

District Court Mesa County, Colorado Court Address: 125 N Spruce St. P.O. Box 20,000-5030 Grand Junction CO 81501	DATE FILED: April 24, 2018 2:01 PM FILING ID: 2A1D44A9791F0 CASE NUMBER: 2018CV30199
Plaintiff: THE VINELAND CORPORATION dba COLORADO CELLARS, LTD., a Colorado Corporation, on behalf of itself and all others similarly situated  v.  Defendants: THE STATE OF COLORADO, THE COLORADO DEPARTMENT OF AGRICULTURE and THE COLORADO WINE INDUSTRY DEVELOPMENT BOARD	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Attorney:  JOHN WILLIAMS LEGAL, LLC John Williams 817 Falcon Way, Suite 202 Grand Junction, CO 81506 (970) 241-2838 <a href="mailto:john@johnwilliamslegal.com">john@johnwilliamslegal.com</a>  Attorney Reg #8529	Case Number:     Division Courtroom
<b>COMPLAINT</b>	

The Plaintiff, The Vineland Corporation dba Colorado Cellars, LTD., by and through its attorney, John Williams of John Williams Legal, LLC, states the following as its Complaint:

### I. INTRODUCTION

1. This is an action for injunctive relief and declaratory relief seeking to enjoin Defendants (hereafter the "State of Colorado") from charging and collecting a Wine Development Fee under CRS 12-47-503(1)(b) (II). The Wine Development "Fee" is actually a tax of 1.0 cent per liter on all vinous liquors sold in the State of Colorado. The Wine Development Fees collected are transferred to the Colorado Wine Industry Development Fund for use by the Colorado Wine Industry Development Board to promote the Colorado wine industry. In addition to injunctive and declaratory relief, Plaintiffs seek a judgment requiring the State of Colorado to refund all Wine Development Fees collected by the State of Colorado under CRS 12-47-503(1)(b)(II) over the last four years plus

simple interest at the rate of 10% per annum on all Wine Development Fees collected from by the State of Colorado since the inception of the Wine Development Fees in July, 2000 (the time of the initial conduct) as authorized by Article X Section 20 of the Colorado Constitution. As set forth below, the Wine Development Fee is a “fee” in name only and is in reality a tax which the State of Colorado has been levying, and will continue to levy, in violation of Article X, Section 20 of the Colorado Constitution, otherwise known as the “Taxpayer Bill of Rights” or “TABOR.”

## **II. JURISDICTION & PARTIES**

2. Plaintiff, The Vineland Corporation dba Colorado Cellars LTD (“Colorado Cellars”), incorporates the allegations stated in Paragraph 1.
3. Colorado Cellars is a Colorado corporation with a principal business location located at 3553 E Road, Palisade, Colorado 81526.
4. Defendants are the State of Colorado which assesses and collects the Wine Development Fee, the Colorado Agriculture Department which is the department under which the Colorado Wine Industry Development Board operates, and the Colorado Wine Industry Development Board which is the sub-entity that receives the revenue from the Wine Development Fee and then spends such revenue to promote the Colorado Wine Industry. The Defendants will be collectively referred to as the “State of Colorado.”
5. Jurisdiction is proper pursuant to Article VI Section 9 of the Constitution of the State of Colorado, and C.R.C.P. 57 and 65.
6. Venue is proper in Mesa County pursuant to C.R.C.P. Rule 98, as the winery business of Colorado Cellars is located in Mesa County, Colorado, and a substantial portion of the class of similarly situated Plaintiffs operates wineries in Mesa County, Colorado. In addition, the Defendants are located and do business in Mesa County, Colorado.

## **III. CLASS ACTION ALLEGATIONS**

7. Colorado Cellars incorporates the allegations of paragraphs 1-6.
8. Colorado Cellars has filed this action as a representative of a class of persons, including individuals and various forms of business entities, such as partnerships, limited liability companies, and corporations, who are in the business of selling vinous spirits (wine) at wholesale and who pay the Wine Development Fee of \$0.01 per liter of wine sold pursuant to CRS 12-47-503(1)(b)(II).
9. The class of wine wholesalers is believed to consist of approximately one hundred fifty (150) members and joinder of all of the members of the class in this action is impracticable.

