

WORKIN' ON OUR NITE MOVES: A POLE-ARIZED APPLICATION OF A SALES TAX EXEMPTION TO EXOTIC DANCE

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ABSTRACT

Following a tax audit in which New York State alleged Nite Moves, a strip club located in Albany, New York, owed \$124,000 plus interest in sales tax for its door admissions fees and private dance fees, the club argued such fees were not subject to sales tax under New York State's tax exemption for dramatic or musical arts performances. Nite Moves' case was appealed all the way up to New York's highest court. This Note will focus on the Court of Appeals' four-to-three decision that such fees did not fall within the dramatic or musical arts performance exemption, and the persuasive dissenting opinion which argued that the majority's holding made a distinction between "highbrow dance" and "lowbrow dance" that raised constitutional First Amendment issues. Nite Moves plans to appeal the case further on First Amendment grounds.

This Note begins with a brief explanation of New York State's Sales Tax Law and the sections applicable to Nite Moves' case. Part II will explore the procedure of the case, arguments made, and Court of Appeals' decision. It will also discuss the First Amendment implications of the decision. Part III will set forth the current, unsettled First Amendment jurisprudence as it pertains to nude dancing. Part IV will discuss two recent cases that dealt with First Amendment challenges to taxes imposed on exotic dance clubs. Part V will discuss some of the issues surrounding nude dancing's current First Amendment jurisprudence, and the implications and likely outcome of a further appeal of Nite Moves' case. If a further appeal is granted, it will give the Supreme Court an opportunity to produce a more settled doctrine in order to assist lower courts in interpreting nude dancing's First Amendment protection. Finally,

in the alternative, Part VI will suggest improvements to New York State's Tax Law in order to combat similar challenges in the future.