be barred under certain other circumstances.

Background:

Ardon challenged a telephone user's tax (TUT) imposed by the City of Los Angeles (City). The complainant argued that the TUT was barred by a municipal ordinance prohibiting local excise taxes to the extent the amounts are exempt from federal excise taxes. The City, in response, claimed that *Woosley* required that each member of the class file an individual claim as a precondition to the filing of a class action. City prevailed in the Superior Court on the issue of class action availability and an appeal was taken. A divided Court of Appeal affirmed the trial court decision, and the Supreme Court granted review in order to resolve a conflict in decisional authority.

Discussion:

Section 910 is a broad grant of authority to bring actions against local governments. It is not specific to claims for tax refunds. Article XIII, section 32, on the other hand, is a specific prohibition against claims seeking to prevent or enjoin the collection of a tax, requiring the claimant to first pay the tax and then sue for a refund. In *San Jose*, which involved nuisance claims related to the operation of the municipal airport, the court concluded that the authority to file actions accorded to "claimants" under Section 910 includes the class itself and not just individual class members.

Woosley involved a constitutional challenge to the state's vehicle license fee imposed on vehicles purchased outside the state. In *Woosley* the court noted that article XIII, section 32 of the Constitution directed that claims for refunds be brought in the manner directed by the Legislature, and concluded that the applicable statutes directing the procedures for making refund claims did not allow for class actions.

The court in *Woosley* also concluded that the holding in *San Jose* should not be extended to tax refund cases. In *Ardon*, however, the court clarified that *Woosley* only precludes tax refund class actions where the Legislature has established procedures that do not allow such class actions. In so finding, the court distinguished several appellate decisions following *Woosley* that held that class action claims for tax refunds were prohibited absent specific statutory authority, e.g., *Batt v. City and County of San Francisco* (2007) 155 Cal. App. 4th 65, 74-75 (sustaining demurrer to plaintiff's class action challenging city transit occupancy tax); *Howard Jarvis Taxpayers Assn. v. City of Los Angeles (*2000) 79 Cal. App. 4th 242, 249 (taxpayer suit challenging municipal home occupation ordinance rejected); *Neecke v. City of Mill Valley* (1995) 39 Cal. App. 4th 946, 961-62 (property owner's action challenging city property tax rejected). The court in *Ardon* noted that in each of these cases, there were applicable statutes or ordinances that provided specific procedures for filing tax claims which would not accommodate class actions. The court also specifically rejected as overbroad, a finding in the *Howard Jarvis* decision that in order to maintain a tax refund class action, each member of the class must have first filed a separate administrative refund claim.

In *Ardon* the appellate court had determined that the applicable statute was Section 910 and that Section 910's use of the term "claimant" should be broadly construed, as it was in *San Jose*, to include the class itself. In seeking to harmonize the decisions in *San Jose* and *Woosley*, the court observed that *San Jose* merely concluded that Section 910 did not preclude tax refund class actions; in *Woosley*, the court merely concluded that a court should first determine whether the claims statute applicable to the claim permitted or prohibited class actions. *Woosley* did not analyze Section 910. Accordingly, the court concluded that *Woosley* should not be construed as preventing a class action where the claim in question was not barred by the applicable statute or ordinance.

Conclusion and Observations:

While the Supreme Court's *Ardon* decision resolves the apparent conflict between *San Jose* and *Woosley*, it leaves for later determination whether particular refund claims for a specific local tax would be allowed as a class action. In making that determination, the first level of review would be to determine whether the Legislature or the applicable municipal governing body has adopted a relevant statute or ordinance that allows or is not prohibitive of a class action. If there is an applicable statute or ordinance prohibiting class actions, then that option is probably not available. If the statute or ordinance allows class actions, or there is no specific requirement (in which case the claim would be subject to Section 910), then a class action should be permitted.