

LITIGATION ROSTER

SPECIAL TAXES

JUNE 2011

**Special Taxes
JUNE 2011**

NEW CASES

Case Name

Court/Case Number

FARAH SMOKE SHOP

San Francisco Superior No. CPF-11-511344

CLOSED CASES

Case Name

Court/Case Number

None

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

Special Taxes
LITIGATION ROSTER
JUNE 2011

CA FARM BUREAU FEDERATION I, et al. v. CA State Water Resources Control Board, et al.

California Supreme Court Case No. S150518

Sacramento Superior Court Case No. 04CS00473

Court of Appeal, Third Appellate District Case No. C050289

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

Filed – 04/13/04

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: The California Supreme Court issued its decision on January 31, 2011, affirming the Court of Appeal's judgment holding that the fee statutes at issue are facially constitutional and reversing the Court of Appeal's determination that the statutes and their implementing regulations are unconstitutional as applied. The case is remanded to the Court of Appeal to remand to the trial court for proceedings consistent with the opinion. Petitions for Rehearing filed. On April 20, 2011, the Court denied the petitions for rehearing, and modified its opinion. Remittitur issued May 12, 2011. Status Conference is scheduled for July 29, 2011.

CA FARM BUREAU FEDERATION II, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 05CS00538

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Filed – 01/13/05

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION III, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 06CS00651

Filed – 04/26/06

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION IV, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 07CS00485

Filed – 02/11/08

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007; 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION V, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2009-80000231

Filed – 05/07/09

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2009-2009

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, Case No. S150518.

DIAGEO-GUINNESS USA, INC., et al. v. California State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00013031-CU-JR-GDS

Court of Appeal, Third Appellate District No. C061227

Plaintiff's Counsel

Elizabeth Mann, Jeffrey N. Goldberg

McDermot, Will & Emery LLP

Filed – 06/12/08

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Issue(s): (1) Whether BOE has the authority to adopt new Alcoholic Beverage Tax Regulations [2558](#), [2559](#), [2559.1](#), [2559.3](#) and [2559.5](#) (“Regulations”) recently approved by the Office of Administrative Law on June 10, 2008; (2) whether the Regulations are consistent with governing law; (3) whether BOE is required to follow federal regulations in this area; (4) whether BOE failed to comply with the Administrative Procedures Act; and (5) whether the Regulations violate the Commerce Clause of the United States Constitution (Revenue and Taxation Code sections [32002](#), [32152](#), [32451](#) and Business and Professions Code sections [23004](#), [23005](#), [23006](#), [23007](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Judgment for BOE was entered February 19, 2009. Plaintiff's Notice of Appeal was filed on February 27, 2009. This case has been fully briefed in the Court of Appeal and is awaiting scheduling of oral argument.

FARAH SMOKE SHOP v. California State Board of Equalization

San Francisco Superior Court Case No. CPF-11-511344

Plaintiffs' Counsel

Robert G. Cummings

Law Office of Robert G. Cummings

Filed – 06/03/11

BOE's Counsel

Joyce Hee

BOE Attorney

Sharon Silva

Issue(s): The issue in this case is whether or not plaintiff was properly suspended for purchasing cigarettes from an unlicensed person per B & P Code section 22980.1. ([Bus. & Prof. Code section 22974 and 22980.1](#); Title 17 Cal. Code Regs. 4606.

Audit/Tax Period: None

Amount: \$0.00

Status: The Court granted Petitioner's Ex Parte Application for Temporary Restraining Order for Stay of Suspension of Cigarette and Tobacco License; the Order was entered June 8, 2011. The 30-day suspension is stayed pending hearing and decision. A hearing is scheduled for August 9, 2011.

GREYHOUND LINES, INC. v. California Board of Equalization

Sacramento Superior Court Case No. 07CS00054

Plaintiff's Counsel

William D. Taylor, Eli R. Makus

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP

Filed – 01/12/07

BOE's Counsel

Bob Asperger

BOE Attorney

Renee Carter

Issue(s): Whether consumption of diesel fuel used to operate air conditioning systems on buses was exempt from the diesel fuel tax ([Revenue and Taxation Code section 60501\(a\)\(4\)\(A\)](#); [Regulation 1432](#)).

Audit/Tax Period: 08/01/01-12/31/03; 01/01/04-06/30/05

Amount: \$295,583.04

Status: BOE's Answer to the Second Amended Complaint was filed February 1, 2010. On March 5, 2010, Greyhound agreed to remove its Demurrer to BOE's Answer to the Second Amended Complaint from the court's March 19, 2010 calendar.

MORNING STAR COMPANY v. The State Board of Equalization, et al.

