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Taxes, Strip Clubs, And Defining Art

In our increasingly wired (and occasionally weird) society, there's much discussion about [Amazon Taxes](#) and [taxes on product sales](#). State and local tax revenues are drying up. Enacting new taxes is tough, as is raising rates. But audits and tax disputes can be darned productive and can collect from unexpected sources.



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Take sales taxes. What's a sale and what's a service? And if there are exemptions for "art", what's art? Those are meaty questions, and the New York courts are not short of legal firepower.

In the Albany, New York suburbs, an adult juice bar called "Nite Moves" doesn't serve alcohol but does serve up lap dances. It is engaged in a bitter sales tax fight over them involving hundreds of thousands of dollars. It seems an unlikely tax dispute.

In a court ruling last year, the club lost out when the court said lap dances—at least **these** lap dances—weren't art. See [677 New Loudon Corp., dba Nite Moves v. New York Tax Appeals Tribunal](#). But now the case is on appeal.

The club's revenue comes from admission charges, sales of non-alcoholic beverages, and exotic dances. Most dance revenue is for dances in private

lounges. New York is claiming hundreds of thousands of dollars in sales tax for the dances. The bar's defense?

A little known loophole in the sales tax law for musical performances. Some argue only choreographed dances count. Were these lap dances extemporaneous? Well, they weren't choreographed with each move planned.

Sure, some dancers had artistic training, but most relied on videos and fellow dancers to, as the court put it, "learn their craft." As Judge Eugene Pigott put it, "We need to get past the idea that somehow this is the Bolshoi."

A cultural anthropologist testified about her extensive research on exotic dance. And Nite Moves put a voluminous DVD collection into evidence to support the expert's opinion these were choreographed performances. The lower court issued a [unanimous opinion](#) upholding the tax.

The result on appeal is expected soon, and hundreds of other clubs are literally waiting in the wings. The Hustler Club in New York also filed a brief in the case. Will their response be choreographed? Stay tuned.

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