

**YES**  
**EXHIBITS**

EXHIBITS OR ATTACHMENTS TO COMPLAINT WERE NOT COPIED

CASE NO. 218CH06028

DATE: 5/10/2018

CASE TYPE: Class Action

PAGE COUNT: 8

CASE NOTE

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – CHANCERY DIVISION**

SONYA RAYFORD, individually, and on behalf of )  
all others similarly situated, )

Plaintiff, )

v. )

BLOOMINGDALE’S, INC., an Ohio corporation, )

Defendant. )

2018CH06028  
CALENDAR/ROOM 16  
TIME 00:00  
Class Action

Court No.

Jury Trial Demanded.

CORRECTIVE DIVISION  
2018 MAY 10 PM 12:01  
FILED-1

**CLASS ACTION COMPLAINT**

NOW COMES Plaintiff SONYA RAYFORD (“Plaintiff”), individually, and on behalf of all others similarly situated, by and through counsel at ZIMMERMAN LAW OFFICES, P.C., and complains of Defendant BLOOMINGDALE’S, INC. (“Bloomingdale’s” or “Defendant”), an Ohio corporation, as follows:

**Nature of the Case**

1. This is a class action brought on behalf of the class of persons defined herein (the “Class”), who were improperly charged the City of Chicago Checkout Bag Tax on garment bags provided to them at Bloomingdales stores in Chicago, Illinois.
2. The Chicago Checkout Bag Tax Ordinance (“Ordinance”) imposes a tax of \$0.07 per checkout bag sold or used in Chicago (“Bag Tax”).
3. The Ordinance defines “checkout bag” as “a paper carryout bag or a plastic carryout bag.” Municipal Code of Chicago, Section 3-50-020.
4. Pursuant to the Ordinance, sales tax is not to be imposed on bags other than a paper carryout bag or a plastic carryout bag. Defendant improperly charged Plaintiff the Bag Tax on a garment bag, resulting in an unlawful sales tax charge. On information and belief, Bloomingdales

stores in Chicago are automatically and uniformly charging the Bag Tax on bags other than checkout bags as defined in the Ordinance.

5. Defendant's acts and omissions alleged herein violate the Illinois Consumer Fraud and Deceptive Trade Practices Act.

### **The Parties**

6. Plaintiff Sonya Rayford is a natural person residing in Illinois.

7. Defendant Bloomingdale's, Inc. is an Ohio corporation with its corporate headquarters in Cincinnati, Ohio. Defendant is the owner of all Bloomingdale's retail stores, including the stores in Chicago, and is authorized to do business in the State of Illinois.

### **Jurisdiction and Venue**

8. Jurisdiction over Defendant is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within this State), section 2-209(a)(7) (the making or performance of any contract or promise substantially connected with this State), section 2-209(b)(4) (corporation doing business within this State), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States). 735 ILCS 5/2-209(a)(1), (a)(7), (b)(4), and (c).

9. Venue is proper in this County, pursuant to 735 ILCS 5/2-101, because this is where the complained of transaction occurred. Defendant is a private corporation and is doing business in this County. 735 ILCS 5/2-102(a).

### **City of Chicago Checkout Bag Tax Ordinance**

10. The Bag Tax is a \$0.07 per bag tax on the retail sale or use of paper and plastic checkout bags in Chicago, of which retail merchants retain \$0.02 and the remaining \$0.05 is remitted to the City. See **Exhibit A**, Guidance on the Chicago Checkout Bag Tax, at p. 1.

11. The Bag Tax became effective February 1, 2017.

12. Under the Ordinance, “store” means any person who engages in the business of selling tangible personal property, other than tangible personal property titled or registered with an agency of Illinois government, at retail in the City of Chicago, pursuant to the Home Rule Municipal Retailer’s Occupation Tax Act, and who delivers or provides its property through the use of checkout bags. Municipal Code of Chicago, Section 3-50-020. Defendant is a “store” under the Ordinance because Defendant sells tangible personal property at retail in its Bloomingdale’s stores in the City of Chicago.

13. Under the Ordinance, “customer” means any person who purchases tangible personal property from a store. Municipal Code of Chicago, Section 3-50-020. Plaintiff is a customer under the Ordinance because she purchased tangible personal property (*e.g.*, a coat) for personal use from a Bloomingdale’s store on North Michigan Avenue in Chicago.

