

LITIGATION ROSTER

SPECIAL TAXES

SEPTEMBER 2024

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NEW CASES

Case Name

Case Number

CLOSED CASES

Case Name

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

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ALTBAUM, ROYAL PAWN, INC. v. STATE OF CALIFORNIA

San Diego County Superior Court: 37-2024-00003904-CU-MC-CTL

Filed – 01/26/2024

Plaintiffs' Counsel

LeRoy George Siddell

CDTFA's Counsel

Kara Siegel

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiffs, two Federal Firearms License (“FFL”) holders, seek a permanent injunction against the enforcement of an 11% excise tax imposed on the gross receipts of the retail sale of a firearm, firearm precursor parts, and ammunition beginning July 1, 2024, pursuant to [Assembly Bill 28](#) - Gun Violence Prevention and School Safety Act (2023). Plaintiffs argue the tax violates the Second and Fourteenth Amendments to the United States Constitution because the tax will minimize the capacity of ordinary, law-abiding citizens to exercise their Second Amendment rights and will cause financial harm to the Plaintiffs' businesses. Plaintiffs also seeks monetary damages on behalf of taxpayers alleged to be harmed by the implementation of AB 28 and attorneys' fees.

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiffs served the Department of Justice on February 7, 2024. The court granted CDTFA an additional 30 days to respond to the Complaint. The new deadline is April 8, 2024. On April 8, 2024, CDTFA filed its Demurrer and Motion to Strike the Complaint; the hearing is scheduled for October 11, 2024. Plaintiffs filed their opposition to CDTFA's Demurrer and Motion to Strike on September 20, 2024. CDTFA's reply papers are due October 4, 2024.

HNHPC, INC. v. CDTFA

Orange County Superior Court: 30-2023-01369643-CU-WM-WJC

Filed – 12/28/2023

Plaintiffs' Counsel

Jeff Augustini, Law Office of Jeff Augustini

CDTFA's Counsel

Justin Buller

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiff HNHPC, Inc., filed a lawsuit against CDTFA and the Office of Administrative Law (OAL) challenging the validity of [Regulation 3802](#), Gross Receipts from Sales of Cannabis and Cannabis Products, and the amendment to [Regulation 3700](#), Cannabis Excise and Cultivation Tax, promulgated by CDTFA using its emergency regulatory authority. Plaintiff argues that CDTFA abused its authority by ignoring the Administrative Procedures Act's (APA) procedural requirements including the failure to properly provide notice and the assertion of a non-existent emergency. Plaintiff also asserts that Regulation 3802 and the amendment to Regulation 3700(i) contravene the stated intent of Proposition 64 and the Cannabis Tax Laws ([Rev. & Tax. Code, §34010 et seq.](#)) that separately stated "cannabis accessories" are not subject to the cannabis excise tax.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was personally served with the Summons and Complaint on January 5, 2024. CDTFA's deadline to file a responsive pleading is February 16, 2024. On February 16, 2024, CDTFA filed a Motion to Transfer Venue of this case to Sacramento County. The hearing on this motion is scheduled for May 23, 2024. On May 10, 2024, Plaintiff filed its opposition to CDTFA's Motion to Transfer Venue. On May 16, 2024, CDTFA filed a reply in support of its Motion to Transfer Venue. On May 22, 2024, the court denied CDTFA's Motion to Transfer Venue based on HNHPC's stipulation to "withdraw all requested relief other than its request to invalidate the two challenged 'emergency' regulations for failure to follow the APA and the applicable emergency rule-making requirements." HNHPC will file an amended petition eliminating its injunctive and declaratory relief causes of action consistent with the court's order. On June 24, 2024, CDTFA filed an answer to the Writ and Complaint. OAL also filed a Demurrer to

the Writ and Complaint on June 24, 2024, which is scheduled for hearing on November 14, 2024. In its demurrer, OAL argues that it is not a proper party and cannot provide any equitable relief to HNHPC.

DANIELLE JAYMES, JOSHUAH GERKEN, SECOND AMENDMENT FOUNDATION, FIREARMS POLICY COALITION, CALIFORNIA RIFLE & PISTOL ASSOCIATION, AND NATIONAL RIFLE ASSOCIATION OF AMERICA v. NICOLAS MADUROS, ET AL.

