

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ISLAND GARDEN, INC. and of
ARNOLD CARLSON

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~(Year(s))~~ Period June 1; 1966
through May 31, 1970

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

State of New York
County of Albany

Martha Funaro , 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 10th day of January , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Island Garden, Inc.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Island Garden, Inc.

500 Hempstead Turnpike
West Hempstead, New York 11552

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

10th day of January , 1974.

Martha Funaro
Judge S. Van Patten

STATE OF NEW YORK
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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of January , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Arnold Carlson

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Arnold Carlson
c/o Island Garden, Inc.
500 Hempstead Turnpike
West Hempstead, New York 11552

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.

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Sworn to before me this

10th day of January, 1974

James L. Van Patten

Martha Funaro

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STATE TAX COMMISSION

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State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of January , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Howard B. Hornstein,
Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Howard B. Hornstein, Esq.
Miller & Hornstein, Esqs.
150 Broadway
New York, New York 10038
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

10th day of January , 1974

James S. Van Latten

Martha Funaro



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino,
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

January 10, 1974

**Mr. Arnold Carlson
c/o Island Garden, Inc.
500 Hempstead Turnpike
West Hempstead, New York 11552**

Dear Mr. Carlson:

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

Please take further notice that pursuant to
Section(s) **1138 & 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	:	
	:	
ISLAND GARDEN, INC. and of	:	DETERMINATION
ARNOLD CARLSON	:	
	:	
for a Hearing to Review a Determination	:	
or a Denial of Refund of Sales and Use	:	
Taxes under Articles 28 and 29 of the	:	
Tax Law for the Period June 1, 1966	:	
through May 31, 1970.	:	
	:	
	:	

Island Garden, Inc., filed an application under section 1138 of the Tax Law for a hearing to review a determination, dated September 8, 1970, of sales and use taxes due under Articles 28 and 29 of the Tax Law in the amount of \$27,148.55, plus penalty and interest of \$6,227.10, for a total of \$33,375.65 for the period June 1, 1966, through May 31, 1970. The amount thereof has been reduced to \$15,270.09, plus penalty and interest.

In lieu of a hearing, the applicants have submitted the case to the Commission on the file of the Sales Tax Bureau. The applicant is represented by Howard B. Hornstein, Esq., of Miller & Hornstein, New York City. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the admissions charge to circus performances are subject to the tax imposed under section 1105(f)(1) of the Tax Law on "any admission charge...to...any place of

amusement...except charges for admission to...dramatic or musical arts performances..." in view of the definition of "dramatic or musical arts performances" as found in section 1101(d)(5) and the reference to "carnivals, rodeos or circuses..." in section 1116 (d) (2) (B).

FINDINGS OF FACT

1. Island Garden, Inc. is a corporation with 75% of its stock owned by Arnold Carlson, who is also its president and 25% of the stock owned by Joseph Belamente, an attorney, who is also its secretary.

2. The assessment as revised found taxable receipts from circus admissions of \$420,704.53, receipts from closed circuit TV of out-of-state sports events of \$3,254.46 and taxable purchases of assets of \$54,658.35. A tax liability of \$15,423.79 was computed thereon and a credit given for \$153.70 of taxes paid with returns for a net figure of \$15,270.09.

3. The applicant's newspaper advertisements refer to the performances here in issue as a "circus" and show a drawing of a clown's face.

CONCLUSIONS OF LAW

The exception to the admissions tax for "charges for admission to...dramatic or musical arts performances" must be construed so as not to apply to circuses. The legislature has provided explicitly in section 1116(d)(2) that admission charges to "carnivals, rodeos or circuses in which any professional performer or operator

participates for compensation" shall not be exempt from tax solely because they inure to the benefit of certain tax exempt organizations. The clear implication from this language is that the legislature intended circus performances to be taxable even when performed on behalf of exempt organizations and it would follow that they should be taxable when performed for purely commercial purposes. Therefore, the definition of "dramatic or musical arts admission charge" found in section 1101(d)(5) must be construed to include only the cultural events therein stated and not to include a circus. Any other construction would render the statute at least redundant and misleading if not contradictory.

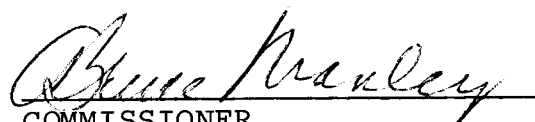
The penalty is proper as no reason has been given for a waiver thereof.

The determination under review is correct and is due together with such additional interest as may be computed to the Tax Law.

DATED: Albany, New York
January 10, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER