

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

BRENDA SMITH d/b/a)	
SUGAR CREEK CARRIAGES,)	
)	
Plaintiff,)	
)	
v.)	No. 20-0640-I
)	
DAVID GERREGANO, Commissioner of)	Chancellor Telford E. Forgety, Jr.
the Tennessee Department of Revenue,)	Judge Rhynette N. Hurd
)	Chancellor Patricia Head Moskal
Defendants.)	

**MEMORANDUM AND ORDER ON
CROSS-MOTIONS FOR SUMMARY JUDGMENT**

This matter is before the Court on Plaintiff’s *Motion for Summary Judgment* and Defendant’s *Motion for Summary Judgment* under Rule 56 of the Tennessee Rules of Civil Procedure. The three-judge panel assigned to this case¹ heard argument on the cross-motions on May 11, 2022, by *ZoomGov* videoconference. Participating in the hearing were Attorney Gary Blackburn, representing Plaintiff Brenda Smith d/b/a Sugar Creek Carriages (“Sugar Creek”), and Deputy Attorney General C. Larry Lewis, representing Defendant David Gerregano, Commissioner of the Tennessee Department of Revenue (the “Department”).

I. BACKGROUND AND STATEMENT OF THE CASE

This case involves a dispute over whether Plaintiff Sugar Creek’s charges for horse-drawn carriage rides in downtown Nashville are subject to the Tennessee’s amusement tax under Tenn. Code Ann. § 67-6-212(a)(2). Plaintiff alleges the Department lacks authority to assess amusement taxes because Plaintiff does not operate a “place of amusement” in Nashville, and the primary

¹ Pursuant to Tenn. Code Ann. § 20-18-101 and Tenn. Sup. Ct. R. 54, Defendant requested a three-judge panel to hear this case on July 23, 2021. By order entered August 6, 2021, the Tennessee Supreme Court appointed the undersigned three-judge panel.

purpose of Plaintiff's carriage rides is for transportation, not amusement. Plaintiff also alleges the Department seeks to unlawfully enforce the amusement tax only against Plaintiff and not against other substantially similar businesses, in violation of the equal protection clause. Plaintiff seeks a judgment that Sugar Creek is not liable for amusement taxes, reimbursement of all taxes paid under protest, dismissal of the Department's counterclaim for any remaining unpaid taxes, and an award of attorneys' fees and costs under the Taxpayer Remedies for Disputed Taxes Act, Tenn. Code Ann. § 67-1-1803(d).

The Department claims Plaintiff's carriage rides are amusement activities subject to the tax and Plaintiff is liable for the amusement tax. The Department asserts a counterclaim against Plaintiff for judgment in its favor for the assessed sales and use/amusement taxes and business taxes, plus interest, and attorneys' fees and expenses under Tenn. Code Ann. § 67-1-1803(d).

II. STATEMENTS OF UNDISPUTED FACTS

The facts are largely undisputed.² Brenda Smith d/b/a Sugar Creek owns and, with her husband, operates Sugar Creek Carriages to provide horse-drawn carriage rides in downtown Nashville. Sugar Creek's principal place of business is 3353 Sugar Creek Road, McEwen, Hickman County, Tennessee. Sugar Creek rents storage space for its carriages at 701 Second Avenue North in Nashville.

Sugar Creek is licensed and regulated by the Metropolitan Transportation Licensing Commission (the "Commission"), which also licenses taxi cabs, vehicles-for-hire, pedal taverns, and wreckers. The Commission issued Sugar Creek a Certificate of Public Convenience and Necessity. The Commission limits to five the number of carriages Sugar Creek may operate at

² The few statements that are disputed by the parties are either not material to the issues presented or set forth legal conclusions and not facts. *See e.g.*, Pl.'s Statement of Undisputed Facts ¶ 4 (legal conclusion); Def.'s Statement of Undisputed Facts ¶¶ 5, 6, 20 (not material facts).

any given time and defines the general downtown area within which the carriages can operate. About 50 to 70 percent of Sugar Creek's rides take place within Nashville's lower Broadway entertainment area. The Commission limits the hours on which carriage companies can operate to after 6:00 p.m. on weekdays and during the day and night on weekends and holidays. The Commission designates specific carriage stand locations for carriage companies, including Plaintiff, to load and unload customers, but Sugar Creek does not maintain a permanent physical facility at the carriage stands.

