

# Tax Section News

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## Table of Contents

Chair's Report . . . . .	1
<i>By Christina L. Cook</i>	
Commissioner's Column . . . . .	2
<i>By Ward Einess, Commissioner, Minnesota Department of Revenue</i>	
IRS Column . . . . .	3
<i>Submitted on behalf of Faris Fink, Area Director, SBSE Compliance, and Shane Ferguson, Territory Manager, SBSE Taxpayer Education &amp; Communication (TEC)</i>	
Ascertaining the Scope of the Minneapolis Entertainment Tax: The Tax Should Be Interpreted According to Its Own Language and Not the Language of the Sales Tax . . . . .	5
<i>By Masba M. Yevzelman, Fredrikson &amp; Byron, P.A</i>	
Minnesota Administrative Law Judge Supports Rule Imposing Sales Tax on Assets Transferred to a Single-Member LLC. . . . .	7
<i>By: Dale Busacker and Caroline Balfour, Grant Thornton, Minneapolis</i>	
Minnesota Unemployment Insurance: Independent Contractors in the Trucking Industry . . . . .	9
<i>By: Eugene Sherayzen, Sherayzen Law Office</i>	
Pending Minnesota State Tax Case Summaries . . . . .	11
<i>By Jerry Geis, Briggs &amp; Morgan</i>	
Public Rulemaking Docket . . . . .	15
<i>Submitted by Susan Barry, Minnesota Department of Revenue</i>	

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# Ascertaining the Scope of the Minneapolis Entertainment Tax: The Tax Should Be Interpreted According to Its Own Language and Not the Language of the Sales Tax

By Masha M. Yevzelman, Fredrikson & Byron, P.A.

For the past four decades, the Commissioner of Revenue has been collecting a three percent tax on admissions, amusements, and transient lodging accommodations in Minneapolis. The tax, known as the Minneapolis Entertainment Tax (“MET”), was enacted as a special uncodified law in 1969, which has not been amended since.<sup>1</sup> Perhaps because the tax is not well-known, there had been little guidance on how its terms should be interpreted until the Minnesota Tax Court’s recent decision in Ticketmaster, LLC v. Commissioner of Revenue, Docket No. 7866R (Minn. Tax Ct. Mar. 6, 2008). The Ticketmaster decision demonstrates that both the Minnesota Department of Revenue and the Tax Court view the tax as self contained, meaning that it should be interpreted solely according to the common meaning of the MET’s own terms.

The MET provides:

Sec. 3. There is hereby levied a supplement to the state sales tax in the amount of three percent on sales of admissions and amusements, and transient lodging accommodations in the city of Minneapolis. The tax shall apply to sales made on or after October 1, 1969.

Minn. Laws 1969, ch. 1092, § 3.

The tax therefore applies to three categories of entertainment: admissions, amusements, and transient lodging. Each of these terms is defined in the MET as follows:

Subd. 2. “Admission tax” means a tax on the consideration paid for the privilege of admission to places of amusement or athletic events and the privilege of admissions to places of amusement or athletic events and the privilege of use of amusement devices.

Subd. 3. “Amusements tax” means a tax on the sales of food, refreshments, services, or merchandise served or provided in any bar, restaurant, hall, cabaret, or other public place where music and dancing privileges or any other entertainment, except mechanical music alone, are afforded the patrons.

Subd. 4. “Transient lodging tax” means a tax on the consideration paid for lodging and related services by a hotel, tourist court, motel, or trailer camp and for the granting of any similar license to use real property other than the renting or leasing thereof for a continuous period of 30 days or more.

Minn. Laws 1969, ch. 1092 § 2.

The definition provisions do not state, however, what many of the terms used in the definition provisions mean (e.g., “privilege of admission,” “food,” “cabaret,” etc.). Therefore, the relevant inquiry becomes, since the tax is a “supplement to the state sales tax,” do the sales tax provisions provide guidance as to the meaning of these terms.

In the past, the Minnesota Department of Revenue has applied the procedural provisions of the sales tax to the MET. In Plitt North Central Theaters, Inc. v. Comm’r of Revenue, Docket No. 4524 (Minn. Tax Ct. Oct. 2, 1987), for example, the Department successfully argued that the refund provisions of the sales tax apply to the MET. The Tax Court noted that the refund provisions applied because Section 4 of the MET states that the Minneapolis tax “shall be collected by the Commissioner of Taxation along with the state’s general sales tax imposed by Minn. Stat. § 297A, at the same time, in the same manner, and subject to the same rules and the same interest and penalties for non-payment.” Minn. Laws 1969, ch. 1092 § 4. It was therefore clear to the Tax Court in Plitt that the procedural refund provisions of the sales tax applied to the MET.