Sacramento Superior Court Case No. 34-2008-00005600-CU-MC-GDS

Court of Appeal, Third Appellate District No. C063437

Plaintiff's Counsel

Brian C. Leighton, Richard Todd Luoma

Attorneys at Law

Filed – 03/06/08

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 01/01/03-12/31/05

Amount: \$38,698.92

Status: Trial court judgment in favor of BOE was entered September 22, 2009. Plaintiff filed an appeal. The case was argued and submitted on March 14, 2011. On May 5, 2011, the Court of Appeal affirmed the trial court's judgment. Morning Star's Petition for Review was filed on June 15, 2011.

NORTHERN CA WATER ASSOCIATION I, et al. v. State Water Resources Control Board, et al.

California Superior Court Case No. S150518

Sacramento Superior Court Case No. 03CS01776

Court of Appeal, Third Appellate District: 03CS01776

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

Filed – 12/17/03

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: The California Supreme Court issued its decision on January 31, 2011, affirming the Court of Appeal's judgment holding that the fee statutes at issue are facially constitutional and reversing the Court of Appeal's determination that the statutes and their implementing regulations are unconstitutional as applied. The case is remanded to the Court of Appeal to remand to the trial court for proceedings consistent with the opinion. Petitions for Rehearing filed. On April 20, 2011, the Court denied the petitions for rehearing, and modified its opinion. Remittitur issued May 12, 2011. Status Conference is scheduled for July 29, 2011.

NORTHERN CA WATER ASSOCIATION II, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 04CS01467

Filed – 10/29/04

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION III, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 05CS01488

Filed – 10/19/05

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION IV, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 06CS01517

Filed – 10/18/06

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION V, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2008-00003004-CU-WM-GDS

Filed – 02/07/08

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION VI, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2009-80000183

Filed – 03/05/09

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2008-2009

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION VII, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2010-80000461

Filed – 03/04/2010

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2009-2010

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION VIII, et al. v. State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 34-2011- 80000828

Filed – 04/05/2011

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2010-2011

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

PALO VERDE IRRIGATION DISTRICT v. State Water Resources Control Board, et al.

Riverside Superior Court Case No. INC 043178

Filed – 05/28/04

Plaintiff's Counsel

David R. Saunders
Clayson, Mann, Yaeger & Hansen

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases (see *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.)

PARMAR, ASHOK V., et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC379013

Filed – 10/11/2007

Court of Appeal, Second Appellate District No. B215789

Plaintiffs' Counsel

Marty Dakessian
ReedSmith LLP

BOE's Counsel

Ron Ito
BOE Attorney
John Waid

Issue(s): Whether the BOE issued the Notice of Determination to the correct entity and whether plaintiff intentionally evaded payment of excise taxes as a distributor defined under [Revenue and Taxation Code sections 30008 and 30009](#).

Audit/Tax Period: 12/16/93-03/08/95

Amount: \$87,647.00

Status: Judgment in favor of plaintiffs was entered February 23, 2009. The case is on appeal, and is currently being briefed in the Court of Appeal. On June 14, 2011, the Second District Court of Appeal issued its opinion resulting in a partial victory for the Board.

SANTA CLARA, COUNTY OF, et al. v. State Board of Equalization of California

San Francisco Superior Court Case No. CPF-06-506789

Filed – 11/15/06

Plaintiffs' Counsel

Louise H. Renne, K. Scott Dickey
Renne, Sloan, Holtzman, Sakai LLP

BOE's Counsel

Steven J. Green
BOE Attorney
Kiren Chohan

Issue(s): Whether the BOE is under a mandatory duty to tax flavored malt beverages as distilled spirits under [Revenue and Taxation Code section 32451](#).

Audit/Tax Period: None

Amount: Unspecified

Status: On June 2, 2009, the court granted Third Party Diageo-Guinness USA, Inc.'s Motion to Enforce Stay. The court ordered that the existing stay order, entered June 18, 2007, shall remain in effect until a Remittitur is filed and served by the clerk of the Court of Appeal in *Diageo-Guinness USA, Inc. v. California State Board of Equalization*, Case No. C061227, and that this stay order bars all discovery activity in the case.

SHAITRIT, ASHER v. California State Board of Equalization

San Diego Superior Court Case No. 37-2008-00094283

Filed – 11/15/06

Court of Appeal, Fourth Appellate District Case No. D056858

Plaintiffs' Counsel

Asher Shaitrit
In Pro Per

BOE's Counsel

Leslie Branman Smith
BOE Attorney
Renee Carter

Issue(s): The issue in this case is whether plaintiff, a licensed distributor of cigarettes, purchased and distributed unstamped cigarettes subject to the Cigarette and Tobacco Products Tax Law (Revenue and Taxation Code section [30000](#) et seq.).

Audit/Tax Period: 5/1/99 – 5/31/01

Amount: \$157,871.09

Status: Trial court judgment in favor of BOE. Plaintiff filed a Notice of Appeal on December 28, 2009. The case is currently being briefed in the Court of Appeal.

**SPECIAL TAXES
CLOSED CASES
LITIGATION ROSTER
JUNE 2011**

No cases were closed during this period.

DISCLAIMER

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