14. The Ordinance defines “checkout bag” as “a paper carryout bag or a plastic carryout bag.” Municipal Code of Chicago, Section 3-50-020.

15. Under the Ordinance, “paper carryout bag” means any paper bag that is provided by a store to a customer for the purpose of carrying goods out of the store. Municipal Code of Chicago, Section 3-50-020. Under the Ordinance, “plastic carryout bag” means any plastic bag provided by a store to a customer for the purpose of carrying goods out of the store. *Id.* The term “plastic carryout bag” does not include dry cleaning or garment bags, or bags with a retail price of at least fifty cents (\$.50) each. *Id.*

16. While the Bag Tax may not be a significant amount charged to each purchaser, over \$9.5 million of Bag Tax has been collected in the aggregate from customers since the Ordinance was enacted.

### **Defendant's Implementation of the Checkout Bag Tax**

17. On information and belief, at the point-of-sale, in instances where Bloomingdale's sells or gives garment bags to customers when they make a retail purchase, Bloomingdale's automatically imposes and collects an improper Bag Tax on each garment bag.

18. On information and belief, Bloomingdale's automatically charges the Bag Tax on garment bags that do not fall within the definition of a "checkout bag" under the Ordinance, thereby improperly charging its customers the Bag Tax.

### **Facts Relating to Plaintiff**

19. On November 9, 2017, Plaintiff purchased a winter coat at the Bloomingdale's store located at 900 North Michigan Ave, in Chicago, Illinois.

20. The total price of Plaintiff's purchase before tax was \$925.00. Defendant added a \$0.07 Bag Tax to Plaintiff's purchase, bringing the subtotal to \$925.07. A 10.25% sales tax was imposed on Plaintiff's purchase in the amount of \$94.81. The grand total of Plaintiff's purchase was \$1,019.88 (\$925.00 for merchandise, plus \$94.81 sales tax, plus the \$0.07 bag tax). The garment bag is not subject to the Bag Tax. Thus, Plaintiff should have been charged \$1,019.81 (i.e., \$925.00 for merchandise, plus \$94.81 sales tax).

21. However, Bloomingdale's improperly charged Plaintiff \$1,019.88, as, unbeknownst to Plaintiff, Bloomingdale's imposed the Bag Tax on a garment bag is not subject to the Bag Tax, resulting in an overcharge to Plaintiff.

22. Plaintiff paid the total purchase price of \$1,019.88 as a condition of the sale and receipt of the product. The salesperson at the point of sale, an employee of the Bloomingdale's retail store, acting within the course and scope of employment, informed Plaintiff that she owed that amount, and Plaintiff, relying upon that representation, paid that amount to the store. Defendant's uniform policies required the salesperson to inform customers, like Plaintiff and Class members, of

the amount of money that they owed for their purchases, and not to sell the items unless the customers paid the total purchase price.

23. After she left the store, Plaintiff discovered that Defendant had improperly charged the Bag Tax on a garment bag that is not subject to the Bag Tax.

### **Class Action Allegations**

24. This action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801 *et seq.*, as set forth below.

25. *Class Definition.* Plaintiff brings this action individually and on behalf of the following class of similarly situated persons (the "Class"), of which Plaintiff is a member:

All persons who were charged and paid the City of Chicago Checkout Bag Tax on garment bags at a Bloomingdale's store in Chicago, Illinois.

Excluded from the Class are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person. Plaintiff hereby reserves her right to amend the above class definition based on discovery and the proofs at trial.

26. *Numerosity.* The Class is so numerous that joinder of all members is impracticable. Plaintiff believes that there are thousands of people in the Class. It is believed that Bloomingdale's provides garment bags with hundreds of its merchandise sales per day. The exact number and identity of Class members is unknown to Plaintiff at this time and can be ascertained from Defendant's books and records or by other means.

27. *Commonality.* There are questions of fact or law common to the Class, which common questions predominate over any questions affecting only individual members including, *inter alia*, the following:

- a. whether Defendant's acts and omissions alleged herein constitute a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*;
- b. whether Defendant misrepresented that the Bag Tax was owed on garment bags provided with purchases of merchandise from its Bloomingdale's stores in Chicago, Illinois;
- c. whether Plaintiff and the members of the Class have sustained damages and, if so, what is the proper measure of their damages; and
- d. whether Plaintiff and the members of the Class are entitled to the relief sought, including attorney's fees.