In the recent Ticketmaster litigation, the Minnesota Department of Revenue confronted the question of whether, in addition to the sales tax’s procedural provisions, the sales tax’s substantive provisions apply to the MET. The primary issue in Ticketmaster, LLC v. Commissioner of Revenue, Docket No. 7866 R (Minn. Tax Ct. Mar. 6, 2008), was whether Ticketmaster’s convenience charges and processing fees are subject to the MET.<sup>2</sup> The parties had stipulated that the convenience charge is a per ticket amount charged by Ticketmaster to a ticket buyer for purchasing tickets through one of Ticketmaster’s distribution methods (at local ticket outlet locations, on Ticketmaster’s telephone reservation system, and at [www.ticketmaster.com](http://www.ticketmaster.com)). And the processing fee is a per transaction amount that Ticketmaster assesses those customers who purchase tickets via the Internet or by telephone and is in exchange for services such as taking and maintaining the ticket buyer’s orders, arranging for shipping, and coordinating with the box office. Neither the convenience charge nor the processing fee is charged to ticket buyers who choose to purchase their tickets at the box office.

<sup>1</sup> The Minneapolis Entertainment Tax is not well-known because it is uncodified. It is not published in the Minnesota Statutes. The 1969 session law via which the MET was enacted is the only place where one can find the text of the MET. So, the only way to locate the terms of the MET, is to know of its existence and to know the date and chapter number of the session law pursuant to which it was enacted. And the only way to determine whether it has been amended is to search through all of the session laws since the MET’s enactment.

<sup>2</sup> Another minor issue in the Ticketmaster litigation was whether Ticketmaster owed sales taxes on the optional UPS/Courier fees that Ticketmaster charged to ticket buyers who desired expedited, physical delivery of their tickets. The tax court held that the UPS/Courier fees were subject to the sales tax because they constituted “delivery fees” within the meaning of Minn. Stat. § 297A.6, subd. 7 and could not be deducted from “sales price.”

In deciding whether the convenience charges and processing fees were subject to the MET, the Commissioner of Revenue argued that the substantive provisions of the sales and use tax should be controlling. Specifically, the Commissioner asserted that the fees are taxable because they are part of the “sales price” of tickets, which includes “charges by the seller for any services necessary to complete the sale.” See Minn. Stat. § 297A.61, subd. 7(3). In support of its argument that the sales tax definitions applied, the Commissioner relied on Section 4 of the MET, which provides that the procedure for collecting the MET is governed by the provisions of Chapter 297A.

As litigation drew nearer, however, the Commissioner abandoned his argument that the substantive sales tax definitions applied to the MET. Instead, the Commissioner argued to the Minnesota Tax Court that the federal admissions tax (repealed in 1965) and the court opinions interpreting it were persuasive authority that Ticketmaster’s convenience charges and processing fees should be subject to the MET.

In response to the Commissioner’s changed argument, the taxpayer argued that the federal admissions tax was irrelevant because the MET is self-contained—only the definitions found in Section 2 of the MET and the common meaning of the terms used in those definitions were relevant in ascertaining the MET’s scope. The taxpayer argued that under the plain language of the MET, the convenience charges and processing fees are not subject to the tax because they are not charged “for the privilege of admission,” and because, according to the common meaning of the phrase, they do not grant ticket buyers “the right to enter or access [an event].” Rather, the taxpayer pointed out that these charges constitute consideration for the privilege and convenience of using Ticketmaster’s system. Only the face value of the ticket is the amount that gives ticket buyers the right to enter events. Because ticket buyers can choose to pay only the face value of the ticket by purchasing tickets at the box office, only that amount is “for the privilege of admission” and only that amount is therefore subject to the MET.

The Tax Court, in conducting its analysis, agreed with Ticketmaster and did not look outside the MET. It found the federal admissions tax entirely irrelevant and did not even mention it in its opinion. The court instead looked solely to the terms of the MET and held that “the Convenience Charge and Processing Fee are not tied to admission since anyone can gain admission to the event without paying these fees.”<sup>3</sup>

Thus, by the end of the Ticketmaster litigation both the Department of Revenue and the Minnesota Tax Court seem to have agreed that the Minneapolis Entertainment Tax is self-contained. Neither the substantive provisions of the sales tax nor the case law interpreting the federal admissions tax should be relevant in ascertaining the MET’s scope and meaning. Rather, to determine whether a charge is subject to the MET, a taxpayer need only look to the common meaning of the terms of the MET itself.

<sup>3</sup> The Tax Court’s decision in Ticketmaster was not appealed to the Minnesota Supreme Court.