Sugar Creek charges customers for horse-drawn carriage rides based on the time of the ride and number of riders, and not on the distance traveled. Sugar Creek advertises its carriage rides on its website. For example, Sugar Creek offers a 20-minute carriage ride for \$64.95 for one to four customers, referred to on its website as a "20 Minute Narrated Ride," with additional charges for additional riders. Sugar Creek also offers "Historical Rides of Nashville," "Walk-Up Rides," and "Special Events," such as weddings, funerals and other events. Sugar Creek advertises carriage tours that include many Nashville "hotspots," such as the Schermerhorn Symphony Center, the Country Music Hall of Fame, Bridgestone Arena, Johnny Cash Museum, Riverfront Park, Hard Rock Café, Wildhorse Saloon, Ryman Auditorium, and Tootsies Orchid Lounge.

Under "ideal traffic conditions," Sugar Creek can travel 12 or 13 blocks in 20 minutes. Under "adverse traffic conditions," Sugar Creek may travel only two blocks in 20 minutes. When timed rides expire, Sugar Creek drops riders off even if they have not reached their desired destination. Sometimes riders become upset when they do not reach their destination or see all of the sights they wanted to see.

The Commissioner of the Department of Revenue is authorized to assess and collect state taxes. Tenn. Code Ann. §§ 67-1-101, *et seq.* The Department audited Sugar Creek in 2019. On June 16, 2020, the Department issued a Notice of Proposed Assessment to Sugar Creek for

(i) business tax plus interest in the amount of \$548.36 for the period January 1, 2016 to December 31, 2018, and (ii) sales and use tax (amusement tax) plus interest in the amount of \$32,858.12 for the period December 1, 2015 through April 30, 2019. On December 4, 2020, Sugar Creek paid the Department the total taxes and interest due of \$33,768.16 under protest. Before June 2020, the Department had never assessed amusement tax on Sugar Creek's horse-drawn carriage rides.

Sugar Creek challenges its liability for the amusement tax on the grounds the assessment is unjust, illegal, or incorrect. The Department responds it has authority to assess amusement tax on Sugar Creek's charges for carriage rides under Tenn. Code Ann. § 67-6-212(a)(2).

III. SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04; *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). In determining if summary judgment is appropriate, trial courts must decide “(1) whether a *factual* dispute exists; (2) whether the disputed fact is *material* to the outcome of the case; and (3) whether the disputed fact creates a *genuine* issue for trial.” *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993) (emphases in original). A disputed fact is “material” if it is one that “must be decided in order to resolve the substantive claim or defense at which the motion is directed.” *Id.* at 215. Irrelevant or unnecessary facts are not material. *Rye*, 477 S.W.3d at 251. Disputed, material facts do not include “mere legal conclusions” to be drawn from those facts. *Byrd*, 847 S.W.2d at 215. A “genuine issue” exists when “a reasonable jury could legitimately resolve that fact in favor of one side or the other.” *Id.*

In deciding a motion for summary judgment, the court must “take the strongest legitimate view of the evidence in favor of the nonmoving party.” *Id.* at 210 (citations omitted). Further, the

court does not weigh competing evidence, but overrules a motion for summary judgment when there is a genuine dispute as to any material fact. *Id.* at 211. “Mere conclusory generalizations will not create a material factual dispute sufficient to prevent the court from granting a summary judgment.” *Davis v. Campbell*, 48 S.W.3d 741, 747 (Tenn. Ct. App. 2001). “If . . . the evidence and inferences to be reasonably drawn from the evidence would permit a reasonable person to reach only one conclusion, then there are no material factual disputes and the question can be disposed of as a matter of law.” *Id.* (citations omitted). Conversely, “[i]f reasonable minds could justifiably reach different conclusions based on the evidence at hand, then a genuine question of fact exists.” *Id.* Even where it appears the parties have no disputes regarding the material facts, if they disagree about the inferences and conclusions to be drawn from those facts, summary judgment is precluded. *See CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 87 (Tenn. 2010); *Price v. Mercury Supply Co., Inc.*, 682 S.W.2d 924, 929 (Tenn. 1984).