28. *Adequacy.* The representative Plaintiff will fairly and adequately protect the interest of the Class. Plaintiff has retained the undersigned class counsel, who are competent and experienced in the prosecution of complex and class action litigation. The interests of Plaintiff are aligned with, and not antagonistic to, those of the Class.

29. *Appropriateness.* A class action is an appropriate method for the fair and efficient adjudication of this controversy. The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class. Also, the likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the relatively modest amount of monetary relief at issue for individual Class members.

### **COUNT I**

#### **(Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act)**

30. Plaintiff repeats and realleges the allegations in all of the preceding paragraphs with the same force and effect as though fully set forth herein.

31. At all times relevant hereto, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* ("ICFA").

32. Chapter 2 of the ICFA prohibits unfair or deceptive acts or practices used or employed in the conduct of any trade or commerce. See, 815 ILCS 505/2.

33. Defendant's practice of charging Plaintiff and the Class the Bag Tax on garment bags that are not subject to the Bag Tax, as alleged in detail *supra*, is an unfair and deceptive act or practice prohibited by Chapter 2 of the ICFA. *See*, 815 ILCS 505/2.

34. Defendant's conduct described herein created a likelihood of confusion or misunderstanding for Plaintiff and the Class by misrepresenting the amount of tax owed on their retail purchases as described herein, and therefore constitutes a deceptive act or practice under the ICFA.

35. Defendant's conduct described herein also constitutes a deceptive act or practice under the ICFA because it offends public policy; it is immoral, unethical, oppressive, and unscrupulous; and collectively as a whole it causes substantial injury to consumers.

36. Defendant intended to deceive Plaintiff and the Class, and intended to be unfair to Plaintiff and the Class, by unlawfully charging the Bag Tax on garment bags that are not subject to the Bag Tax, as described herein.

37. Defendant intended that Plaintiff and the Class rely on (a) Defendant's misrepresentation that the Bag Tax was owed on a garment bag that was not subject to the Bag Tax, and (b) Defendant's failing to disclose or notify Plaintiff and the Class that the Bag Tax was not due on the garment bag supplied with the purchase of Defendant's merchandise.

38. Plaintiff and the Class relied on the misrepresentations and omissions to their detriment by paying the Bag Tax on garment bags that are not subject to the Bag Tax.

39. The above-described deceptive and unfair acts and practices were used or employed in the conduct of trade or commerce—namely, the sale of goods to Plaintiff and the Class.

40. As a direct and proximate result of the foregoing, Plaintiff and the Class have been damaged in an amount to be determined at trial.



WHEREFORE, Plaintiff prays for an Order as follows:

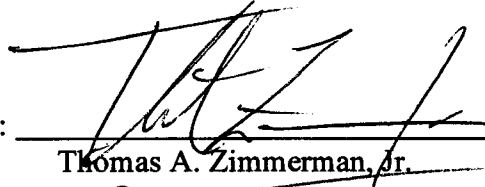
- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class, and against Defendant;
- D. Awarding Plaintiff and Class members their actual damages, attorney's fees and costs, including interest thereon, as allowed or required by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff SONYA RAYFORD, individually, and on behalf of all others similarly situated,

By: \_\_\_\_\_

  
Thomas A. Zimmerman, Jr.  
*tom@attorneyzim.com*

~~Sharon A. Harris  
*sharon@attorneyzim.com*~~

Matthew C. De Re  
*matt@attorneyzim.com*

Nickolas J. Hagman  
*nick@attorneyzim.com*

Maebetty Kirby  
*maebetty@attorneyzim.com*

ZIMMERMAN LAW OFFICES, P.C.  
77 West Washington Street, Suite 1220  
Chicago, Illinois 60602  
(312) 440-0020  
Firm I.D. No. 34418  
[www.attorneyzim.com](http://www.attorneyzim.com)

Counsel for Plaintiff and the Class

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bloomingdale's Charges Illegal 'Paper or Plastic' Bag Tax on Garment Bags Sold in Chicago, Class Action Claims](#)

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