San Diego County Superior Court: 37-2024-00031147-CU-MC-CTL
Filed – 07/02/2024

Plaintiffs' Counsel

C.D. Michael, MICHAEL & ASSOCIATES, P.C.

CDTFA's Counsel

Jennifer Henderson

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiffs, Danielle Jaymes, Joshua Gerken, Second Amendment Foundation, Firearms Policy Coalition, California Rifle & Pistol Association, and National Rifle Association of America, filed a verified complaint challenging the constitutionality of [Assembly Bill 28](#) (Ch. 231, Stats. 2023), which imposes an 11% excise tax on the “gross receipts from the retail sale . . . of any firearm, firearm precursor part, or ammunition” sold by licensed firearms dealers, firearms manufacturers, and ammunition vendors with the intent to raise money and award grants for gun violence intervention and prevention programs. Plaintiffs contend that the imposition of the excise tax violates the right to keep and bear arms secured by the Second Amendment to the United States Constitution.

Audit/Tax Period: None

Amount: Unspecified

Status:

The Complaint was filed on July 2, 2024. CDTFA was served with the Complaint on August 26, 2024. CDTFA's responsive pleading is due September 25, 2024. Plaintiffs will file an amended complaint by November 1, 2024, and stipulated that CDTFA's response to the amended complaint will be due December 17, 2024.

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

Jennifer Henderson

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

Court of Appeal, Third Appellate District: C101143

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. On October 9, 2023, CDTFA filed its answer to the Petition and a cross-complaint against Petitioners. In its cross-complaint, CDTFA seeks a court order that: (1) Petitioners be ordered to produce records necessary for CDTFA to carry out its duties under the Cigarette and Tobacco Products Tax Law (CTPTL); (2) CDTFA be granted sufficient time to carry out its duties under the CTPTL; and (3) Petitioners be ordered to return any excess tax reimbursements that they collected to their customers from whom such excess amounts were collected. On November 27, 2023, the court approved the parties' stipulated briefing schedule, which provides as follows: (1) Starbuzz's deadline to file its opening brief in support of its writ petition and a demurrer to CDTFA's cross-complaint is December 8, 2023; (2) CDTFA's deadline to file its opposition brief on the merits and opposition to Starbuzz's demurrer is January 12, 2024; and (3) Starbuzz's deadline to file its reply brief on the merits and reply in support of its demurrer is January 25, 2024. The hearing on these matters is scheduled for February 9, 2024. On December 8, 2023, Petitioners filed a Motion for Issuance of Writ and a Demurrer to CDTFA's Cross Complaint. On January 12, 2024, CDTFA filed an opposition brief to Petitioners' Motion for Issuance of Writ and Demurrer to CDTFA's Cross-Complaint. On January 25, 2024, Petitioners filed a reply to CDTFA's opposition brief. The hearing on Petitioners' Motion and Demurrer is scheduled for February 9, 2024. On February 9, 2024, the trial court denied Petitioners' Petition and Demurrer to CDTFA's Cross-Complaint, finding in favor of CDTFA on both the Petition and Cross-Complaint. The court held that Petitioners did not show that CDTFA's review of whether Petitioners collected excess tax reimbursement from their customers is barred by res judicata; and, such review is not the same cause of action as Petitioners' refund claims. On February 29, 2024, Petitioners filed a Motion to Vacate the Judgment. CDTFA's deadline to oppose the motion is March 11, 2024. On March 11, 2024, CDTFA filed an opposition to Petitioners' Motion to Vacate the Judgment. On March 15, 2024, Petitioners filed a reply to CDTFA's opposition to the Motion to Vacate the Judgment. The hearing on this motion is scheduled for March 22, 2024. On March 22, 2024, the court denied Petitioners' Motion to Vacate Judgment on the ground that it was premature. Petitioners filed their answer to CDTFA's Cross-Complaint on that same date. The court entered the dismissal of CDTFA's cross-complaint on May 1, 2024, without prejudice. On May 14, 2024, the trial court

entered judgment in favor of CDTFA. On May 16, 2024, Petitioners filed a Notice of Appeal of the judgment. Petitioners' opening brief is due October 7, 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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CLOSED CASES

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