When the party moving for summary judgment *does not* bear the burden of proof at trial, the moving party must either (i) affirmatively negate an essential element of the non-moving party’s claim, or (ii) show that the non-moving party’s evidence at the summary judgment stage is insufficient to establish the non-moving party’s claim. Tenn. Code Ann. § 20-16-101; *Rye*, 477 S.W.3d at 264. When the moving party *does* bear the burden of proof at trial, “that party must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict.” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986) (Brennan, J., dissenting)). The burden then shifts to the nonmoving party to produce evidence to show that there is a genuine issue for trial. *Id.*

Cross motions for summary judgment are claims by each side that he or she alone is entitled to summary judgment. *CAO Holdings*, 333 S.W.3d at 83. A court is to rule on each party’s motion

“on an individual and separate basis.” *Id.* (citations omitted). The denial of one motion for summary judgment does not necessarily require the grant of the other party’s motion. *Id.*

IV. ANALYSIS

A. Applicable Tax Statutes, Rules, and Notice

Tennessee imposes a general sales tax on the retail sale of tangible personal property and certain services. *See* Tenn. Code Ann. § 67-6-201. Under Tenn. Code Ann. § 67-6-212, the sales tax is extended to amusements, entertainment, and other recreational events or activities and is referred to as “the amusement tax.” The amusement tax statute identifies four categories of taxable activities, only one of which is at issue in this case:

- (a) There is levied a tax at a rate equal to the rate of tax levied on the sale of tangible personal property at retail by § 67-6-202 on the sales price of each sale at retail of the following:

* * *

(2) Sales of tickets, fees or other charges made for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities, including free or complimentary admissions when made in connection with a valuable contribution to any organization or establishment holding or sponsoring such activities which shall have the value equivalent to the charge that would have otherwise been made;

Tenn. Code Ann. § 67-6-212(a)(2). There are some exemptions to the amusement tax, as set forth at Tenn. Code Ann. § 67-6-330, none of which apply in this case. The amusement tax statute does not provide more specific definitions of the amusement, entertainment, or other recreational events or activities that are subject to the tax.

The Department is authorized to and has promulgated rules and regulations for the enforcement of sales and use taxes under Tenn. Code Ann. § 67-6-402. *See* Tenn. Comp. R. & Regs. 1320-05-01-.115 through -.123. Specifically, the Department’s Rule 1320-05-01-.117

(“Rule 117”) addresses the types of amusement, entertainment, or other recreational events and activities described in Tenn. Code Ann. § 67-6-212(a)(2) as follows:

Places of amusement, sports, entertainment, exhibition, display or other recreational events or activities subject to sales and use tax upon charges or admissions shall include, but not be limited to:

- (1) Establishments listed or described in Major Group 79 of the Standard Industrial Classification Manual as establishments providing amusement or entertainment.
- (2) Motion picture theaters, mini adult theaters, or similar establishments displaying motion pictures, whether the exhibition is indoors or outdoors.
- (3) Establishments listed or described in Major Group 84 of the Standard Industrial Classification Manual including noncommercial museums, art galleries and botanical or zoological gardens.

Tenn. Comp. R. & Regs. 1320-05-01-.117.³ Major Group 79 of the Standard Industrial Classification Manual, referred to in subpart (1) of Rule 117, includes the subcategory of “Industry Group 7999—Amusement and Recreation Services, Not Elsewhere Classified.”⁴ By way of example in this case, the Department identifies the following types of activities from Industry Group 7999 as subject to Tennessee’s amusement tax: amusement rides, agricultural fairs, moped rental, motorcycle rental, rental of saddle horses, riding stables, scenic railroads for amusement, rodeo animal rental, tourist attractions, and tourist guides. The Department states Rule 117’s list of taxable activities is not exhaustive but is intended to provide guidance. *See Carson Creek Vacation Resort, Inc. v. Dep’t of Revenue*, 766 S.W.2d 783, 784 (Tenn. 1989).

³ See “State Sales and Use Tax Rules,” at <https://publications.tnsosfiles.com/rules/1320/1320-05/1320-05-01.20220110.pdf>.

⁴ See “Description for 7999: Amusement and Recreation Services, Not Elsewhere Classified,” at <https://www.osha.gov/sic-manual/7999>.

