

STATE OF MINNESOTA

TAX COURT

COUNTY OF RAMSEY

REGULAR DIVISION

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Ticketmaster, LLC,

**ORDER**

Appellant,

vs.

Docket     7866 R  
No.

Commissioner of Revenue,

Dated: March 6, 2008

Appellee.

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The Honorable Sheryl A. Ramstad, Judge of the Minnesota Tax Court, heard Cross Motions for Summary Judgment on December 20, 2007, at the Minnesota Judicial Center, St. Paul, Minnesota.

Tom R. Muck, Attorney at Law, represented the Appellant

James Neher, Assistant Attorney General, represented the Appellee, the Commissioner of Revenue ("Commissioner").

Both parties submitted briefs. The parties also filed a Stipulation of Facts dated November 16, 2007, and Appellant Ticketmaster LLC filed the Affidavit of Howard Fleming in support of its Motion. The matter was submitted to the Court for decision on January 15, 2008.

The issues in this case are (1) whether Ticketmaster's Convenience Charge and Processing Fee are subject to the Minneapolis Entertainment Tax

(Minn. Laws 2969, ch. 1092) and (2) whether the UPS/Courier Fees are subject to Minnesota, Minneapolis, St. Paul, Mankato and Rochester's sales taxes.<sup>1</sup>

The Court, having heard and considered the evidence adduced at the hearing, and upon all of the files, records and proceedings herein, now makes the following:

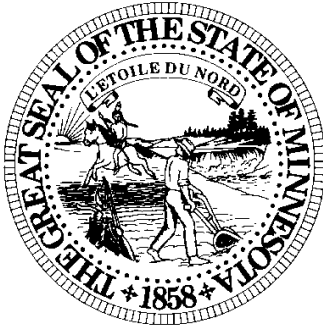
**ORDER**

1. Appellant's Motion for summary judgment is hereby granted in part and denied in part.
2. The Commissioner is directed to determine the specific Convenience Charges and Processing Fees on which Minnesota sales or use tax was paid, and to issue tax refunds as required, along with statutory interest, to Appellant.
3. Appellee's Motion for summary judgment is hereby granted in part and denied in part.

IT IS SO ORDERED. THIS IS A FINAL ORDER. LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF FIFTEEN DAYS IS HEREBY ORDERED.

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<sup>1</sup> The parties have resolved the other issues presented by the Notice of Appeal.



BY THE COURT,

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Sheryl A. Ramstad, Judge  
MINNESOTA TAX COURT

DATED: March 6, 2008

### **Memorandum**

#### **Background**

This matter comes before the Court on Cross Motion for Summary Judgment pursuant to Minn. R. Civ. P. 56, and Minnesota Tax Court Rules of Procedure 8610.0070, 8610.0100, and 8610.0110. Summary judgment is appropriate where it is determined that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03.<sup>2</sup> The parties have filed a Stipulation of Facts, which is incorporated herein and summarized below. We find that there are no material facts in dispute and the issue is properly presented for summary judgment.

#### **Facts**

The parties have entered into a Stipulation of Facts ("Stip.\_\_") which presents the undisputed facts necessary to a determination of the cross-motions.

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<sup>2</sup> Accord DLH Inc. v. Russ, 566 N.W.2d 60, 69 (Minn. 1997) (summary judgment permits the court to dispose of an action on the merits if there is no genuine issue as to any material fact).

Appellant Ticketmaster L.L.C. (“Ticketmaster”) does business in Minnesota as a ticket agent for venues, artists and event promoters (collectively “Event Organizer Clients”), who organize and produce various live entertainment events, such as sporting events, concerts, and plays. Ticketmaster, acting as an exclusive agent for its Event Organizer Clients, sells Tickets<sup>3</sup> through retail outlets, by telephone, and over the internet. As ticketing agent, Ticketmaster does not itself purchase and resell tickets to the events. Instead, Ticketmaster just acts as an agent and sells tickets on behalf of its Event Organizer Clients.

Ticketmaster contracts with Event Organizer Clients to have the exclusive right to sell all Tickets through retail outlets, by telephone, and over the internet, except for the following rights to sell retained by the Event Organizer Clients: (i) sell single Tickets from its box office to persons physically present at the box office; (ii) sell season/contract Tickets; (iii) conduct group sales of Tickets; and (iv) provide a reasonable number of “house seats” (as defined by contract) to house seat recipients. Event Organizer Clients have access to Ticketmaster’s exclusive hardware and software systems, enabling the clients to sell Tickets, track their sales, and coordinate assignment of seating with Ticketmaster.

