

1-1-1956

Taxes—Theater Admissions Tax

Dawn Girard

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Recommended Citation

Dawn Girard, *Taxes—Theater Admissions Tax*, 5 Buff. L. Rev. 238 (1956).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol5/iss2/68>

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purpose of determining the applicability of retail sales tax laws has been applied to burlap "sacks" or "envelopes" holding smaller cotton bags filled with sugar,⁴ steel drums and wooden barrels used as containers for molasses and syrup,⁵ wooden packing boxes and crates,⁶ and to corrugated cardboard cartons in the instant case.

Theatre Admissions Tax

In New York State, municipalities are authorized by state law to levy a 5% tax on theatre admissions.⁷ Under this enabling act New York City imposed a 5% tax. This resulted in some patrons' paying more than the 5% because of the "breakage."⁸

Plaintiffs in this case⁹ sought a judgment declaring the local law invalid since the city can collect tax only if power is conferred by the state enabling act, "or such as is necessarily implied therefrom."¹⁰

The Court in a unanimous decision,¹¹ reversing the Appellate Division,¹² held, the city can collect breakage in imposing a 5% tax. The city can collect the tax only if the power is conferred by the State enabling act, or such as is necessarily implied therefrom.¹³ The majority believed that the power to collect the fraction over the stipulated 5% was implied from the fact that the legislature had reenacted the statute in exactly the same language as the original enactment under which, to the knowledge of the legislature, at least two cities had administered the tax in the manner of which the plaintiff here complains.¹⁴ Also, the court considered the de minimis doctrine as pertinent here; the effect of the extra half penny on the theatre patron is minimal. It was argued that the amount involved in the city's revenue was considerable, but the Court preferred to consider it only from the patron's point of view.

4. *Sterling Bag Co. v. New York*, 281 N. Y. 269, 22 N. E. 2d 369 (1939).

5. *American Molasses Co. v. McGoldrick*, 281 N. Y. 269, 22 N. E. 2d 369 (1939).

6. *Wood Packing Box Co. v. McGoldrick*, 286 N. Y. 665, 36 N. E. 2d 698 (1941).

7. L. 1947, c. 278.

8. N. Y. LOCAL LAW §37: "Where the tax to be paid by a patron includes a fraction of one cent, the fraction shall not be paid where it is less than one-half cent and a full cent shall be paid when the fraction is one-half cent or more." Administrative Code of City of New York, §G46-2.0(d).

9. *RKO-Keith-Orpheum Theatres v. City of New York*, 308 N. Y. 493, 127 N. E. 2d 284 (1955).

10. *City of Johnstown v. Wells*, 242 App. Div. 103 (1934), *aff'd* 275 N. Y. 623 (1937).

11. Note 9, *supra*.

12. 285 App. Div. 374, 137 N. Y. S. 2d 736 (2d Dep't 1955).

13. Note 10, *supra*.

14. If the practical construction of a statute is well known the legislature is charged with knowledge and its failure to interfere indicates acquiescence therein. *People v. Charbinau*, 115 N. Y. 433, 22 N. E. 271 (1889).