The Far Side

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Tax cases often challenge the logic of the law. In the recent case of *State of New Jersey v. Burnham* (Superior Court, Appellate Division, December 21, 2022), the Court was asked to rule on whether sales taxes should be included in the "full retail value of merchandise when determining the gradation of shoplifting offenses." Specifically, the defendant shoplifted an Xbox One, that had a retail price of $499.99, not including sales tax from a retailer's shelves. The crime of shoplifting, like other crimes, has various levels of offenses. Shoplifting crimes are graded on the value of the merchandise stolen. Fourth-degree shoplifting is merchandise with a value of at least $200 and not greater than $500, and third-degree shoplifting, a more serious crime, is merchandise in excess of $500 but less than $75,000. Thus, if the amount shoplifted included sales tax, the crime would be a third-degree offense, if not, a fourth-degree offense. The Court noted that the general theft statute specifically includes any State tax avoided. However, the shoplifting statute has no such language. In holding that the amount shoplifted did not include sales tax, the Court stated that the legislature, in enacting the shoplifting law, could have included sales tax but did not.