10. There are questions of law and fact common to the class members, specifically whether the payment of the Wine Development Fee pursuant to CRS 12-47-503(1)(b)(II) is in fact payment of an excise tax in violation of Article X, Section 20 of the Colorado Constitution.
11. The claim of Colorado Cellars as the representative plaintiff is identical to the claims of the wine wholesalers that make up the class who have also paid the Wine Development Fee required by CRS 12-47-503(1)(b)(II) in that this fee is in fact an excise tax barred by Article X Section 20 of the Colorado Constitution.
12. Colorado Cellars will fairly and adequately represent and protect the interests of the class because it has retained counsel with experience in litigation and with experience with the wine industry and wine legislation in Colorado, and because Plaintiff has no interest which conflicts in any way with those of the class members.
13. Colorado Cellars seeks certification of a class action pursuant to CRCP 23(b)(2) and (3).
14. This case may be maintained as a class action pursuant to CRCP 23(b)(2) in that Colorado Cellars seeks declaratory relief with respect to the constitutionality of the "fee" in CRS 12-47-503(1)(b)(II) as well as injunctive relief with respect to further collection of the fee of \$0.01 per liter of wine sold at wholesale in the State of Colorado.
15. This case may also be maintained as a class action pursuant to CRCP 23(b)(3) in that the questions of law and fact which are common to the class members clearly predominate over individual questions affecting class members. In fact, Colorado Cellars sees no individual questions that are specific to individual class members. The common issues of fact and law in this case are that Colorado Cellars and the class members each paid a fee of \$0.01 per liter of wine sold at wholesale within the State of Colorado, which "fee" is in reality a tax in violation of TABOR. Colorado Cellars will seek in this action a judgement for reimbursement to Colorado Cellars and all class members of all money paid as Wine Development Fees pursuant to CRS 12-47-503(1)(b)(II) for the last four (4) fiscal years plus simple interest of 10% per annum on the sum of all Wine Development Fees paid since the "initial conduct" as proscribed in Article X Section 20(1) of the Colorado Constitution. In addition, Colorado Cellars will seek an order requiring the State of Colorado to pay all attorney's fees and costs of Colorado Cellars and of all represented class members.
16. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because the question of law to be determined herein is common to each of the class members and the damages suffered by individual class members may in most instances be relatively small and the burden upon each member of the class to litigate the issue may make it difficult and impractical for each to pursue its own claim against the State of Colorado.
17. Judicial economy will be served by maintenance of this lawsuit as a class action in that it is likely to avoid the burden which would be otherwise placed upon the judicial system by the filing of numerous similar suits by large and small wine wholesalers. There will be no obstacles to effective and efficient management of this lawsuit as a class action by this Court.

#### IV. GENERAL ALLEGATIONS

18. Colorado Cellars incorporates the allegations set forth in paragraphs 1-17.
19. In 1990, the Colorado legislature passed H.B. 1990-1068, to be known as the Colorado Wine Industry Development Act, to promote the Colorado wine industry (the "1990 Wine Act").
20. A part of the 1990 Wine Act codified at CRS 35-29.5-105 created the Colorado Wine Industry Development Fund ("Wine Fund") to consist of moneys credited to the fund pursuant to CRS 12-47-127(1)(b.1) and (1) (b.2). The Wine Fund was to be continuously appropriated to the Colorado Wine Industry Development Board ("Wine Board") for expenses of the Wine Board, with at least one-third going to research and development for the wine industry and at least one-third going to promotion and marketing of the Colorado wine industry.
21. The Wine Fund was funded by an excise tax surcharge paid on the sale of wine in Colorado. CRS 12-47-127 (1)(b.1)(I)(A) provided that an *"excise tax surcharge at the rate of 1.0 cents per liter is imposed on all vinous liquors sold, offered for sale, or used in the state."* [Emphasis supplied] This subsection went on to state that the one hundred per cent of this "excise surcharge tax" collected was to be transferred from the general fund to the Wine Fund.
22. CRS 12-47-127(1)(b.1)(I)(B), which immediately followed the above excise tax provision, stated that the excise tax surcharge of 1.0 cent per liter on vinous liquors sold, offered for sale, or used in Colorado "is repealed July 1, 2000." In other words, the 1.0 cent excise tax on the sale or use of wine was to sunset on the tenth anniversary of the starting date of the 1990 Wine Act.
23. In 1997, the Colorado legislature amended the 1990 Wine Act. For purposes of this Complaint, Colorado Cellars will refer to this amending legislation as the "Amended Wine Act."
24. The Amended Wine Act changed the wording of the excise tax surcharge provision found in CRS 12-47-127(1)(b.1)(I)(A). In the Amended Wine Act, the excise tax surcharge of 1.0 cents per liter was replaced at C.R.S. 12-47-503(1)(b)(II) with language that states *"wine development fee at the rate of 1.0 cent per liter is imposed on all vinous liquors except hard cider sold, offered for sale, or used in the state."* [Emphasis supplied] Just like in the earlier version of the taxing statute, one hundred per cent of the "fee" is to be transferred to the Wine Fund created under CRS 35-29.5-105. Just like the earlier taxing statute, the purpose of the "fee" is to fund the Colorado Wine Industry Development Board.
25. Prior to the passage of the Amended Wine Act, the voters of the State of Colorado approved an amendment to the Colorado Constitution known as the Taxpayers Bill of Rights, commonly referred to as TABOR. TABOR is codified in the Colorado Constitution in Article X of Title 20.
26. Section 20(4)(a) of TABOR provides that the State must have voter approval in advance for "any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax...."

