Tales from The Bar Side - Poles Apart

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Whoever thought that tax law was as exciting as watching your lawn grow has overlooked the scintillating secrets lurking in the pages of its jurisprudence. Take, for instance, New London Corp. v. St. of N.Y. Tax Appeals Tribunal, 19 N.Y. 3d 1058 (2012).

Therein, petitioner, who operated something termed "an adult juice bar" in Latham, N.Y. (available juice flavors and sizes went unmentioned), contended that his establishment merited a statutory exemption from a New York tax imposed on a wide array of entertainment and amusement venues ranging from sporting events to ice shows to magic performances. The legislature, apparently in the spirit of encouraging cultural and artistic performances, enacted an exemption from this tax for "dramatic or musical arts performances." Enter petitioner, claiming that the exotic stage and private couch dances featured at his emporium rivaled anything seen in Radio City Music Hall—not counting the juice.

Apparently, prior decisions construing this exemption somehow required that exempt dance routines be "choreographed performances." The court then found that petitioner, through the testimony of its expert, had failed to meet its burden since, disappointingly, no evidence had been presented depicting the performances, nor had the expert "observed [or] had personal knowledge of what occurred in private areas." In a particularly interesting choice of words, the court concluded that if the performance of "ice shows presenting pairs ice dancing performances" were not entitled to the exemption, then surely a club "presenting performances by women gyrating on a pole to music, however artistic or athletic their practiced moves are," was not deserving of the exemption.

The stiff dissenting opinion argued forcefully that the dancers in petitioner's emporium "worked hard to prepare their acts," noting with some degree of judicial notice that "pole dancing is actually quite difficult...." Decrying the irrational distinction imposed by the majority between "highbrow dance and lowbrow dance," the dissent analogized to a palpably unconstitutional discrimination between literary works found in Hustler as opposed to The New Yorker (cartoons excepted, of course).

Do not dance around this issue, dear reader(s).