

District Court City and County of Denver, Colorado 1437 Bannock Street Denver, Colorado 80202	DATE FILED: February 7, 2020 9:35 AM FILING ID: CADC126C56947 CASE NUMBER: 2020CV30505
Plaintiff: TURLEY WINE COMPANY, LLC v. Defendants: COLORADO DEPARTMENT OF REVENUE, COLORADO WINE INDUSTRY DEVELOPMENT BOARD AND JARED POLIS, GOVERNOR, AS THE REPRESENTATIVE OF THE STATE OF COLORADO	<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 john@johnwilliamslegal.com Attorney Reg #8529	Case Number: Division Courtroom
COMPLAINT	

The Plaintiff, Turley Wine Company, LLC, 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 to enjoin and prevent Defendants (hereafter the "State of Colorado") from charging and collecting the Wine Development Fee pursuant to CRS 12-47-503(1)(b) (II). The Wine Development Fee is an assessment of 1.0 cent per liter on all vinous liquors sold in the State of Colorado. The Wine Development Fee was enacted by legislation passed by the Colorado legislature in 1996. The Wine Development Fee was an extension of an existing tax which should have been approved by the voters of the State of Colorado pursuant to Article X Section 20 of the Colorado Constitution ("TABOR"). The money collected from the payment of the Wine Development Fee is transferred by the State of

Colorado to the Colorado Wine Industry Development Fund for the exclusive use of the Colorado Wine Industry Development Board (which is a part of the Colorado Department of Agriculture) to promote the Colorado wine industry. The Wine Development Fee is an unauthorized tax which the State of Colorado has been levying, and will continue to levy, in violation of TABOR.

II. JURISDICTION & PARTIES

2. Plaintiff, Turley Wine Company, LLC (“Turley Wine Company”), incorporates the allegations stated in Paragraph 1.
3. Turley Wine Company is a Colorado limited liability company wholly owned by Kyle Turley.
4. Turley Wine Company holds Federal License Number CO-W-21115 and Colorado Limited Winery License 03-12276 entitling Turley Wine Company to manufacture vinous liquor in the State of Colorado. The federal license and the Colorado Limited Winery License were issued to Turley Wine Company in 2020. Turley Wine Company has begun wine production in Palisade, Colorado.
5. Defendants are the Colorado Department of Revenue, the Colorado Wine Industry Development Board and Jared Polis, governor of the State of Colorado. Polis is the chief executive of the State of Colorado and is named in his representative capacity. The Colorado Department of Revenue assesses and collects the Wine Development Fee and then disburses the money collected to the Colorado Wine Industry Development Fund.
6. 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.
7. Venue is proper in Denver County pursuant to C.R.C.P. Rule 98, because the official seat of the State government of Colorado is in Denver County.

III. GENERAL ALLEGATIONS

8. Turley Wine Company incorporates the allegations stated in paragraphs 1-7.
9. In 1990, the Colorado legislature passed H.B. 1990-1068, known as the Colorado Wine Industry Development Act, to promote the Colorado wine industry (the “1990 Wine Act”).
10. 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 the money collected from three sources. The first source was an excise tax on Colorado-made wines codified at C.R.S. 12-47-127(1)(b.2)(I); the second source was an excise tax surcharge (“Excise Tax Surcharge”) on all wines sold in Colorado codified at C.R.S. 12-47-127(1)(b.1)(I); and the third source was an excise tax surcharge on all grapes grown in the State of Colorado. The Wine Fund is continuously appropriated to the Colorado Wine Industry Development Board (“Wine Board”) for use by the

Wine Board to promote the Colorado wine industry. At least one-third of the Wine Fund is to be spent on research and development for the Colorado wine industry and at least one-third of the Wine Fund is to be spent on the promotion and marketing of the Colorado wine industry.

11. The Excise Tax Surcharge, found at 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 further provided that the one hundred per cent of the Excise Tax Surcharge collected was to be transferred from the general fund to the Wine Fund. Over the years, almost all of the money that has been paid into the Wine Fund has been derived from the Excise Tax Surcharge. Importantly, the Excise Tax Surcharge was the only tax under the 1990 Wine Act to be imposed both on Colorado produced wines and on all other wines sold in Colorado no matter where produced.
12. CRS 12-47-127(1)(b.1)(I)(B), which immediately followed the above excise tax provision in the 1990 Wine Act, 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 per liter Excise Tax Surcharge was to sunset on the tenth anniversary of the starting date of the 1990 Wine Act. On information and belief, Turley Wine Company alleges that the Colorado legislature’s intent by including this sunset provision was that the Colorado wine industry be self- sustaining without a tax on out-of-state wines after ten years of economic support from a tax on the sale of wines produced outside of Colorado.
13. In 1996, the Colorado legislature amended the 1990 Wine Act. For purposes of this Complaint, Turley Wine Company will refer to this amended legislation as the “Amended Wine Act.”
14. The Amended Wine Act provided for a Wine Development Fee to take effect at the time the Excise Tax Surcharge was to sunset in 2000. Specifically, C.R.S. 12-47-127(1)(b.1)(1.5) provides that a “*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 the Excise Tax Surcharge, one hundred per cent of the Wine Development Fee was, and is, transferred to the Wine Fund created under CRS 35-29.5-105. Just like the Excise Tax Surcharge, the sole purpose of the Wine Development Fee is to fund the promotion of the Colorado wine industry through the Colorado Wine Industry Development Board. And just like the Excise Tax Surcharge, the great majority of the Wine Development Fee is paid by out-of-state wine producers.
15. C.R.S. 12-47-127(1)(b.1)(1.5) was relocated one year following passage to C.R.S. 12-47-503(b)(II) and then re-codified effective October 1, 2018, at C.R.S. 44-3-503(1)(c)(I). The wording and meaning of the statute was unchanged by these re-codifications.
16. 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 known as TABOR. TABOR is codified in the Colorado Constitution at Article X of Title 20.