The Department also issued Sales Tax Notice #16-09 in September 2016,⁵ identifying “amusement tours” as subject to the tax. Notice #16-09 provides: “Tours conducted for amusement within the state for a fee, whether the tour is on foot or in a vehicle, are subject to the Tennessee sales tax as an amusement.” The Notice describes, by way of example, amusement tours such as “ghost tours, celebrity bus tours, cave tours, facility tours, city tours, sight-seeing tours, boat tours, etc.”

B. Rules of Statutory Construction

The construction of a statute presents a question of law. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 924 (Tenn. 1998). The cardinal rule of statutory construction is to ascertain and give effect to the intent and purpose of the legislature, based on the natural and ordinary meaning of the language used in the statute without limiting or extending the meaning of that language. *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000). In tax cases, additional rules of construction apply. The Commissioner is authorized to promulgate regulations without enlarging the scope of the taxing statute by rule. *Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 134 (Tenn. 1992). “[R]ules contrary to the express directives of a taxing statute are void.” *Id.* “Statutes levying taxes will not be extended by implication beyond the clear import of the language used, nor will their operation be enlarged so as to embrace matters not specifically pointed out, although standing on a close analogy.” *Id.* at 135 (citations omitted). Statutes imposing a tax are construed liberally in favor of a taxpayer and strictly against the taxing authority, but a court should not use a strict construction to thwart the legislative intent to impose a tax. *CAO Holdings*, 333 S.W.3d 73, 85-86 (Tenn. 2010). The meaning of a statute is not derived from the separate meaning of each individual word but from the entire statute as a whole. *Id.* at 86.

⁵ See “Sales and Use Tax Notice #16-09, Amusement Tours,” at <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales16-09.pdf>.

C. Applicability of the Amusement Tax to Sugar Creek's Carriage Rides

Sugar Creek contends it is not subject to the amusement tax because (i) it does not maintain a physical "place of amusement" in Nashville as required under the amusement tax statute, and (ii) it provides a transportation service rather than an amusement. Sugar Creek also claims it is entitled to equal protection of the taxing laws, and the Department has violated Sugar Creek's rights by failing to impose the amusement tax on other similarly situated horse-drawn carriage companies.

The Department's tax assessment is presumed valid, and Sugar Creek bears the burden of proving the assessment is unjust, illegal, or incorrect, or violates Sugar Creek's equal protection rights. *See Louis Dreyfus Corp. v. Huddleston*, 933 S.W.2d 460, 467 (Tenn. Ct. App. 1996) (citations omitted); "Taxpayer Remedies for Disputed Taxes," Tenn. Code Ann. §§ 67-1-1801, *et seq.*

It is undisputed that Sugar Creek operates horse-drawn carriages on the streets of downtown Nashville, primarily in the lower Broadway entertainment area. It charges admission for the carriage rides, which are advertised, for example, as historical tours, narrated tours, tours of Nashville "hotspots," and special event tours. Sugar Creek's charges are based on the amount of time of the carriage rides and the number of riders, and not the distance traveled. Sugar Creek is regulated by the Metropolitan Commission, which limits the number of carriages Sugar Creek may operate at any one time and the hours of operation. The Commission has designated carriage rider loading and unloading locations, but Sugar Creek determines the routes its carriages will take.

These undisputed facts lead to the conclusion that Sugar Creek charges admission for its horse-drawn carriage rides in downtown Nashville, and those rides are a form of amusement or entertainment activity within the meaning of the amusement tax statute. Reading the statute as a

whole, the purpose and intent of the statute is to impose an amusement tax on charges made for admission to a wide variety of “places of amusement, sports, entertainment, exhibition, display or other recreational events or activities.” Tenn. Code Ann. § 67-6-212(a)(2). Sugar Creek’s operation of its horse-drawn carriage rides over the public streets of downtown Nashville, where the carriage driver determines the route taken, supplies the required “places” of amusement or entertainment. The plain language of the amusement tax statute does not require a permanent, physical location as the “places” of amusement, and the Court does not construe the statute as including such requirement. The fact that Sugar Creek does not operate from a permanent, physical location in downtown Nashville does not diminish the amusing or entertaining nature of the horse-drawn carriage rides for its passengers on Nashville’s streets as the places of amusement within the meaning of the statute.

