

LITIGATION ROSTER

SPECIAL TAXES

AUGUST 2022

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NEW CASES

Case Name

Case Number

CLOSED CASES

Case Name

Case Number

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

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**IPC (USA), INC. v. CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION, AN AGENCY OF THE STATE OF CALIFORNIA**

Sacramento County Superior Court: 34-2021-00310045

Filed – 10/22/2021

Plaintiffs' Counsel

Andres Vallejo, Vallejo, Antolin, Agarwal & Kanter LLP

CDTFA's Counsel

Andrea Schoor

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiff filed its Complaint for Refund of Taxes (“Complaint”) on October 22, 2021, and personally served Defendant California Department of Tax and Fee Administration (“CDTFA”), on November 3, 2021. Plaintiff contends that it is entitled to a refund of motor vehicle fuel taxes (“MVFT”) in the amount of \$10,521,997.89, with interest, for the period April 1, 2016 through January 31, 2018 (“Period at Issue”). Plaintiff also seeks attorneys' fees and costs. Plaintiff alleges that it is a wholesale distributor of gasoline, diesel, and other refined petroleum products throughout the United States. Plaintiff alleges that, in April 2016, it began selling fuel to First American Petroleum LLC (“FAP”), an Indian purchaser, and did not collect MVFT from FAP because its sales occurred above the rack, and on November 17, 2016, the State Board of Equalization (“SBE”) provided it with a spreadsheet that included FAP in SBE's most current Supplier List. Therefore, Plaintiff alleges that it was not aware that CDTFA considered FAP to be as an unlicensed person during the Period at Issue. (Rev. & Tax. Code, § [7363](#), subd. (c).) On March 10, 2020, Plaintiff filed a claim for refund for MVFT in the amount of \$8,664,652.08, which CDTFA denied on July 28, 2021. On August 5, 2021, Plaintiff filed a claim for refund for MVFT in the amount of \$1,857,345.81, which CDTFA denied on August 12, 2021.

Audit/Tax Period: None

Amount: \$10,521,997.89

Status:

CDTFA was served with the complaint on November 3, 2021. The parties agreed to a 15-day extension for CDTFA to file its response to the complaint; CDTFA's response is now due December 20, 2021. CDTFA filed its answer to the complaint on December 17, 2021. Pursuant to the parties' settlement agreement, Plaintiff filed a request for dismissal on August 15, 2022, which was entered by the court that same date. This case will now be closed.

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.

STARBUZZ TOBACCO, INC., A CALIFORNIA CORPORATION, AND STARBUZZ INTERNATIONAL, INC., A CALIFORNIA CORPORATION v. CALIFORNIA OFFICE OF TAX APPEALS, ET AL.

Los Angeles County Superior Court: 22STCP02300

Orange County Superior Court: 30-2021-01222965-CU-WM-CJC

Filed – 09/21/2021

Plaintiffs' Counsel

Mardiros Dakessian, Dakessian Law, LTD

CDTFA's Counsel

Michael von Loewenfeldt, Wagstaffe, von Loewenfeldt, Busch & Radwick LLP

CDTFA Attorney

Kiren Chohan

Issue(s):

Starbuzz Tobacco, Inc. and Starbuzz International, Inc. (“Petitioners”) filed a Verified Petition for Writ of Mandate or Administrative Mandate (“Petition”) against the Office of Tax Appeals (“OTA”) as the Respondent, and named CDTFA as the Real Party in Interest. In its Petition, Petitioners seek a peremptory writ of mandate or, alternatively, peremptory writ of administrative mandate, to command OTA to rescind its September 9, 2021 decision granting CDTFA's petition for rehearing and to deny the same. Petitioners' pending appeal before OTA involves the CDTFA's denial of Petitioners' refund claims totaling \$2,818,739, for the combined period October 1, 2012, through September 30, 2015, for Petitioners' taxable distributions of shisha under the Cigarette and Tobacco Products Tax Law. On April 28, 2021, OTA issued its decision granting Petitioners' refund claims, finding that Petitioners' shisha distributions were not subject to the tobacco products excise tax. On May 26, 2021, CDTFA timely filed a petition for rehearing with the OTA because the OTA's decision was contrary to the law, which was granted by the OTA. Petitioners seek to stay all further proceedings before the OTA on CDTFA's petition for rehearing until the court decides the Petition. Petitioners also seek attorneys' fees.

Audit/Tax Period: None

Amount: \$2,818,739.00

Status:

CDTFA was served with the Petition on September 29, 2021. On October 21, 2021, Petitioners served CDTFA with a First Amended Verified Petition for Writ of Mandate or Administrative Mandate ("FAP"). On October 22, 2021, OTA filed a Motion to Transfer Venue, scheduled to be heard on March 14, 2022. On

