

# **LITIGATION ROSTER**

## **SPECIAL TAXES**

**OCTOBER 2022**

**Special Taxes  
LITIGATION ROSTER  
OCTOBER 2022**

**NEW CASES**

**Case Name**

**Case Number**

**CLOSED CASES**

**Case Name**

**Case Number**

STARBUZZ TOBACCO, INC. v. CALIFORNIA OFFICE OF TAX APPEALS, ET AL. 22STCP02300

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

**Special Taxes**  
**LITIGATION ROSTER**  
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**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

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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.

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**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

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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**

| <b><u>Case Name</u></b>  | <b><u>Case Number</u></b> |
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**DISCLAIMER**

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