SUPREME COURT OF OHIO

Home Depot USA, Inc. v. Levin

121 Ohio St. 3d 482, 2009-Ohio-1431 (2009) · No. 2008-1182 · Decided April 2, 2009

SUMMARY

The Supreme Court of Ohio held that Home Depot was not entitled to a sales-tax bad-debt deduction under R.C. 5739.121 because the finance companies, rather than Home Depot, carried the customer debt and charged it off as uncollectible. The court affirmed the Board of Tax Appeals and rejected Home Depot's statutory, equal-protection, and due-process arguments.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer, J.; Moyer, C.J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	April 2, 2009
DOCKET	2008-1182
DISPOSITION	affirmed
PROCEDURAL POSTURE	Home Depot appealed the Board of Tax Appeals' affirmance of the Tax Commissioner's denial of sales-tax refund claims based on the statutory bad-debt deduction.
STANDARD OF REVIEW	The Supreme Court of Ohio reviewed the BTA's determination under the applicable tax-appeal standard and construed the governing statute de novo as a question of law.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Ohio
PARTIES	Home Depot USA, Inc. v. Levin, Tax Commissioner

TOPICS

sales and use tax · tax refunds · tax deductions · statutory interpretation · equal protection

PRACTICE AREAS

sales and use tax · state and local tax · administrative law · constitutional law

QUESTIONS PRESENTED

1. Whether R.C. 5739.121 permits a vendor to claim a sales-tax bad-debt deduction when a third-party finance company, rather than the vendor, carries the customer debt and charges it off as uncollectible.
2. Whether denying Home Depot the deduction violated equal protection by treating it differently from vendors that extend credit directly to customers.
3. Whether denying the deduction violated due process by allowing the state to retain sales tax after a customer's subsequent default.

HOLDINGS

1. R.C. 5739.121 permits a bad-debt deduction only when the vendor charges the uncollectible debt off on the vendor's own books. Because GE, not Home Depot, carried the customer debt and charged it off, Home Depot was not entitled to the deduction.
2. The substantive provisions authorizing a tax reduction must be strictly construed, and the court would not expand R.C. 5739.121 through a liberal construction in favor of Home Depot.
3. Denying Home Depot the deduction did not violate equal protection because a vendor that extends credit directly and a vendor that hires a finance company to extend credit are not similarly situated with respect to bad-debt risk and lending burdens.
4. Denying Home Depot the bad-debt deduction did not violate due process because the deduction is a legislative benefit available only within the limits of the statute, and the sales-tax obligation is triggered by the consummated sale rather than by the customer's later payment of the debt.

KEY QUOTATIONS

> *"We agree with the BTA that since separate finance companies carried the debt at issue, Home Depot did not qualify for the deduction under the plain language of R.C. 5739.121."* (¶ 1)

> *"Because the statute's plain language limits the bad-debt deduction to a vendor that writes the debt off its own books, Home Depot is not entitled to the deduction in this case."* (¶ 17)

> *"R.C. 5739.121 constitutes an act of pure legislative grace that extends only to those persons and situations described in the statute"* (¶ 23)

FACTUAL BACKGROUND

Home Depot used affiliated GE finance companies to provide private-label credit cards to customers. GE paid Home Depot the purchase price and sales tax, less a service fee, and the customers thereafter owed the debt to GE rather than Home Depot. GE bore the risk of customer default, charged the debts off its own books, and claimed the federal bad-debt deduction; Home Depot sought Ohio sales-tax refunds based on those write-offs.

PROCEDURAL HISTORY

Home Depot filed sales-tax refund claims with the Tax Commissioner for periods from January 1, 1998, through July 31, 2003. The Tax Commissioner denied the claims, and the Board of Tax Appeals affirmed. Home Depot appealed to the Supreme Court of Ohio, which affirmed the BTA's decision.

DISPOSITION

affirmed

CASES CITED

- Chrysler Fin. Co., L.L.C. v. Wilkins, 102 Ohio St. 3d 443, 2004-Ohio-3922, 812 N.E.2d 948
- Phoenix Amusement Co. v. Glander, 148 Ohio St. 592, 36 O.O. 224, 76 N.E.2d 605 (1947)
- Key Servs. Corp. v. Zaino, 95 Ohio St. 3d 11, 764 N.E.2d 1015 (2002)
- GTE N., Inc. v. Zaino, 96 Ohio St. 3d 9, 2002-Ohio-2984, 770 N.E.2d 65
- Tigner v. Texas, 310 U.S. 141, 147, 60 S. Ct. 879, 84 L. Ed. 1124 (1940)
- Boothe Fin. Corp. v. Lindley, 6 Ohio St. 3d 247, 6 OBR 315, 452 N.E.2d 1295 (1983)
- MCI Telecomm. Corp. v. Limbach, 68 Ohio St. 3d 195, 625 N.E.2d 597 (1994)
- GTE N., Inc. v. Zaino, 96 Ohio St. 3d 9, 2002-Ohio-2984, 770 N.E.2d 65, ¶¶ 31-38