November 19, 2021, CDTFA filed its Motion to Transfer Venue. The hearing on this motion is scheduled for March 21, 2022. On March 4, 2022, petitioners filed an opposition to OTA's Motion for Transfer of Venue. On March 7, 2022, OTA filed a reply brief in support of its motion. On March 9, 2022, petitioners filed an opposition to CDTFA's Motion to Transfer Venue and a sur-reply responding to OTA's reply in support of its Motion to Transfer Venue. On March 11, 2022, the trial court issued a tentative ruling granting OTA's Motion to Transfer Venue to Los Angeles County Superior Court. Following oral argument on March 14, 2022, the court continued the hearings on OTA's Motion to Transfer Venue, as well as the hearing on CDTFA's Motion to Transfer Venue and the case management conference, to May 9, 2022. On May 9, 2022, the court granted the Office of Tax Appeals' and CDTFA's motions to transfer the case to Los Angeles County Superior Court. On June 17, 2022, the Los Angeles County Superior Court sent notice of receipt of the case from the Orange County Superior Court. CDTFA's deadline to file a response to the petition is July 18, 2022. On June 23, 2022, CDTFA received notice that the court has scheduled a trial setting conference on September 20, 2022. Petitioners granted CDTFA a 15-day extension to respond to the Petition. CDTFA's deadline for a responsive pleading is August 2, 2022. On July 18, 2022, OTA filed a Demurrer to the Petition, and the hearing on the Demurrer is scheduled for August 18, 2022. On July 21, 2022, the parties filed a Stipulated Joinder in Demurrer, whereby the parties agreed that the pending Demurrer filed by OTA will be treated as if it were filed by both OTA and CDTFA without the need for CDTFA to file any further documents concerning the Demurrer. On August 5, 2022, petitioners filed an opposition to the Demurrer filed by OTA and CDTFA. On August 11, 2022, OTA filed a reply in support of its Demurrer. On August 17, 2022, pursuant to the parties' stipulation, the court continued the Demurrer hearing and trial setting conference to October 4, 2022. Petitioners filed a request for dismissal on September 1, 2022, which was entered by the court that same date.

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.

**SWARTZ v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
(CDTFA), ET AL.**

Kern County Superior Court: BCV-20-102242

Filed – 09/28/2020

Plaintiffs' Counsel

Harry Swartz, Pro Per

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiff filed its Complaint for Damages against CDTFA, Director Maduros, in the amount of no less than \$2.2 million, plus interest, costs of suit and such other relief the court may deem proper. Plaintiff alleges that it was an owner in a partnership, Valleywide Distributors, which was a licensed cigarette and tobacco products distributor. Plaintiff alleges that the Defendants seized cigarettes and tobacco products at Plaintiff's business premises in connection with a fraudulent criminal investigation; and, that Defendants destroyed the seized property with no prior notice given to Plaintiff.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served on October 23, 2020. CDTFA filed a Motion to Transfer Venue on November 23, 2020; the hearing on this motion is scheduled for January 6, 2021. Plaintiff served Defendants with an opposition to Defendants' Motion to Transfer Venue to Los Angeles County Superior Court on December 21, 2020. On December 29, 2020, CDTFA filed a reply brief in support of its Motion to Transfer Venue to Los Angeles County Superior Court. On January 6, 2021, the Court took CDTFA's Motion to Transfer Venue from Kern County to Los Angeles County Superior Court under submission. On January 20, 2021, the Trial Court denied CDTFA's Motion to Transfer Venue, concluding that the gravamen of this case is Plaintiff's request for return of seized property and thus sounds in mandamus, as opposed to a claim for refund under [Section 30403](#) of the Revenue and Tax Code as urged by CDTFA. CDTFA's response to the Complaint is due on February 1, 2021. Defendants filed an answer to the Complaint on February 1, 2021. On March 12, 2021, Plaintiff filed a response to Defendants' answer to the Complaint. On March 18, 2021, Defendants filed an Objection to Plaintiff's response to Defendants' answer. On March 29, 2021, at the case management conference, the court scheduled the trial and final case management conference for September 26, 2022, and a mandatory settlement conference for August 26, 2022. CDTFA filed its Motion for Judgment on the Pleadings and Request for Judicial Notice on October 14, 2021. The hearing on CDTFA's Motion for Judgment on the Pleadings is set for November 30, 2021. On November 19, 2021, CDTFA filed its reply brief in support of its Motion for Judgment on the Pleadings. On November 30, 2021, the court granted CDTFA's motion with leave to amend, within 20 days from the entry of the order. The court ordered CDTFA to prepare an order consistent with its ruling. Plaintiff filed a First Amended Complaint on December 16, 2021. CDTFA filed its answer to the First Amended Complaint on January 18, 2022. Defendants filed a Motion for Judgment on the Pleadings to the First Amended Complaint on April 14, 2022. The hearing on this motion is scheduled for May 17, 2022. On May 10, 2022, CDTFA filed a reply brief in support of its Motion for Judgment on the Pleadings. On May 11, 2022, Plaintiff served CDTFA with an opposition to the motion. On May 17, 2022, the trial court granted CDTFA's Motion for Judgment on the Pleadings without leave to amend based on the ground that this action is barred under [Government Code section 860.2](#). On June 15, 2022, the court entered a judgment of dismissal. CDTFA filed and served a Notice of Entry of Judgment on June 23, 2022. Plaintiff's deadline to appeal the judgment is August 22, 2022. No appeal was filed from the judgment in favor of CDTFA and this matter is now over and will be closed.

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CLOSED CASES

Case Name

Case Number

DISCLAIMER

Every attempt has been made to ensure the information contained herein is valid and accurate at the time of publication. However, the tax laws are complex and subject to change. If there is a conflict between the law and the information found, decisions will be made based on the law.

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