

LITIGATION ROSTER

SPECIAL TAXES

AUGUST 2023

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NEW CASES

Case Name

STARBUZZ INTERNATIONAL, INC. v. CDTFA

Case Number

23WM00060

CLOSED CASES

Case Name

Case Number

Please refer to the case roster for more detail regarding new and closed cases

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AUGUST 2023

SPRINT TELEPHONY PCS, L.P. v. CDTFA
Sacramento County Superior Court: 34-2021-00296518
Filed – 03/15/2021

Plaintiffs' Counsel

Timothy A. Gustafson, Eversheds Sutherland

CDTFA's Counsel

Lauren Freeman

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff contends that it is entitled to a refund of \$1,420,371.00 in overpaid electronic waste recycling fees (“e-waste fees”) for the period of April 1, 2013 to March 31, 2016, because the tablet devices it sold were not specifically identified as “covered electronic devices” (“CEDs”) in the Department of Toxic Substances Control’s (“DTSC”) regulations and were therefore not subject to the e-waste fee. [Public Resources Code section 42463, subdivision \(e\)\(1\)](#), provides that a CED is “a video display device . . . that is identified in the regulations adopted by” DTSC. Plaintiff further contends that it is not liable for e-waste fees when a manufacturer of a CED fails to send the required notice to a retailer that their device meets the definition of a CED and are subject to e-waste fees.

Audit/Tax Period: April 1, 2013 to March 31, 2016

Amount: \$1,420,371.00

Status:

Plaintiff filed its verified complaint on March 15, 2021, and served it on CDTFA on March 22, 2021. CDTFA received an extension to file its responsive pleading by May 6, 2021. The parties have agreed to stay the action while Plaintiff exhausts its administrative remedies with the CDTFA, and will file a stipulation to stay the action with the court. The court entered the Order to Stay Case Pending Exhaustion of Administrative Remedies on May 12, 2021. On October 14, 2022, CDTFA filed a Notice of Exhaustion of Administrative Remedies and Proposed Order to Lift Stay. On November 3, 2022, plaintiff filed and served a Verified First Amended Complaint for Refund of Fees, adding the California Department of Toxic Substances Control as the Real Party in Interest. Plaintiff stipulated to a 15-day extension for CDTFA to file its response to the amended complaint.

CDTFA's response is now due December 21, 2022. On December 21, 2022, CDTFA filed its Answer to plaintiff's Verified First Amended Complaint for Refund of Fees. Real Party in Interest, DTSC, filed its Answer to Sprint's First Amended Complaint on January 13, 2023. The court has set a Case Management Conference for August 4, 2023. Discovery has commenced and is ongoing. The court scheduled the trial date for April 14, 2025.

STARBUZZ INTERNATIONAL, INC. v. CDTFA

Sacramento County Superior Court: 23WM00060

Filed – 08/03/2023

Plaintiffs' Counsel

Mardiros Dakessian, Dakessian Law, LTD

CDTFA's Counsel

Daniel Robertson

CDTFA Attorney

Kiren Chohan

Issue(s):

Starbuzz International, Inc. and Starbuzz Tobacco, Inc. (collectively “Petitioners”) seek to compel CDTFA to refund \$1,004,309.89 (for the period October 1, 2012, through September 30, 2013) and \$1,814,429.11 (for the period August 1, 2013, through September 30, 2015), respectively, in tobacco products tax (Tax), which they allege was ordered by the Office of Tax Appeals (OTA) in its decision dated March 15, 2023. As background, Petitioners filed their respective refund claims for the amounts at issue claiming that shisha does not fall within the definition of tobacco products under the Cigarette and Tobacco Products Tax Law (CTPTL) because it contains less than 50 percent tobacco (Refund Claims).

In order to process Petitioners' Refund Claims in accordance with Revenue and [Taxation Code section 30361.5](#) (which provides that when an amount is collected by a distributor from their customers as reimbursement for tax is computed upon an amount that is not taxable under the CTPTL, the excess tax reimbursement is required to be returned to their customers or remitted to this state), CDTFA requested sales invoices to ascertain the extent to which Petitioners collected tax reimbursement from their customers and to verify that those customers will be returned the payments. Petitioners object to providing their sales invoices, asserting that CDTFA must abide by its ministerial duty of simply issuing a refund for the full amount they claimed in their Refund Claims. Petitioners also seek attorneys' fees under Code of [Civil Procedure section 1021.5](#).