27. The State violated TABOR by the passage of the Amended Wine Bill in 1997, five years after TABOR became effective, by calling the excise tax surcharge in the 1990 Wine Act a Wine Development Fee in the Amended Wine Act, thereby extending this 1.0 cent excise tax surcharge into perpetuity even though it was to sunset on July 1, 2000.
28. Simply re-naming the 1.0 cent excise tax surcharge a "Wine Development Fee," the State unconstitutionally extended an "expiring tax" in violation of TABOR as the extension was not approved by the Colorado voters.

## **V. CLAIMS FOR RELIEF**

### **First Cause of Action – Injunctive Relief**

29. Colorado Cellars incorporates the allegations set forth in Paragraphs 1-28.
30. An actual controversy exists between the Colorado Cellars (and as the representative of the class members) with the State of Colorado because Colorado Cellars and the class members have each paid to the State of Colorado a Wine Development Fee of 1.0 cent per liter for each liter of wine sold in Colorado since July 2000 as provided in the Amended Wine Act. Colorado Cellars and all class members will continue to be subjected to this 1.0 cent "fee" during the pendency of this action. Subjugation to the imposition of the Wine Development Fee constitutes the danger of real, immediate, and irreparable injury. Last year the Plaintiff and class members paid approximately \$730,000 in Wine Development Fees to the State of Colorado.
31. The State of Colorado must be enjoined from continuing to collect the Wine Development Fee and from imposing penalties against Colorado Cellars and all class members for the non-payment of the Wine Development Fee until the Court has determined whether such "fee" is an impermissible tax.

### **Second Cause of Action – Declaratory Judgment**

32. Colorado Cellars incorporates the allegations contained in Paragraph 1-31.
33. An actual controversy exists between the Parties with respect to payment of the Wine Development Fee imposed by the State of Colorado.
34. Pursuant to CRCP 57, Colorado Cellars requests that the Court issue an Order declaring that the Wine Development Fee is an impermissible attempt to extend an expiring tax without voter approval, and that this attempt to rename a excise tax surcharge a Wine Development Fee without such voter approval is a violation of TABOR.

### **Third Cause of Action – Judgment For Refund of All Fees Paid**

35. Colorado Cellars incorporated the allegations contained in Paragraphs 1-34.
36. In addition, the Colorado Cellars and the class members request that pursuant to Section (1) of TABOR, the Court enter an order requiring the State of Colorado to refund all Wine Development

Fees collected from Colorado Cellars and all class members over the past four full fiscal years plus simple interest at the rate of 10% per year on all Wine Development Fees collected from the time of the "initial conduct," that is, first collection, of the Wine Development Fees in July, 2000. See TABOR (1).

37. In addition, and also pursuant to Section 1 of TABOR, Colorado Cellars requests that the Court order the State of Colorado to pay all reasonable costs and attorneys' fees incurred herein.

THEREFORE, Colorado Cellars prays for judgement against the State of Colorado as follows:

- A. For an order enjoining the State of Colorado from collecting or attempting to collect the Wine Development Fee imposed by CRS 12-47-503(1)(b)(II); and
- B. For an order declaring that the Wine Development Fee imposed by CRS 12-47-503(1)(b)(II) is in violation of TABOR and thus unconstitutional; and
- C. For an order directing the State of Colorado to refund to Colorado Cellars and all class members all of the Wine Development Fees paid to the State of Colorado pursuant to CRS 12-47-503(1)(b)(II) for the past four fiscal years plus simple interest of 10% per annum on all Wine Development Fees paid since the inception of CRS 12-47-503(1)(b)(II) in July, 2000; and
- D. An order directing the State of Colorado to pay all attorney's fees and costs incurred in the prosecution of this action; and
- E. Such other and further relief as the Court deems just.

DATED: April 24, 2018

/s/ John Williams

John Williams #8529

John Williams Legal, LLC

Attorney for Plaintiff Colorado Cellars