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Strippers Argue Free Speech In Court, Don't Stay In Vegas

The Nevada Supreme Court will decide whether Vegas strip clubs must pay [a 10% entertainment tax](#) imposed by state law. The tax covers fees, food and drinks. Although the clubs have been forced to pay it since 2003, they claim it's unconstitutional and want a refund.

Why? Exotic dancers have First Amendment rights, the clubs say. This tax violates the Constitution. Sound crazy? It depends.

Lawyers for eight strip clubs [say](#) the tax violates the right to free speech. But the Nevada Department of Taxation sees the tax as just another excise tax on business transactions. An excise tax is like a sales tax only more targeted. Some people call these sin taxes, and that's a name that seems apt here.

Several courts have heard the case since 2006. But in case after case, Nevada's tax has been upheld so far. Now Nevada's highest court will take a look. Most observers think the tax will be upheld.

In fact, in other states taxes on similar activity have generally passed constitutional muster. In New York, court battles brewed for years over a sales tax exemption that was applied to artistic performances like ballet but



(Photo credit: brh_images)

not to so-called exotic dance. The question was whether lap dances could be classified as “art” and therefore be tax-exempt.

A key suit was filed by a New York club called Nite Moves. An adult juice bar, the club serves no alcohol but does serve lap dances. The club claimed lap dances were art so were tax-exempt, but the club consistently lost. See [677 New Loudon Corp., dba Nite Moves v. New York Tax Appeals Tribunal](#).

The club’s revenue comes from admission charges, sales of non-alcoholic beverages, and exotic dances. New York is collecting sales tax on the dances. The club relied on an exemption for musical performances.

Some argued only choreographed dances count, while lap dances are more extemporaneous. After losing in New York’s highest court, Nite Moves fired off a [petition](#) asking the U.S. Supreme Court to hear its appeal. That petition [was rejected by SCOTUS](#).

Texas also has a Sexually Oriented Business Fee, generally referred to as a pole tax. It collects \$5 from each patron of clubs featuring nudity and serving alcohol. There have been court battles over this tax too, but the Texas Supreme Court eventually upheld it. Dancing may be a way of expressing yourself, but the pole tax doesn’t violate the First Amendment, the court ruled.

Even [Illinois now has a pole tax](#). Getting any tax ruled as unconstitutional is tough. And while the specific language and effect of any tax must be examined, the likelihood of the free speech argument carrying the day seems small.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.