

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ERIE COUNTY AGRICULTURAL SOCIETY
for Revision of a Determination or for Refund
of Sales and Use Taxes under Articles 28 and 29
of the Tax Law for the Period 1982.

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DECISION

Petitioner, Erie County Agricultural Society, 5600 McKinley Parkway, Hamburg, New York 14075, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period 1982 (File No. 40614).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York on February 6, 1985 at 9:15 A.M., with all briefs submitted by May 14, 1985. Petitioner appeared by Sherwood & Hebard (George S. Hebard, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the portion of an agricultural fair's "pay-one-price" admission charge paid to the operator of the midway at such fair is subject to sales tax.

FINDINGS OF FACT

1. On or about September 22, 1982, Erie County Agricultural Society ("petitioner") filed a sales tax return and remitted \$20,997.35 to the Department of Taxation and Finance. Petitioner made a timely application for refund of such monies. Said claim for refund was denied on or about June 23, 1983 and petitioner timely filed a petition to review such denial.

2. Petitioner is an exempt organization and holds a valid exempt organization certificate.

3. Annually, petitioner operates the Erie County Fair and, in particular, petitioner operated the 1982 Erie County Fair.

4. As it had in previous years, the James E. Strates Show provided the "midway" carnival rides and amusements for petitioner at the 1982 fair.

5. Petitioner instituted a new ticket policy for the 1982 fair. In prior years, patrons purchased an admission ticket to the fair but separately paid the James E. Strates Show for admissions to the midway rides and other amusements. In 1982, petitioner offered admission to the fair through the purchase of either a pay-one-price ("POP") ticket or a "walk-around" ticket.

6. The walk-around ticket allowed a patron admission only to the fair grounds. The patron could view the parades, sample the food and walk the grounds.

7. The POP ticket allowed access, without additional payment, to everything inside the fence of the fairgrounds. Thus, the POP ticket holder had access to the buildings, exhibits, shows, amusement rides and grandstand.

8. All the ticket booths (except one) were located at the entrances to the fair grounds. The personnel working at said ticket booths were all employees of petitioner. No employees of the James E. Strates Show sold tickets or collected monies for entrance to the fair or use of the amusement rides at the midway.

9. One could not purchase a "single ride" ticket for admission to or use of the midway carnival rides and amusements from either the James E. Strates Show or petitioner.

10. There was one ticket office located inside the fairgrounds. If fair participants and other persons on the grounds decided they wished to attend certain events, go to the grandstand or ride the amusements, it was necessary for them to purchase a POP ticket. Such persons could do so at the ticket booth on the grounds. Likewise, patrons having purchased a walk-around ticket could upgrade their ticket to a POP ticket at this booth. Only employees of petitioner sold tickets at this booth.

11. During the 1982 fair, petitioner, pursuant to a contractual arrangement, paid the James E. Strates Show a specified percentage of each POP ticket sold. In prior years, the James E. Strates Show had paid a percentage of its sales to petitioner.

12. The Department of Taxation and Finance had asserted to petitioner that sales tax was due on that portion of the POP ticket which represented admission to the midway, and the sales tax paid by petitioner for which refund is requested represents tax on said amount.

CONCLUSIONS OF LAW

A. That Tax Law §1105(f)(1) provides, in pertinent part, that a sales tax should apply to "[a]ny admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state." The term "place of amusement" is defined by Tax Law §1101(d)(10) as "[a]ny place where any facilities for entertainment, amusement, or sports are provided", and the term "admission charge" is defined by Tax Law §1101(d)(2) as "[t]he amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor."

Clearly, that portion of the receipts of the "pay-one-price" ticket attributable to admission to the midway/carnival are, absent some other exemption, subject to tax within the meaning of section 1105(f) of the Tax Law.

B. That section 1116(a) of the Tax Law provides an exemption from the sales tax for admission charges paid to organizations exempt pursuant to said section limited, inter alia, by the provisions of section 1116(d) of the Tax Law. Pertinent to the issue herein, section 1116(d)(2)(B) (during the periods at issue) provided that admission charges paid to an organization such as petitioner are not exempt in respect of admissions to carnivals, rodeos, or circuses in which any professional performer or operator participates for compensation. Thus again, petitioner is not entitled to exemption pursuant to the provisions of section 1116(d)(1) of the Tax Law.

C. However, section 1116(d)(3) of the Tax Law, in pertinent part, provides:

"(3) Admission charges for admission to the following places or events shall not be subject to any of the taxes imposed under subdivision (f) of section eleven hundred five:

(A) Any admission to agricultural fairs if no part of the net earnings thereof inures to the benefit of any stockholders or members of the association conducting the same; provided the proceeds therefrom are used exclusively for the improvement, maintenance and operation of such agricultural fairs."

During 1982, petitioner sold "walk-around" tickets which only gave a patron general admission to the fair. Petitioner also sold a "pay-one-price" ticket which gave a patron not only general admission to the fair, but entitled one to admission to and use of, among other things, the midway carnival and amusement rides without payment of additional charges by the patron. Patrons or other fair goers who did not purchase a POP ticket were not able to avail themselves of the amusements otherwise provided to the purchasers of the POP ticket. A

portion of the proceeds of each of the POP tickets was shared with the operator of the midway carnival.

D. That the proceeds of the POP ticket shared by petitioner with the operator of the carnival midway are not an exempt admission to an agricultural fair within the meaning of section 1116(d) of the Tax Law (Matter of David Robb, State Tax Comm., February 6, 1985, TSB-H-85[106]S; Outdoor Amusement Business Assn. v. State Tax Comm., 84 A.D.2d 950, rev'd on dissenting mem., below 57 N.Y.2d 790; Fairland Amusements, Inc. v. State Tax Comm., ___ A.D.2d ___ (Third Dept. 1985) 487 N.Y.S 2d 879).


E. That the petition for refund of Erie County Agricultural Society is denied and the denial of refund is in all respects sustained.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985


PRESIDENT


COMMISSIONER


COMMISSIONER