### **Convenience Charge, Processing Fee, and UPS/Courier Fee**

Ticket buyers who purchase Tickets using Ticketmaster’s system, rather than at the Event Organizer Client’s box office, have the option of purchasing them at Ticketmaster’s retail outlets, through Ticketmaster’s telephone reservation system, or over the internet. They must pay a per Ticket

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<sup>3</sup> A “Ticket” is a printed, electronic or other type of evidence of the right to occupy space or to attend an attraction, even if not evidenced by any physical manifestation of such right, such as a “smart card.” Stip. ¶ 8.

Convenience Charge, a per transaction Processing Fee, and an optional UPS/Courier Fee (collectively, "Ticketmaster Charges"). The Convenience Charge is a per Ticket amount charged by Ticketmaster to a Ticket buyer for purchasing through Ticketmaster's distribution methods, including at local ticket outlet locations in many neighborhoods, on Ticketmaster's telephone reservation system, and Ticketmaster.com. The Processing Fee is the per transaction amount Ticketmaster assesses those purchasing Tickets via the internet or by telephone for services such as taking and maintaining the Ticket buyer's order on Ticketmaster's ticketing system, arranging for shipping, and coordinating with the box office "will call" in the case of will call tickets. No Processing Fee is charged when a Ticket is purchased from the Event Organizer Client's box office or at a Ticketmaster retail outlet. Ticketmaster also charges a UPS/Courier Fee when the Ticket buyer selects expedited, physical delivery of the Ticket. All of these different charges and fees Ticket buyers pay to Ticketmaster are separately itemized on the statement Ticketmaster sends to the Ticket buyer.

Ticketmaster sometimes remits to Event Organizer Clients a negotiated royalty based on the amount of Convenience Charges or Processing Fees that it charges to Ticket buyers.<sup>4</sup> Ticketmaster would then retain the remainder of the amounts it receives as Convenience Charges and Processing Fees. Other than negotiated royalties based upon the amount of Convenience Charges or Processing Fees that Ticketmaster sometimes remits to Event Organizer Clients, Ticketmaster retains the amounts it receives as Convenience Charges,

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<sup>4</sup> In one contract, the percentage of the Convenience Charge paid back to a Minneapolis Event Organizer Client could be as high as 32% of the total Convenience Charges paid by Ticket buyers for a Ticket. Stip. Attachment 4.

Processing Fees, and UPS/Courier Fees. Ticketmaster remits amounts it receives for the Tickets themselves to the Event Organizer Clients.

### **Issues**

The issues are (1) whether Ticketmaster's Convenience Charge and Processing Fee are part of the consideration paid for the privilege of admission to places of amusement or athletic events and therefore subject to the Minneapolis Entertainment Tax, and (2) whether Ticketmaster's UPS/Courier Fee is part of the total amount of consideration for which personal property or services are sold to a Ticket buyer and, therefore, subject to Minnesota and local sales taxes.

### **Applicable Statutes**

Minneapolis imposes a 3% tax on sales of admissions in the city ("the Minneapolis Entertainment Tax"),<sup>5</sup> which is first at issue in this case. The tax was enacted in a special, uncodified law in 1969 and has not been amended since. Here, the question is whether the Minneapolis Entertainment Tax requires taxation of Ticketmaster's convenience charge and processing fee.

The 1969 law provides:

Sec. 3. There is hereby levied a supplement to the state sales tax in the amount of three percent on sales of admissions and amusements, and transient lodging accommodations in the city of Minneapolis. The tax shall apply to sales made on or after October 1, 1969.<sup>6</sup>

The Minneapolis Entertainment Tax defines the "admission tax" as follows:

Subd. 2. "Admission tax" means a tax on the consideration paid for the privilege of admission to places of amusement or athletic events and the privilege of use of amusement devices.<sup>7</sup>

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<sup>5</sup> The Minneapolis Entertainment Tax also taxes "amusements" and "transient lodging".

<sup>6</sup> Minn. Laws 1969, ch. 1092, § 3.

<sup>7</sup> Minn. Laws 1969, ch. 1092 § 2.