There are no Tennessee cases addressing the applicability of the amusement tax to horse-drawn carriage rides. The Department cites to a case decided by the Missouri Supreme Court, *Surrey’s on the Plaza, Inc. v. Dir. of Revenue*, 128 S.W.3d 508 (Mo. 2004). Construing a similar amusement tax statute, Missouri held that where a carriage operator provided horse-drawn carriage rides in a public plaza of Kansas City, the plaza became the “place of amusement” over which the carriage operator had control, and the rides were subject to Missouri’s amusement tax. *Id.* at 510. The Missouri Court reasoned the carriage operator’s business was similar to two other types of businesses to which the Court deemed the Missouri amusement tax applied—helicopter tours and boat rides—where the operators of those vehicles controlled the rides. *Id.* Here, the Panel reaches the same result as the Missouri Court. Like in *Surrey’s on the Plaza*, Sugar Creek operates horse-drawn carriages in a “place of amusement” over which it has control.

Sugar Creek nevertheless argues that the Department ignores the plain statutory language of the amusement tax statute, requiring a “place” of amusement or entertainment, and suggesting

that Sugar Creek must have a specific physical building or location where the amusement is provided. The amusement tax statute does not more specifically define places of amusement, entertainment, and other recreational events or activities. The Department identifies a non-exclusive list of charges for “admissions” under Rule 117, and describes types of “amusement tours” included in Notice #16-09 by way of example. Like the amusement tax statute, these descriptions are broad. Although neither Rule 117 nor Notice #16-09 specifically mentions horse-drawn carriage rides, the Nashville downtown streets over which the carriages are operated supply the places of amusement or entertainment activities for purposes of the tax statute, and it is not necessary that Sugar Creek maintain a permanent, physical location in downtown Nashville. The Department’s view of what constitutes a place of amusement is therefore consistent with the statute’s plain language.

Sugar Creek further argues it is not subject to the amusement tax, in any event, because it provides a transportation service rather than an amusement. It contends that because horse-drawn carriages are regulated by other state laws relating to motor vehicles and local ordinances for licensing, the primary purpose of the rides is transportation. For example, Sugar Creek points to Title 55 of the Tennessee Code pertaining to motor and other vehicles. Section 55-8-178, in particular, addresses “rules of the road” for operating nonmotor vehicles and animals, including horse-drawn carriages, while they are on the road. The inclusion of horse-drawn carriages under Title 55’s “rules of the road” provision does not exclude horse-drawn carriages from taxation as a form of amusement under Title 67, where the rides are offered for entertainment, historical, narrated, and “hotspots” tours. State and local regulation of horse-drawn carriages, on the one hand, and taxation of horse-drawn carriage rides that are operated for amusement, on the other hand, are not mutually exclusive activities.

More directly on point is the decision in *Carson Creek Vacation Resorts*, where a campground operator made a similar argument that the “primary purpose” of its campground was lodging, and not recreation subject to the amusement tax. *Carson Creek*, 766 S.W.2d at 784. The Supreme Court rejected the argument, finding the primary purpose of the campground was for “the recreational activity of camping which is a different purpose from that of simply obtaining a place to stay overnight.” *Id.* Applying the same reasoning in *Carson Creek* to the undisputed facts in this case, the Panel concludes the “primary purpose” of the carriage rides offered by Sugar Creek in downtown Nashville is the “amusement” derived from the horse-drawn carriages, which is a different purpose from that of simply obtaining transportation from one location to another. As the Department points out, alternative modes of transportation are otherwise readily available in downtown Nashville by private vehicle, bus, taxi cab, or walking.

The Department further suggests that Tennessee courts apply a “true object” test to determine the primary purpose of a taxable activity, citing *Qualcomm, Inc. v. Chumley*, No. M2006-01398-COA-R3-CV, 2007 WL 2827513, at *4 (Tenn. Ct. App. Sept. 26, 2007) (sales and use taxes assessed on telecommunications) and *Sky Transpo, Inc. v. City of Knoxville*, 703 S.W.2d 126 (Tenn. 1985) (“admissions” tax assessed on gondola and chair lift). In *Sky Transpo*, the Supreme Court found a plaintiff’s gondola and chair lift operated at the World’s Fair was primarily a means of transportation rather than an amusement within the meaning of a private tax act. *Id.* at 129. Sugar Creek objects to the Department’s reliance on the *Sky Transpo* decision and its characterization of a seven-factor analysis as applied to this case. The Court, itself, noted in *Sky Transpo* that the tax at issue was an admissions tax imposed by private act as applied to activity occurring in 1982 and declined to consider any argument by the taxing authority based on the applicability of amusement tax statute, which was enacted two years later in 1984. Without addressing the factors discussed in *Sky Tranpo* where the tax assessed was based on a private act,

the Panel applies the straightforward “primary purpose” analysis as discussed in *Carson Creek*, which is based on the same amusement tax statute at issue here, to determine the primary purpose of Sugar Creek’s carriage rides is amusement.

