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Class-action status OK'd in claim BJ's collects excessive sales tax

By [Ron Hurtibise](#)

A lawsuit alleging that B.J.'s Wholesale Club is charging excessive sales tax can proceed as a class action, meaning it could benefit all members paying the tax, a judge has ruled.

The suit was filed in 2015 by a Miami-Dade County woman, Laura Bugliaro, who said she noticed she was being charged state sales tax on the full retail price of discounted items at the club's Cutler Bay store after buying two Samsung televisions in November 2014.

The suit says Bugliaro paid \$769.99 and \$329.99 but was charged sales tax on the full retail prices of \$1,399.99 and \$529.99.

The suit is seeking a two-pronged remedy: a permanent injunction to stop the practice and a separate ruling ordering the wholesale club to return sales taxes it contends were improperly collected since 2011.

Thursday's ruling by Judge John W. Thornton of the 11th Judicial Circuit in Miami establishes a class of future victims who would be protected by a permanent injunction stopping the practice, two of the plaintiffs' attorneys, Steve Silverman of Miami-based law firm Kluger, Kaplan, Silverman, Katzen & Levine and Victor Diaz of V.M. Diaz & Partners, based in Miami Beach, said in an interview Tuesday.

The class is defined as members of BJ's 31 Florida stores who will be charged sales tax on the full price of products discounted in part by BJ's, according to Thornton's written order.

To this day, BJ's charges its members sales tax on the full retail prices of its items regardless of how the discount is funded, the complaint states.

BJ's customers have no way of knowing whether they are being properly charged because the wholesaler does not disclose which portion of the discount is funded by a manufacturer and which portion is funded by BJ's, Silverman and Diaz said.

At issue earlier in the case was the question of what portion of discounts offered on products at BJ's is subject to sales tax.

State law clearly allows sales taxes on the portion of a discount funded by a product manufacturer, Thornton ruled in February 2016. Examples of that include when a customer purchases a product and then hands the clerk a money-off coupon, the sales tax is paid on the original purchase price. Similarly, consumers expect to pay sales tax on the full price of products sold with manufacturers' rebate coupons, even though they receive money back after the sale.

In the February 2016 ruling, Thornton said state tax code is clear that only the net price a customer pays after a dealer's discount is taken at the point of sale is subject to sales tax.

As a result, BJ's improperly charged sales tax on the portion of the discount it created, Thornton ruled.

After that ruling, the attorneys were prepared to move forward on its request to create a class of future BJ's purchasers, they said.

But then the Florida Department of Revenue joined the case as an intervenor, arguing that the court had no standing to administer tax laws.

Thornton rejected that argument last week by granting the class action status, Silverman and Diaz said.

A spokesman for BJ's declined a request for comment Tuesday. In court filings, the wholesale club has denied violating state law in the way it charges sales tax, and in a statement to the South Florida Business Journal in April 2015, the company said it "believes it has followed Florida state law when calculating and collecting state tax on discounted items." The statement stressed that sales tax collected by BJ's is sent to the state and not kept by the company.

In addition to seeking the permanent injunction stopping BJ's from collecting what the suit claims is excessive sales tax, the plaintiff and her attorneys will next seek to certify a class of victims to collect restitution of money already collected, Silverman and Diaz said.

The potential class includes up to 750,000 Florida households that belong to BJ's, according to the attorneys.

"We're talking about millions of dollars," Diaz said.