17. Section 20(4)(a) of TABOR provides that the State must have voter approval 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....”
18. The Colorado legislature violated TABOR by adopting the Wine Development Fee as part of the Amended Wine Act in 1996. The Wine Development Fee of 1.0 cent per liter of wine sold in Colorado took effect on July 1, 2000, the day after the expiration of the Excise Tax Surcharge of 1.0 cent per liter of wine sold in Colorado. The Wine Development Fee went into effect on July 1, 2000, the day after the Excise Tax Surcharge expired.
19. The Wine Development Fee extended an existing tax, the Excise Tax Surcharge. This extended tax was not approved by the voters of Colorado. Instead of seeking voter approval, the legislature simply changed the name of the term “Excise Tax Surcharge” found in the 1990 Wine Act to a “Wine Development Fee” found in the Amended Wine Act, thereby extending the 1.0 cent Excise Tax Surcharge (under a different name) into perpetuity, even though it was to sunset on July 1, 2000 pursuant to the terms of the 1990 Wine Act.
20. Almost all of the money collected through the assessment of the Wine Development Fee comes from wines produced outside of the State of Colorado and not Colorado-produced wines.
21. The Wine Fund is used by the Colorado Wine Industry Development Board solely for the promotion and advancement of the Colorado wine industry (Colorado grape growers and Colorado wine producers). No money from the Wine Fund and none of the Wine Development Fees collected are used to promote the wine industry of any state or nation other than Colorado. The out-of-state wine producers who are assessed and pay the Wine Development Fee derive no benefit from the efforts of the Colorado Wine Development Board.
22. Turley Wine Company is a Colorado resident and taxpayer and has standing to bring and maintain this action. Turley Wine Company must pay the Wine Development Fee on all of the wines produced by Turley Wine Company. Upon its first sale of wine, Turley Wine Company anticipates it will file a motion with the Court to make this action a class action lawsuit. In addition, pursuant *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008), a “plaintiff-taxpayer has standing to pursue his or her interest in ensuring that governmental units conform to the state constitution.” *Barber* at page 6. In this case, the government actions of adopting and collecting the Wine Development Fee without voter approval violates the provisions of the specific constitutional provision, namely TABOR, which was approved by the Colorado voters in 1992 to restrain the growth of government.

IV. CLAIMS FOR RELIEF

First Cause of Action – Injunctive Relief

23. Turley Wine Company incorporates the allegations set forth in Paragraphs 1-22.

24. All wineries and distributors of wine sold in Colorado must pay to the State of Colorado a Wine Development Fee of 1.0 cent per liter for each liter of wine sold in Colorado and have done so since July 2000 as provided in the Amended Wine Act. All wineries and distributors of wine in Colorado will continue to be subjected to this 1.0 cent "fee" during the pendency of this action. Last year, wineries and distributors of wine paid approximately \$730,000 in Wine Development Fees to the State of Colorado.
25. The Wine Development Fee is an impermissible extension of the Excise Tax Surcharge provided for in the 1990 Wine Bill, or is a new tax, prohibited by TABOR.
26. The Wine Fee is a tax.
27. The Wine Fee was not approved by the voters of the State of Colorado.
28. The State of Colorado must be enjoined from continuing to collect the Wine Development Fee and from imposing penalties against wineries and distributors 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

29. Turley Wine Company incorporates the allegations contained in Paragraph 1-28.
30. The Wine Development Fee is an impermissible extension of the excise tax surcharge provided for in the 1990 Wine Bill, or is a new tax, prohibited by TABOR.
31. The Wine Development Fee is a tax.
32. The Wine Development Fee was not submitted to or approved by the voters of the State of Colorado.
33. Pursuant to CRCP 57 and Article X Section 20 of the Colorado Constitution (TABOR), Turley Wine Company requests that the Court issue an Order declaring that the Wine Development Fee is an impermissible tax imposed without voter approval as required by TABOR.

Third Cause of Action – Judgment For Attorney's Fees Incurred

34. Turley Wine Company incorporates the allegations contained in Paragraphs 1-33.
35. Pursuant to Section 20(1) of TABOR, the plaintiff in a successful TABOR challenge shall be allowed its costs and reasonable attorney's fees.
36. Turley Wine Company has incurred and will incur costs and attorney's fees in the prosecution of this action, and requests that the Court order the State of Colorado to pay all of Turley Wine Company's costs and attorneys' fees incurred herein.

THEREFORE, Turley Wine Company 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 is unconstitutional;
- C. For an order requiring the State of Colorado to reimburse all wineries and distributors that have paid the Wine Development Fee all such fees paid over the last four (4) years plus interest at 10% per annum on all such fees that have been collected since the Wine Development Fee went into effect in 2000; and
- D. For an order directing the State of Colorado to pay all attorney's fees and costs incurred by Turley in the prosecution of this action; and
- E. For such other and further relief as the Court deems just.

DATED: February 7, 2020

/s/ John Williams

John Williams #8529

John Williams Legal, LLC

Attorney for Plaintiff Turley Wine Company, LLC