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THE TAX LAWYER

Oct. 25 2012

Lap Dances Aren't Art, At Least Not In NY

Lap dances don't promote culture like ballet, New York's highest court has ruled. Does it take a court to say this? Apparently, and it wasn't an easy decision. Even the *Wall Street Journal* covered it. See [Lap Dances Subject To Tax](#).



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Most exotic dancer cases involve employment taxes, questioning whether dancers are employees of the club or independent contractors. Clubs like the latter treatment so they don't have to withhold payroll taxes. Some clubs make dancers rent out the stage in an elaborate end-run to avoid employee treatment. See [Pole Dancers: Employees or Contractors?](#)

But this time the dispute was over sales tax and whether lap dances are exempt. The court split 4-3, with a three judge dissent standing up for lap dances. The venue? Nite Moves, an adult juice bar outside Albany. Honest, I'm not making this up. Nite Moves doesn't serve alcohol but lap dances?

You bet. In a tiff about taxes not culture, New York claimed hundreds of thousands of dollars in sales tax on lap dances. The bar relied on an exemption for choreographed artistic performances. The trial court ruled these lap dances weren't artistic. See [677 New Loudon Corp., dba Nite](#)

[*Moves v. New York Tax Appeals Tribunal*](#). On appeal, New York's highest court agreed. See [Top NY court does the splits on case arguing that lap dances are art and therefore not taxable](#).

Sure, some dancers have artistic training. At trial, a [cultural anthropologist](#) testified about exotic dance, making it sound even more cultured. Nevertheless, the lower court taxed the gyrations in a [unanimous opinion](#). Hundreds of other venues like the Hustler Club awaited the results on appeal.

But lap dances are not the Bolshoi, quipped the Appeals Court. Besides, intricately choreographed ice-dancing routines are taxed, so lap dances should be too. But the dissent said dancing is dancing. Differentiating based on taste raises the specter of constitutional issues.

Is there a constitutional right to lap dances? Not really, but should one dance be treated differently than another? Discrimination based on the content of speech—like imposing a tax on Hustler magazine while giving the New Yorker an exemption—might be unconstitutional. If the Ballet is tax-free, why not a lap dance?

New York State judges just didn't get it, but perhaps a federal judge would know art when he sees it. Stay tuned.

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