

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
on Behalf of	:	
F.B.T. PROMOTIONS, INC., JAMES FLAHERTY, CLEMON T. BENJAMIN, and VICTOR TRIMMER	:	DETERMINATION
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 August 1, 1965 through May 31, 1968.	:	

An application was made on behalf of F.B.T. Promotions, Inc., James Flaherty, Clemon T. Benjamin and Victor Trimmer, 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 August 1, 1965 through May 31, 1968.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on February 15, 1972. Messrs. James Flaherty, Clemon T. Benjamin and Victor Trimmer appeared pro se, and as officers of F.B.T. Promotions, Inc. The Sales Tax Bureau was represented by Saul Heckelman, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

Whether the amount of admission fees reported by the applicant-corporation for sales tax purposes is correct.

FINDINGS OF FACT

1. On October 21, 1968, as a result of the failure of F.B.T. Promotions, Inc. to file quarterly sales tax returns or to submit any records for audit, the Sales Tax Bureau issued an estimated notice

of determination, numbered 90,756,402, in the amount of \$56,500, plus statutory penalties and interest, covering the period from August 1, 1965 through May 31, 1968.

2. On February 6, 1969, F.B.T. Promotions, Inc. filed delinquent New York State sales and use tax returns for the period September 1, 1965 through August 31, 1968. The periods from December 1, 1966 through November 30, 1967, show taxable sales of \$3,070 and sales tax due of \$153.50, which amount was paid at the time of filing, without the addition of any penalties or interest by reason of late payment or filing.

3. On October 21, 1969, as the result of informal conferences held at the New York District Office, and the applicants having failed to submit any records for audit, the original assessment was reduced to an estimated \$7,500. plus statutory penalties and interest, limited to the periods from June 1, 1966 through May 31, 1968.

4. Timely applications for revision of the determinations were filed on behalf of the applicants.

5. The corporation was engaged in holding public dances in various ballrooms and private homes in New York City. The records of the Department of Consumer Affairs of the City of New York indicate that permits were issued to F.B.T. Promotions, Inc. to hold dances. The earliest recorded permit was April 30, 1967, and the latest was January 11, 1968. The officers of the corporation testified that occasionally dances were run without admission fees on slow nights in order to promote business for more desirable nights. The success or failure of a particular promotion depended on the night of the week and the weather conditions.

6. The testimony of the officers in support of the amounts reported on the delinquent tax returns represents the most accurate estimate of the admission fees received from the promotion of public dances by the applicants.

7. The quarterly sales and use tax returns for the periods in issue are accepted as filed.

DETERMINATION

A. The notice of determination is reduced to conform to the taxable sales and sales tax due as shown on the delinquently filed quarterly returns for the periods in issue.

B. Maximum statutory penalties and interest are imposed based upon the sales taxes reported on the filed quarterly returns.

C. The application for revision of the determination is granted in part, in accordance with items (A) and (B) above.

DATED: Albany, New York

April 25, 1972.

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Kremer
COMMISSIONER