Audit/Tax Period: October 1, 2012 to September 30, 2015
Amount: \$2,818,739.00

Status:

On August 3, 2023, Petitioners filed their Petition and served CDTFA on August 7, 2023. CDTFA's deadline to file its first responsive pleading to the Petition is September 6, 2023. On August 28, 2023, the parties agreed to extend the deadline for CDTFA to respond to the Petition to October 9, 2023, subject to court approval. The parties also agreed to a hearing date of February 9, 2024, which has been reserved by the court. Pursuant to Sacramento County Superior Court Local Rules, the briefing schedule is as follows: Opening Brief due November 27, 2023; Opposition Brief due January 10, 2024; and Reply Brief due January 25, 2024.

STESHENKO, GREGORY v. California Board of Equalization, et al.

Sacramento County Superior Court: 34-2016-00202671-CU-CR-GDS

Santa Cruz County Superior Court: 16CV007757

Filed – 03/25/2016

Plaintiffs' Counsel

Gregory Steshenko, Pro Se

CDTFA's Counsel

Robert E. Asperger

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiff contends that the fire prevention fee Assembly Bill 29 [AB 29](#) is invalid and unconstitutional, and that exempt funds were illegally seized.

Audit/Tax Period: None

Amount: Unspecified

Status:

On June 28, 2016, the BOE filed its Reply to Plaintiff's Opposition to Motion to Transfer Action to Sacramento County Superior Court. At the July 6, 2016 hearing, the Court granted the Motion for Change of Venue to Sacramento County Superior Court. On August 29, 2016, the BOE's Proposed Order for change of venue to Sacramento was submitted to Plaintiff for approval as to form. On September 8, 2016, the DAG sent a signed letter to the Court submitting the Proposed Order granting Motion for change of venue, with attachments. On September 28, 2016, the Court entered an Order, transferring the case to

Sacramento County Superior Court. On October 11, 2016, Plaintiff filed a petition for writ of mandate with the Sixth Appellate District. The Santa Cruz Superior Court has transferred the case to Sacramento County Superior Court. Sacramento County Superior Court has scheduled a case management conference for May 4, 2017. The case management statement is due April 19, 2017. On February 28, 2017, the Court of Appeal denied the petition for writ of mandate and request for stay. On March 21, 2017, Defendants BOE and CalFIRE filed a demurrer and Motion to strike. The hearing on these moving papers is scheduled for April 27, 2017. On April 26, 2017, the Court continued the hearing to June 2, 2017. On April 27, 2017, the Court issued its tentative ruling on the CMC set for May 4, 2017. It requires the parties to choose trial and settlement conference dates before the end of the year. The hearing on BOE's Demurrer has been continued to July 7, 2017. At the July 7, 2017 hearing, the trial court sustained the demurrers of Defendants California Board of Equalization, the California Department of Forestry and Fire Protection, and Andres Lopez as to the second through fourth causes of action of the complaint; and stayed the entire action on the grounds that there is another action pending between the same parties on the same cause of action. On July 19, 2017, [Assembly Bill 398](#) was adopted to add [Public Resources section 4213.05](#), which effective July 1, 2017, suspends the fire prevention fee until January 1, 2031. On August 3, 2017, the Court entered an order sustaining the Board's demurrer to the second through fourth causes of action and staying the first cause of action on the grounds that there is another action pending between the same parties (the Howard Jarvis case). There has been no action since then. On December 30, 2017, plaintiff filed a motion to lift the stay on this action. No Hearing date has been set. On January 16, 2018, plaintiff filed a Motion to Lift the stay in this action. The hearing on plaintiff's Motion to Lift the stay in this action is April 18, 2018. On April 8, 2018, plaintiff filed a Reply to his Motion to Lift the Stay of proceedings in this case. On April 18, 2018, the court adopted its Tentative Ruling and denied Plaintiff's Motion to Lift the Stay.

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DISCLAIMER

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