

TUESDAY, FEBRUARY 11, 2014

At the margins of taxpayer standing

By Kevin P. McLaughlin

It may come as little surprise that in order to assert taxpayer standing, one must be a taxpayer. In fact it may be more surprising to learn that standing to bring suit can be premised only upon payment of taxes. A concept long rejected for federal taxpayers, payers of state and local tax nonetheless have broad standing under California law to bring suits to restrain the illegal expenditure or waste of public funds or property. While this rule has great breadth, it is not without limits. Foremost among them: The plaintiff must actually pay tax, a principle recently confirmed by the 1st District Court of Appeal in *Reynolds v. city of Calistoga*, 2014 DJDAR 1431 (Feb. 3, 2014).

The interest of a federal taxpayer in challenging the expenditure of federal monies is considered too indirect and remote to support standing to challenge the expenditure, unless there is some immediate danger of a direct injury to the plaintiff. See *Massachusetts v. Mellon*, 262 U.S. 447, 486-88 (1923). But as recognized in *Mellon*, the interest of a local taxpayer in suing his local government to enjoin the use of local funds is much more direct. California has long accorded standing to local taxpayers. Code of Civil Procedure Section 526a, enacted in 1909, expressly permits a citizen or corporation who pays tax in a county, city or town to bring suit to enjoin the “illegal expenditure of, waste of, or injury to...” the funds or property of that county, city or town.

Section 526a is liberally construed to achieve its remedial purposes, and is particularly meant to facilitate challenges to government action that would otherwise go unchallenged due to lack of standing. There need be no connection between the taxes paid and the challenged expenditure, and the expenditure can be small —

or even a savings. The taxpayer need not have any personal stake in the expenditure at issue. Over time, case law has expanded Section 526a to also apply to the state; to permit enjoining implementation of the state constitution or a state statute by a local government; and to permit suits not only for injunctive relief but for declaratory relief, restitution, mandamus, and even monetary damages. Where a plaintiff meets the requirements of Section 526a, none of the usual standing requirements need be met.

By its terms, Section 526a limits taxpayer standing to citizens of the county, city or town that is sued. However, this residency requirement has been held unconstitutional, and as a result anyone who pays tax in a county, city or town may bring suit to enjoin the improper use of funds. The reach of taxpayer standing is thus extremely broad in California. The primary limitation on standing remains: Has the plaintiff paid taxes in the state, county, city or town?

In *Reynolds*, plaintiff Grant Reynolds sought to enjoin the use of Napa County sales tax funds by the city of Calistoga. According to Reynolds, the funds were required to be spent for flood protection and watershed improvement, and Calistoga intended to spend those funds on a project allegedly outside this purpose. Reynolds argued that enjoining this alleged misuse of funds is precisely within the remedial purpose of Section 526a, and the Court of Appeal agreed that Reynolds’ claims fell within the purpose of the statute.

However Calistoga argued that Reynolds did not pay taxes within the city and therefore did not have standing. It was undisputed that Reynolds did not reside in Calistoga. Reynolds asserted that he had paid sales tax on purchases within the county and had standing on that basis. Reynolds also claimed that he had a lien interest on property

located within the city. Neither assertion was sufficient to allege taxpayer standing.

Contrary to popular perception, sales tax in California is not paid by the purchaser but by the retailer. Under the Retail Sales Tax Act, sales tax is an excise tax for the privilege of conducting business and is based upon a retailer’s gross receipts. A retailer may choose not to charge a purchaser any sales tax, and the sales tax remains the retailer’s obligation at all times. The act permits separately listing the price and the tax and defining taxable gross receipts as the amount received less the amount of the tax added solely so that the retailer does not pay tax on the amount already taxed. See *W. Lithograph Co. v. State Bd. of Equalization*, 11 Cal. 2d 156, 164 (1938). For this reason, Reynolds’ payment of county sales tax did not amount to the payment of tax within the county or city whose action he sought to enjoin. The ownership of a lien interest on property within the city also did not evidence the payment of taxes within the city.

While the Court of Appeal did not reach the issue, it appears Reynolds would lack taxpayer standing for an additional reason. The plaintiff must allege payment of taxes within the county or city whose action he seeks to enjoin. Yet a payment of sales tax within Napa County, as Reynolds alleged, is plainly not a payment of sales tax within the city of Calistoga, both because sales tax is not paid directly to the city, and because payment of sales tax within the greater county does not amount to payment of sales tax within the city.

Despite the broad construction and aspirational purpose of California’s taxpayer standing statute, the requirement that the plaintiff pay tax within the county or city that is sued provides an important limitation, ensuring that persons with a remote interest in local governance cannot

seek to enjoin the actions of local government. This same concern limits the standing of payers of state income tax to challenge a county or city project funded in part by state monies: The connection between the tax paid and the program funded is too inconsequential to provide any real limitation. See *Carmichael v. Los Angeles Cnty. Metro. Transp. Auth.*, 49 Cal. App. 4th 1761, 1778-79 (2010). Similarly, if payment of sales tax by a purchaser were sufficient to create taxpayer standing, any individual seeking to enjoin a city’s expenditure could allege a routine purchase in the city and thereby establish standing — even if that individual lived in another state or country. This connection is far too attenuated to provide a standing requirement of any consequence.

Echoing the concerns supporting the prohibition on federal taxpayer standing — that citizens will sue on matters too remote and indirect from any payment of taxes — the requirement that the plaintiff have a real, direct interest in the county or city sued ensures that taxpayer standing has meaningful limits in California.

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