Sugar Creek also challenges the amusement tax assessment on equal protection grounds, arguing that the Department has selectively enforced the amusement tax only against Sugar Creek, and not against other carriage operators. To sustain this claim, Sugar Creek must come forward with credible evidence to affirmatively establish both discriminatory effect and impermissible, discriminatory intent. *See Nat’l Loans, Inc. v. Tenn. Dep’t of Fin. Inst.*, No. 01A01-9506-CH-00241, 1997 WL 194992, at *6 (Tenn. Ct. App. Apr. 23, 1997) (citing *United States v. Armstrong*, 116 S. Ct. 1480, 1488 (1996)). While Sugar Creek alleges it has been singled-out for assessment, it has failed to come forward with undisputed material facts establishing either discriminatory effect or discriminatory intent in support of its equal protection claim on which it bears the burden of proof. Even if the Department has not assessed and collected amusement taxes from other carriage companies, that fact standing alone is not material to the Department’s assessment of Sugar Creek. *See Porter Brown Limestone Co. v. Olson*, 648 S.W.2d 242, 244 (Tenn. 1982) (“Taxpayers owe and it is the duty of the Commissioner of Revenue to collect the taxes due the State under the law as written by the Legislature and interpreted by the Courts, not as interpreted or overlooked or otherwise omitted by various field auditors or other individuals in the Department of Revenue.”). Sugar Creek’s allegations fall short of the required showing necessary to support an equal protection claim.

V. CONCLUSION

For the reasons discussed above, the Panel concludes there are no genuine issues of disputed material fact raised by either party on their cross-motions for summary judgment. The issue presented is one of statutory construction of the amusement tax statute and application of the

statute to the facts, making summary judgment appropriate under Rule 56. Sugar Creek has failed to meet its burden of proving the Department's assessment on Sugar Creek's horse-drawn carriage rides is unjust, illegal, or incorrect under the plain meaning of the amusement tax statute, and Sugar Creek's charges for the horse-drawn carriage rides are taxable under Tenn. Code Ann. § 67-6-212(a)(2). Sugar Creek also has also failed to meet its burden of proving the Department has violated Sugar Creek's equal protection rights.

It is, accordingly, ORDERED, ADJUDGED and DECREED that:

A. Plaintiff's *Motion for Summary Judgment* is hereby DENIED, and Defendant's *Motion for Summary Judgment* is hereby GRANTED;

B. Plaintiff's claim for refund of the amusement and business taxes paid under protest is DENIED and the Complaint, as amended, is DISMISSED, with prejudice;

C. Defendant is entitled to relief on its Counterclaim for any remaining unpaid taxes. Defendant is deemed to be the prevailing party and is awarded reasonable attorneys' fees and costs pursuant to Tenn. Code Ann. § 67-1-1803(d), up to 20% of the amount of the tax at issue. Defendant is directed to submit a separate application for reasonable attorneys' fees and costs to be awarded within fifteen (15) days of the date of entry of this Memorandum and Order. Plaintiff will have fifteen (15) days thereafter to submit any written opposition to the application, after which the Panel will issue an order as to the fee award, without further hearing.

s/Telford E. Forgety, Jr.
CHANCELLOR TELFORD E. FORGETY, JR.

s/Rhynette N. Hurd
JUDGE RHYNETTE N. HURD

s/Patricia Head Moskal
CHANCELLOR PATRICIA HEAD MOSKAL,
Chief Judge

CERTIFICATE OF SERVICE

I hereby certify that I am forwarding a true and exact copy of the foregoing via U.S. Mail, first-class, postage pre-paid, with a courtesy copy by email, to the parties or their counsel named below.

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s/ Maria M. Salas

Clerk & Master

June 29, 2022

Date