

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2014-000136

10/26/2015

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
H. Bell
Deputy

ZIEGFELD INC

JAMES H HAYS

v.

ARIZONA DEPARTMENT OF REVENUE

SCOT G TEASDALE

MINUTE ENTRY

Courtroom 201-OCH

10:32 a.m. This is the time set for Oral Argument re: pending motions for summary judgment. Plaintiff is represented by counsel, James H. Hays. Cory Anderson, a representative of Plaintiff, Ziegfeld, Inc., is present. Defendant is represented by counsel, Scot G. Teasdale.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Oral argument is presented.

Based upon matters presented to the Court,

IT IS ORDERED taking this matter under advisement.

11:01 a.m. Matter concludes.

LATER:

The Court has considered Plaintiff's Motion for Summary Judgment, filed May 14, 2015, Defendant's response and Cross-Motion for Summary Judgment filed July 10, 2015, Plaintiff's reply in support of its motion and response to the cross-motion, filed July 19, 2015, and Defendant's reply in support of its cross-motion, filed July 31, 2015. The Court benefited from oral argument on the motions on October 26, 2015.

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The Court believes that the performances at Le' Girls can fairly be categorized as "shows of any type or nature," and therefore fall under the amusement classification. Apart from perhaps at the aesthetic level, erotic dances are comparable to theatrical performances or operas.¹ Plaintiff's arguments that it is not anything like a theatrical performances or operas because the duration of its performances is continuous and that the amount of time which its customers could attend the performance could vary from minutes to hours, also fail. Customers are free to enter and exit theatrical performances or operas at times they choose and some go on for many hours. Like customers of theatrical performances or operas Plaintiff's customers are expected to watch without actively (or at least visibly) participating in the performance itself, other than by applause or similar feedback.

Plaintiff's business does not need to be shoehorned into the amusement classification like the river-rafting trips were in *Wilderness World, Inc. v. Arizona Dept. of Revenue*, 182 Ariz. 196 (1995). It fits quit well.

The tax base for businesses falling under the amusement classification is the "gross income derived from the business." A.R.S. § 42-5073(B). "Gross income" is defined as "the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service or both and without any deduction on account of losses." A.R.S. § 42-5001(4). The statute makes taxable the gross receipts of "the business," singular. "The business" of Le' Girls is providing erotic entertainment. That necessarily requires Le' Girls to have erotic entertainers. Providing them is therefore part of "the business," and any additional income derived from providing them is part of the taxable base.

For the above reasons, Plaintiff's Motion for Summary Judgment, filed May 14, 2015 is denied and Defendant's Cross-Motion for Summary Judgment filed July 10, 2015 is granted.

¹ Indeed, many operas include erotic dances; examples include Verdi's *Aida*, Borodin's *Prince Igor*, and Strauss's *Salome*.