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BJ's Must Face Certified Class In Fla. Sales Tax Suit

By **Carolina Bolado**

Law360, Miami -- A Florida judge on Thursday certified a limited class of consumers alleging [BJ's Wholesale Club Inc.](#) violates state law by illegally overcharging and keeping sales tax on items purchased through discounts, coupons and other price-reduction offers.

Judge John W. Thornton granted the plaintiffs' motion to certify a class specifically to pursue permanent injunctive relief against BJ's for alleged ongoing violations of the Florida Deceptive and Unfair Trade Practices Act by collecting sales tax on reduced items' original, full price, despite the discounted amount being untaxable under Florida state law.

Judge Thornton rejected BJ's argument that the proposed class of Florida consumers is not "adequately defined and readily ascertainable" because BJ's members are not members of individual stores but of the nationwide chain and are granted access to stores in 15 states.

The judge pointed out that the plaintiffs had asked to certify a class seeking injunctive relief for conduct just in stores in Florida.

"Taken to its logical conclusion, BJ's argument would render this court powerless to stop or enjoin any improper consumer practice in the State of Florida, by virtue of the fact that BJ's offers cross-state or national membership," Judge Thornton said. "This argument flies in the face of the explicit statutory grant of authority by the legislative and executive branches in adopting FDUTPA to confer on Florida courts the power to enjoin unfair and deceptive trade practices within Florida."

The judge has already found in a previous order granting partial summary judgment that BJ's improperly charged and collected taxes on discounted items.

According to the complaint filed in March 2015, Laura Bugliaro purchased two Samsung televisions in late November 2014 from separate BJ's locations. But despite paying discounted prices of \$769.99 and \$329.99 — down from \$1,399.99 and \$529.99, respectively — she was charged sales tax on the full purchase price.

The alleged overcharging not only occurs at two of BJ's 31 stores in Florida, the complaint claims, but is the retailer's regular practice — a practice that violates Florida's Administrative Code and the FDUTPA, it said.

Victor M. Diaz Jr. of V.M. Diaz & Partners, who represents the class, applauded the decision.

"Every day that goes by is another day that Florida consumers are being ripped off," Diaz said. "Our goal is to first stop these improper and deceptive practices and then secure relief for all Florida consumers who have been adversely affected."

An attorney for BJ's could not immediately be reached for comment Tuesday.

Bugliaro's suit is not the chain's first brush with a sales tax dispute. In a largely identical case, a Pennsylvania couple claimed the chain repeatedly hit them with sales tax on the prediscounted price of coupon purchases, but that they only noticed the overcharge when they bought a television using a rebate coupon — a purchase large enough for them to detect the charge.

BJ's defeated that suit in 2015 when a Pennsylvania appellate court [said there was no avenue](#) for the consumers to appeal a state Revenue Department's finding that the retailer correctly assessed sales tax on the regular price of discounted items.

Bugliaro is represented by Alan J. Kluger and Steve I. Silverman of [Kluger Kaplan Silverman Katzen & Levine PL](#) and Victor M. Diaz Jr. of V.M. Diaz & Partners.

BJ's is represented by Craig P. Kalil of [Aballi Milne Kalil PA](#).

The case is Bugliaro v. BJ's Wholesale Club Inc., case number 2015-006256, in the Eleventh Judicial Circuit Court of Florida.