

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 8, 1983

Jerome Nathan
224 Delaware Ave.
Buffalo, NY 14202

Dear Mr. Nathan:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Neil J. Katz
Saperston, Day, Lustz, Gallick, Kirschner & Gaglione
1500 Liberty Bank Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Jerome Nathan

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax
under Article 28 & 29 of the Tax Law for the Period:
Ending 5/31/71.

State of New York
County of Albany

Connie Hagelund, 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 8th day of July, 1983, she served the within notice of Decision by certified mail upon Jerome Nathan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

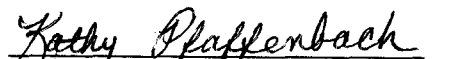
Jerome Nathan
224 Delaware Ave.
Buffalo, NY 14202

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 Postal Service within the State of New York.

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

Sworn to before me this
8th day of July, 1983.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jerome Nathan : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period Ending 5/31/71.

State of New York
County of Albany

Connie Hagelund, 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 8th day of July, 1983, she served the within notice of Decision by certified mail upon Neil J. Katz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Neil J. Katz
Saperston, Day, Lustz, Gallick, Kirschner & Gaglione
1500 Liberty Bank Bldg.
Buffalo, NY 14202

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the 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
8th day of July, 1983.

Connie P. Hagelund

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

JEROME NATHAN :

DECISION

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 Ending May 31, 1971. :

Petitioner, Jerome Nathan, 224 Delaware Avenue, Buffalo, New York 14202, 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 ending May 31, 1971 (File No. 17499).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 22, 1982 at 1:15 P.M. with all briefs to be submitted by August 1, 1982. Petitioner appeared by Saperston, Day, Lustig, Gallick, Kirschner & Gaglione, P.C. (Neil J. Katz, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether charges for admission to the Royal Lipizzan Stallion show were excluded from the imposition of sales tax as charges for admission to a dramatic or musical arts performance or taxable as charges for admission to a place of amusement.

II. Whether petitioner is a person required to collect tax and is thus personally liable under the Tax Law.

FINDINGS OF FACT

1. On October 15, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Jerome Nathan, d/b/a (sic) Buffalo Festival, Inc. (now Festival East Concerts, Inc.) for the period in issue in the amount of \$5,237.16 plus penalty and interest of \$3,551.89 for a total of \$8,789.05. The grounds for the assessment were that since there was a failure to supply requested information, the Tax Commission could determine the amount of tax due pursuant to section 1138 of the Tax Law.

2. A stipulation was entered into between the Audit Division and petitioner covering facts which are incorporated in Finding of Fact "1". In addition, the parties agreed that the petition was timely, that petitioner's principal place of business was the Statler Hilton, Buffalo, New York and that the sales tax rate for City of Buffalo and County of Erie for the period March 19, 1971 through March 21, 1971 was six percent.

3. Jerome Nathan is a concert promoter and has been one since 1960. He is president of Buffalo Festival, Inc. (now Festival East Concerts, Inc.) which is in the business of promoting and presenting concerts and other entertainment events. The performance of the Royal Lipizzan Stallions held in the Buffalo Memorial Auditorium was such an event. The Royal Lipizzan Stallion Show, Inc. contracted with Belkin Productions ("Belkin"), Cleveland, Ohio, as sponsor. Belkin was responsible for the advertising, the selling of tickets, arrangements of the show place, parking of horse vans and trailers and providing necessary electricity and water. Sixty percent of the gross receipts went to the Royal Lipizzan Stallion Show, Inc. and forty percent to Belkin. A rider to the contract provided for the hiring of and payments to stagehands, supplying spotlights and operators thereof, musicians, etc. Jerome Nathan, pursuant to an arrangement with the sponsor, took charge of the distribution and sale of

tickets, submitted reports of the progress of sales, and accepted full responsibility for tickets. He made a full report to Belkin. He received a fee plus expenses.

4. The Royal Lipizzan Stallion Show, Inc. traveled with its own musical director and three or four musicians that formed the nucleus of an orchestra with the addition of twelve local musicians.

5. The show consisted of fourteen numbers and presentations by the Royal Lipizzan Stallions. They performed only with music, which was semi-classical; show tunes and marches were also used.

6. It was the opinion of petitioner, a professional musician and a Cornell University graduate with a music major, that the show was a musical show with the actions of the Royal Lipizzan stallions choreographed directly to the music and that the music was not provided solely for background.

7. By affidavits, petitioner submitted opinions of a Mr. Weedon, musical director, composer and conductor of the show, and a Mr. Riederer, a musician with the show, that the show "involved choreographic elements".

CONCLUSIONS OF LAW

A. That while section 1105(f)(1) of the Tax Law provides for an exclusion to the imposition of a sales tax with respect to the admission charges to dramatic or musical arts performances, petitioner has offered insufficient proof that the performances by the Royal Lipizzan Stallions were choreographic or musical performances. The petitioner, as well as his affiants, were musicians who have not proven or demonstrated any expertise either in the field of choreography or horsemanship.

B. That the exhibition was an amusement, admissions to which are subject to tax under §1105(f)(1) of the Tax Law.

C. That section 1133(a) of the Tax Law provides, in part, that every person required to collect sales tax shall be personally liable for the tax imposed, collected or required to be collected.

D. That petitioner, Jerome Nathan, as a corporate officer of Buffalo Festival, Inc. under a duty to act for such corporation in complying with Article 28 of the Tax Law, was a person required to collect tax for the period ending May 31, 1971, in accordance with the meaning and intent of section 1131(1) of the Tax Law. As such he is personally liable for any unpaid sales tax under section 1133(a).

E. That petitioner acted in good faith and did not willfully attempt to evade payment of sales tax; therefore, penalties and interest exceeding the minimum amount are cancelled.

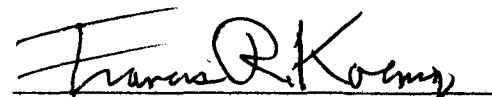
F. That the petition of Jerome Nathan is granted to the extent indicated in Conclusion of Law "E"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on October 15, 1976; and that, except as so granted, the petition is in all other respects denied.

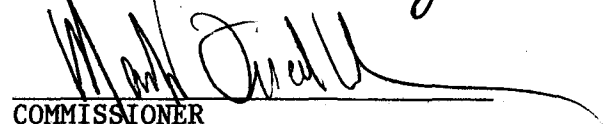
DATED: Albany, New York

STATE TAX COMMISSION

JUL 08 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 207 979

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Jerome Nathan	
Street and No. 224 Delaware Ave.	
P.O., State and ZIP Code Buffalo, NY 14202	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 207 980

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Neil J. Katz	
Saperston, Pa., Lustz,	
Mailick, Kirschner & Gagliardi	
Street and No. 1500 Liberty Bank Bldg.	
P.O., State and ZIP Code Buffalo, NY 14202	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982