

MEMORANDUM

*Big Apple Events  
Sales Sep-Nov. 1975*

TO : Commissioners Tully and Manley  
FROM : Commissioner Koerner  
SUBJECT: Big Apple Events, Inc.

A proposed determination has been submitted by Hearing Officer, Nigel G. Wright, concluding taxpayer was not subject to sales tax for tickets sold in connection with an Art Deco Exposition held at Radio City Music Hall between January 30 - February 3, 1974, inclusive, upon the ground that in conjunction therewith, movie pictures were being exhibited in said theater.

Taxpayer rented out about half of the space of the foyer and the ground lounge of Radio City Music Hall to 38 exhibitors for a fee. He leased a number of old-time movies which had been very popular, such as, "The Informer," "Tom Sawyer," "Top Hat," "King Kong," etc., all films that had opened at Radio City in the 1930's, and then advertised in movie and entertainment magazines for the exposition and a salute to Radio City's greatest hits of the 30's.

The exhibition included, a Jiggs smokestand, figurines of Mickey Mouse, a Bakelite bubble necklace, a bronze maiden, a stainless steel reindeer, a blue glass mantel, Camille Faure's cubist enamels, Rene Lalique's frosted glass vases, Jean Puiforcat's silver teapots and Ruhlmann's ivory-embellished furniture, as well as other items.

It was a very successful show. The average attendance was from 3,000 to 4,000 for each showing of a film. The price of the ticket was \$3.50 at the door and \$2.50 by advance sale. There is no evidence that anyone attended just to view the exhibition and not the movie.

The event in question, while it took place in a legitimate motion picture theater, was not primarily a motion picture exhibition. The determination under review is not correct and I hereby dissent from the proposed determination.

  
Commissioner

May 9, 1975  
Attachment - file

*OK  
Koerner dissenting.*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BIG APPLE EVENTS, INC.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use Taxes :  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXX~~ Period January 30,  
1974 through February 28, 1974.

State of New York  
County of Albany

JANET MACK , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of July , 1975 , she served the within  
Notice of ~~Decision XXX~~ Determination) by ~~(certified)~~ mail upon Big Apple Events, Inc.

~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Big Apple Events, Inc.  
52 MacDougal Street  
New York, New York 10012

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~XX~~ petitioner herein and that the address set forth on said wrapper is the last  
known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

14th day of July , 1975

Joseph J. Van Patten

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BIG APPLE EVENTS, INC.

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXXXX~~ Period  
January 30, 1974 through February  
28, 1974.

State of New York  
County of Albany

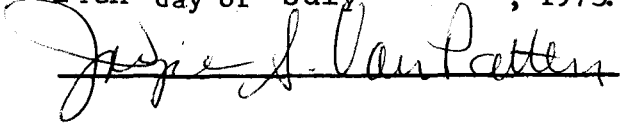
AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

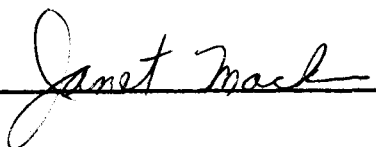
JANET MACK, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of July, 1975, she served the within  
Notice of ~~Decision~~ (for Determination) by ~~(certified)~~ mail upon Erik J. Stapper, Esq.  
and George A. Weiss, Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Erik J. Stapper, Esq.  
& George A. Weiss, Esq.  
Stapper & Weiss, Esqs.  
200 Park Avenue  
New York, New York, 10017  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

14th day of July, 1975.

  
\_\_\_\_\_  
Judge J. Van Patten

  
\_\_\_\_\_  
Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

**James H. Tully, Jr., President**  
~~XXXXXXXXXXXXXXXXXXXX~~

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**July 14, 1975**

**Big Apple Events, Inc.**  
**52 MacDougal Street**  
**New York, New York 10012**

**Gentlemen:**

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 and 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
BIG APPLE EVENTS, INC.	:	DETERMINATION
for a hearing to review a Determination	:	
of Sales and Use Taxes due under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period January 30, 1974, through	:	
February 28, 1974.	:	

---

Big Apple Events, Inc., 52 MacDougal Street, New York, New York 10012, filed an application for a hearing to review a determination of Sales and Use Taxes due under Articles 28 and 29 of the Tax Law for the period January 30, 1974, through February 28, 1974.

Said determination of taxes due was issued on February 26, 1974, under notice number 90,331,845 and is in the amount of \$5,841.43.

A hearing was duly held on November 21, 1974, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The applicant was represented by Erik J. Stapper, Esq. and George A. Weiss, Esq. of Stapper & Weiss, Esqs. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Alexander Weiss, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a commercial exhibition of art objects and of motion pictures together which takes place in a well-known motion picture theater, is subject to sales tax under section 1105(f)(1) of the Tax Law which imposes such tax on admission charges, "for the use of any place of amusement ... except ... motion picture theaters".

FINDINGS OF FACT

1. Big Apple Events, Inc., the applicant herein, was organized specifically to promote and run the "Art Deco Exposition" which took place at Radio City Music Hall in early 1974.

2. The applicant's purpose was always to have a combined showing of both art deco objects and of old movies. At first this was contemplated on a small scale utilizing, for instance, a hotel lobby but when Radio City Music Hall became available that was chosen as the site of the exhibition.

3. The principal organizer and officer of Big Apple Events, Inc. was Mr. Jeffrey Greenberg. Mr. Greenberg has a Bachelor of Fine Arts in film from New York University. He has written a screen play and worked in film production.

4(a). Art Deco, the theme of the exhibition, is a style of decorative art that flourished in the "flapper" era between World War I and World War II. It excelled in decorative enamels,

glassware, bronzes, exotic furniture, jewelry, textiles, rugs and in fountain, floral and nymph forms. Typical were chairs, tables, platform beds and folding wood screens covered in sharkskin or parchment and finished in gilt or in lacquered gold and silver.

4(b). In architecture, Art Deco has been described as a style built largely on the image of a new kind of elegance, sleek and shimmering, which it conveyed. It was a cubist influenced attempt to symbolize the modern age, to appear sleek and modern with forms influenced by Aztec art, Egyptian art and art nouveau. It is in the detail, the splendid geometric ornaments and reliefs symbolizing the modern age that it excelled. It used ornament to romantically symbolize the machine age with sculpture, painting and streamlined and zigzagged forms. An important factor in its success was the ability to encourage fantasy. Examples in architecture include the Chrysler Building and the Chanin Building both on 42nd Street and Lexington Avenue, the ballroom of the St. George Hotel in Brooklyn, the Niagara Mohawk Building in Syracuse, New York, and the apartment houses along the Grand Concourse in the Bronx. The citadel of art deco in the city is Radio City Music Hall with its long covered stairways, cylindrical chandeliers and black mirrored lounge.

4(c). Art Deco was depicted in the motion pictures of the 1930's which emphasized sets of art deco lobbies, hallways, staircases, buildings and furniture. This is seen particularly in films starring Carole Lombard, in Jean Harlow's boudoir sets and also the films "Swing Time" and "Top Hat" starring Fred Astaire and Ginger Rogers.

5(a) Applicant ran ads of about four inches square in newspapers and entertainment magazines. These were captioned "New York Art Deco Exposition" and stated "tens of thousands of objects, furniture, graphics and jewelry from the period for sale ... On the big screen, a salute to Radio City's greatest hits of the 30's ...". These ads did not contain the movie schedule because they had to be placed before the films had been finally selected.

5(b). Later ads were run captioned "New York Art Deco Expo" which highlighted the movie schedule. The exhibition was not mentioned except at the bottom where it was stated, "price of admission includes - movies and exhibitions ...".

5(c). Much smaller ads were placed in the "antique" sections of periodicals. These referred the reader to the display ads in the amusement section of the same periodicals.



5(d). The cost of the ads in the antique sections of periodicals was less than one-tenth of the cost of about \$24,000 for all ads placed.

6. The films selected were chosen from a list of films that had opened at Radio City in the 1930's with final selection depending a great deal on the availability of a good 35mm. print as well as the suitability of the film with respect to the Art Deco theme of the show.

7. The exhibition ran from Wednesday, January 30 through Sunday, February 3. The doors were open from noon to 10:00 P.M. daily and 10:00 A.M. to 10:00 P.M. on Saturday. Different movies were planned for 3:00 P.M. and 7:00 P.M. each day. These movies were, in sequence, "Swing Time", "Gunga Din", "The Informer", "She", "Zoo in Budapest", "King Kong", "The Adventures of Tom Sawyer", "Top Hat", "Garden of Allah", "Jezebel". Starting February 1, with "King Kong" an early 5:00 P.M. showing was made of the scheduled 7:00 P.M. movie, and starting on February 2, with "Tom Sawyer" an early 1:00 P.M. showing was made of the scheduled 3:00 P.M. movie. The additional showings were in response to audience demand.

8. There were thirty-eight exhibitors at the show. They took up about half of the space of the foyer and the ground lounge. The aisles left for passage were about five to eight feet wide.

9. The exhibition included: a Jiggs smokestand, figurines of Mickey Mouse, a Bakelite bubble necklace, a bronze maiden, a stainless steel reindeer, a blue glass mantel, Camille Faure's cubist enamels, Rene Lalique's frosted glass vases, Jean Puiforcat's silver teapots and Ruhlmann's ivory-embellished furniture. It also included memorabilia of the 1939 World's Fair and working amusement arcade machines.

10(a). The theater portion of Radio City Music Hall seats about 3400 on the orchestra floor, 1200 on the first mezzanine and 1200 on the second mezzanine. The orchestra floor has six "spill doors" that open on to the street to enable the audience to leave faster after a show.

10(b). The orchestra floor has a foyer. Below the orchestra floor is a grand lounge. The foyer and grand lounge together normally hold about four hundred people.

10(c) Average attendance at the exhibition was from 3,000 to 4,000 for each showing of a film. After the movie was over, the spill doors were used and most people did not stay to see the exhibits. Before the movie, people could view the exhibits but most could not have spent much time doing so. There is no evidence that anyone attended just to view the exhibits and not the movie.

11. The ticket to the exhibition was captioned, "The 1974 Art Deco Exhibition". The price of a ticket was \$3.50 at the door and \$2.50 by advance sale. The typical ticket prices at major movie theaters at that time were \$2.50 to \$3.50. The typical price at the well-known antique shows in New York was \$2.50 but these were held at Madison Square Garden and the Coliseum and would have had about 300 exhibitors.

12. The rental for the Music Hall was \$35,000 for the five days. The films cost between \$6,000 and \$8,000 including royalties based on admissions. The labor cost incurred for setting up exhibition booths was \$23,500. These booths were rented to the exhibitors for total receipts of \$12,000. The exhibitors were pleased with the results and apparently netted a profit. The rental of a hotel lobby for a small exhibition would have been about \$7,000. The income of the applicant itself was close to its break-even point.

CONCLUSIONS OF LAW

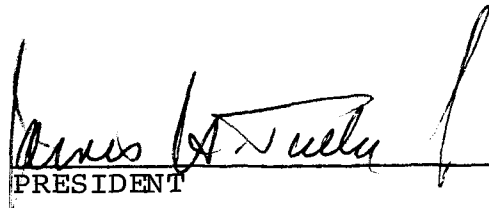
The event in question took place in a legitimate motion picture theater and was primarily a motion picture exhibition.

The determination under review is erroneous and is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

July 14, 1975

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER