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Grosz v. California Department of Tax and Fee Administration

Court of Appeal, Second District, Division 1, California - January 9, 2023 - Cal.Rptr.3d - 2023 WL 128304 - 2023 Daily Journal D.A.R. 246

Taxpayer brought action seeking declaration that California Department of Tax and Fee Administration (DTFA) had a duty to collect sales and use tax from internet retailer for sales which were made by third-party merchants on retailer's website but which were fulfilled by retailer.

The Superior Court sustained DTFA's and retailers' demurrers without leave to amend, and taxpayer appealed.

The Court of Appeal held that DTFA determination as to whether internet retailer or third-party merchants was the "retailer" in any given transaction was a discretionary determination.

California Department of Tax and Fee Administration (DTFA) determination as to whether internet retailer or third-party merchants on retailer's website was the "retailer" in any given transaction in which merchants made sale which was fulfilled by retailer was a discretionary determination, and thus taxpayer did not have standing to bring action seeking declaration that DTFA was required to pursue internet retailer for the sales and use taxes related to those transactions; there was no statute or regulation that conclusively established which entity that the DTFA had to pursue for sales and use taxes related to the transactions, and statute indicated that there might be multiple "persons" who the DTFA could regard as "retailers" for the purposes of a single transaction.

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