

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Erie County Agricultural Society :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 1982. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

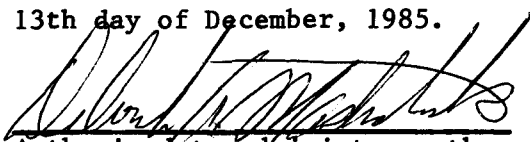
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Erie County Agricultural Society, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Erie County Agricultural Society
5600 McKinley Pkwy.
Hamburg, NY 14075

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
13th day of December, 1985.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Erie County Agricultural Society :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
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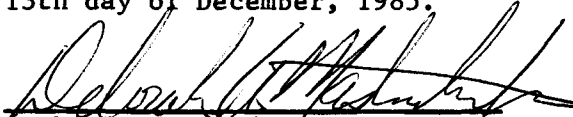
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon George R. Hebard, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George R. Hebard
Sherwood & Hebard
22 Main St.
Hamburg, NY 14075

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



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

December 13, 1985

Erie County Agricultural Society
5600 McKinley Pkwy.
Hamburg, NY 14075

Gentlemen:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
George R. Hebard
Sherwood & Hebard
22 Main St.
Hamburg, NY 14075
Taxing Bureau's Representative

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.

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).

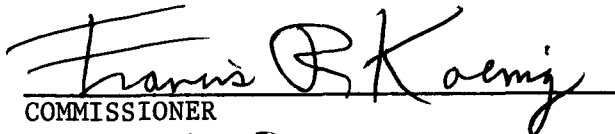
E. That the petition for refund of Erie County Agricultural Society is denied and the denial of refund is in all respects sustained.

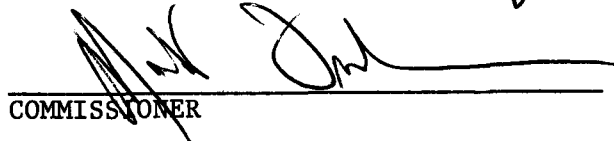
DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 684 313 037

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517 PS Form 3800, Feb. 1982	Sent to <i>Joe Country Development</i>	
	Street and No. <i>3600 McKinley Rd</i>	
	P.O., State and ZIP Code <i>Hamburg NY 14074</i>	
	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		

P 684 313 038

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517 PS Form 3800, Feb. 1982	Sent to <i>Harvey L. DeFord</i>	
	Street and No. <i>Shelburne Rd</i>	
	P.O., State and ZIP Code <i>88 Main St</i>	
	Postage	\$ <i>1.75</i>
	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		