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By JOEL STASHENKO, Associated Press Writer

ALBANY, N.Y. (AP) -- A district attorney's office says authorities in New York have lost a potentially useful tool against bootleggers because of a ruling by the state's highest court.

The unanimous decision Thursday by the state Court of Appeals invalidated grand larceny and conspiracy charges brought against eight New Jersey residents who were indicted in Suffolk County for allegedly running a scam in 1994 and 1995 to import gasoline for sale in New York which had not been taxed by the state.

'Although we respect the Court of Appeals' decision, we believe it takes away an important tool from prosecutors in combatting allegations of tax fraud,' spokesman John Zaher of the Suffolk County district attorney's office.

Tax evasion charges against the men stand and they will be tried on those grounds, Zaher said.

A Suffolk County court judge threw out the larceny and conspiracy charges, but they were reinstated by the midlevel Appellate Division of state Supreme Court. That court said a jury should decide whether the defendants 'withheld property from its rightful owner, i.e., the state of New York' as defined by the larceny statute.

But the Court of Appeals was not persuaded by that line of reasoning Thursday. It said in a ruling written by Judge George Bundy Smith that the taxes due the state are not 'property of the state' before they are remitted to the state Department of Taxation and Finance.

'Accordingly, defendants did not steal money that belonged to New York state, but rather failed to make payments of taxes which were their personal obligations under the (state) Tax Law,' Smith wrote.

A lawyer for two of the defendants said Thursday's ruling affirmed what he has been arguing all along. Mark Freyberg, lawyer for father-and-son defendants William S. and William K. Nappo, said prosecutors were 'piling on' unreasonable charges in hopes of finding some that stick against his clients.

'The Nappos' did not steal any money from New York state,' Freyberg said. 'We continue to deny the tax evasion charges, too.'

The trial of the eight defendants for tax charges was put on hold pending the outcome of appeals on the other charges.

Marc Carey, a spokesman for the state tax department, said his

department will charge suspected tax evaders with larceny when state taxes have been collected but not turned over to the state. The Court of Appeals said Thursday that is an activity that fits into the description of larceny under New York statutes, because the state can be deemed to be the "owner" of the taxes which have been collected, but not turned over to the tax department as required by tax laws.

Prosecutors in Suffolk County say the defendants tried to hide the nonpayment of gas taxes by creating "burn" or shell corporations to create false documentation for the sale of gasoline.

In other rulings by state appeals courts Thursday:

CAPITAL CASE

The Appellate Division of state Supreme Court in Albany ruled that Anthony Schroedel cannot plead guilty to the charges against him in a murder case as a way of avoiding the death penalty.

Schroedel had initially pleaded innocent to slaying Barbara Vogt and slashing her 11-year-old son in Sullivan County in 1999, but he pleaded guilty while county District Attorney Stephen Lungen was still deciding whether to bring capital charges against him.

Lungen argued in person before the appellate division that the state's death penalty statute gives him 120 days to decide whether to seek death against a defendant. Schroedel was trying to take that decision out of this hands by suddenly changing his plea to guilty before Lungen had decided whether to make the case a capital one, the prosecutor argued.

The case against Schroedel has been on hold since the dispute arose over his plea.

REIMBURSEMENT

The appellate division in Albany ruled unconstitutional a provision of state law pertaining to reimbursement for personal care services under Medicaid.

The judges said the law as written is illegally vague about what care providers can reimburse Medicaid for and what they cannot.

The case involved Ulster Home Care Inc. of Ulster County and the charges it made to Ulster County for services provided to Medicaid clients. The state Medicaid Fraud Control Unit charged that the company received higher-than-allowed reimbursements and demanded \$675,000 in restitution.

But the company argued, and the appellate division agreed Thursday, that state laws are too vague to give it or other health providers a clear idea of which charges are permissible and which are not.