



This Week in State Tax (TWIST)

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Tennessee: Carriage Rides Subject to Amusement Taxes

The Tennessee Court of Appeals recently upheld a chancery court's sales and use tax assessment on a horse-drawn carriage company. The taxpayer offered horse or mule drawn carriage rides, including narrated historical rides, in the downtown Nashville Entertainment District. Customers were charged based on ride duration, not distance traveled, and were let off when the agreed upon ride time was over, regardless of the location. Under Tennessee law, tax is levied on the sales price of each sale at retail of sales of tickets, fees or other charges made for admission to or voluntary contributions made to places of amusement. Following an audit, the Tennessee Department of Revenue assessed sales and use tax on the basis that the taxpayer was subject to taxation as a place of amusement. The taxpayer disagreed, and after a chancery court upheld the assessment, this appeal followed.

On appeal, the taxpayer first argued that the lower court erred when it concluded that the amusement tax statute "does not require a permanent, physical location as the 'places' of amusement." In short, the taxpayer argued that its carriage rides could not be "places" of amusement because they were not permanent buildings or localities. However, the Department of Revenue's Rule 117 and Sales & Use Tax Notice #16-09 evidenced that the statute applies to a broad range of amusement and recreational activities, including those that were not housed in permanent buildings or locations. The court noted that while there were no Tennessee cases on point, the Missouri Supreme Court had addressed the taxability of carriage rides under a similar statute and held that when a business "controls the locality of amusement or entertainment, it was liable for sales tax." Applying that reasoning, the court concluded that the taxpayer's carriage rides fell within the broad range of amusement or entertainment activities encompassed by Tenn. Code Ann. § 67-6-212(a)(2) because the driver controlled the location of amusement - the carriage. The appeals court also determined that the taxpayer's carriage rides were primarily for amusement, not transportation. Notably, the taxpayer was restricted as to where it could transport passengers as its carriages could only travel in a small area of downtown Nashville. In addition, the cost of the rides was high, compared to taxis, buses or Uber, making them impractical for transportation purposes. Additionally, the taxpayer did not guarantee its passengers would be dropped at their desired location, which further detracted from the taxpayer's position that it offered a transportation service. Therefore, the fees for the taxpayer's carriage rides were subject to taxation as a place of amusement. The appeals court also agreed with the lower court that the taxpayer had not proven that it was entitled to summary judgement on its claim that there was an equal protection violation because the Department selectively enforced the law against it and had not assessed other carriage ride companies. Please contact Justin Stringfield with questions on *Sugar Creek Carriages v. Gerregano*.

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