The second issue involves the taxability of Ticketmaster's UPS/Courier Fees under the Minnesota, Minneapolis, St. Paul, Rochester, and Mankato sales and use taxes. In its Notice of Change in Sales and Use Tax and Explanation of Adjustment, the Commissioner asserted that Ticketmaster owes sales and use taxes on the UPS/Courier Fees for tax periods after January 1, 2002, under Chapter 297A and under the additional sales tax provisions of Minneapolis, St. Paul, Rochester, and Mankato. Each of the four cities imposes a 0.5% sales tax that is in addition to Minnesota's sales tax.<sup>8</sup>

Minn. Stat. § 297 A.61, subd. 7 (2002), provides:

Subd. 7. Sales price. (a) "Sales price" means the measure subject to sales tax, and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges;
- (5) installation charges; and
- (6) the value of exempt property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

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<sup>8</sup> Authorized cities may impose an additional sales tax on sales transactions that are taxable pursuant to Minnesota Statutes Chapter 297A and that occur within the cities. See Minn. Laws 1986, ch. 396, §4 (allowing Minneapolis to impose an additional sales and use tax); Minn. Laws 1993, ch. 375, art. 9, § 46 (allowing St. Paul to impose an additional sales tax); Minn. Laws 1991, ch. 291, art. 8, § 27 (allowing Mankato to impose an additional sales tax); Minn. Laws 1992, art. 8, § 33 (allowing Rochester to impose an additional sales and use tax); Minn. Laws 1998, ch. 389, art. 8, § 43 (allowing Rochester to impose an additional sales and use tax).

- (b) Sales price does not include:
- (1) discounts, including cash, terms, or coupons that are not reimbursed by a third party and that are allowed by the seller and taken by a purchaser on a sale;
  - (2) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and
  - (3) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

Minn. Stat. § 297A.61, subd. 30 (2002) defines “delivery charges” as follows:

Subd. 30 **Delivery charges.** “Delivery charges” means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.<sup>9</sup>

## **Analysis**

### **Ticketmaster’s Convenience Charge and Processing Fee**

The Commissioner assessed the Minneapolis Entertainment Tax on Ticketmaster’s Convenience Charges and Processing Fees. We find that they are not taxable under the Minneapolis Entertainment Tax for the following reasons.

The Commissioner argues that since a Ticket buyer must pay both the face value of the ticket and the applicable fees in order to gain admission to an event through use of Ticketmaster’s services, the “consideration paid for the privilege of admission” includes both the face value of the ticket and the required additional charges and fees. Ticketmaster contends that the Convenience

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<sup>9</sup> Minn. Stat. § 297A.61, subd. 30 (2002).



Charges and Processing Fees are not subject to the tax under the plain language of the statute because they are not charges for the price of admission but are, rather, optional charges for services that Ticket purchasers elect to pay for the convenience of not having to travel to and wait in lines at the Event Client Organizer's box office to buy tickets.

First, we note that “[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”<sup>10</sup> The statute in this case, as set forth above, imposes a tax of 3% on “sales of admission” in the City of Minneapolis.<sup>11</sup> The 1969 law defines “admission tax” as “a tax on the consideration paid for the privilege of admission to places of amusement or athletic events and the privilege of amusement devices.”<sup>12</sup> Since Ticketmaster collects the 3% tax on the face value of the ticket but not on the consideration paid for the Convenience Charge and Processing Fee, this Court must decide whether the additional fees are “consideration paid for the privilege of admission.”<sup>13</sup>

The term “admission” is undefined by the 1969 law and, therefore, must be construed according to its “common and approved usage.”<sup>14</sup> The parties agree that “admission” is defined as “the right to enter or access.”<sup>15</sup> The Commissioner contends that since a person using Ticketmaster's services must

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<sup>10</sup> Minn. Stat. § 645.16.

<sup>11</sup> 1969 Minn. Laws, ch. 1092 (“1969 Law”), § 3.

<sup>12</sup> 1969 Minn. Laws, ch. 1092, § 2.

<sup>13</sup> Id.

<sup>14</sup> Minn. Stat. § 645.08(1) (2006); see Classic Affairs, Inc. v. Commissioner of Revenue, Docket No. 6162 (Minn. Tax Ct. Feb. 24, 1993).

<sup>15</sup> Appellant's Memorandum in Support of its Motion for Summary Judgment, p. 6; Memorandum in Support of Appellee Commissioner of Revenue's Motion for Summary Judgment, p. 7.

pay both the Ticket's face value and the additional fees, both comprise the "consideration paid for the privilege of admission." <sup>16</sup> On the other hand, Ticketmaster argues that the Ticket itself is what gives the Ticket buyer access to the place of amusement, whereas the Convenience Charge and Processing Fee are charges for access to Ticketmaster's system, simply one of the ways a Ticket buyer can purchase a Ticket. In other words, Ticketmaster contends that the Convenience Charge and Processing Fee are optional and distinguishable from the Ticket, and that the Ticket alone gives the buyer the privilege to enter or access the place of amusement. We agree.

Here, the Convenience Charge and Processing Fee are not tied to admission since anyone can gain admission to the event without paying these fees under certain circumstances. In other words, the Ticket buyers have the option of gaining the right to enter or access an event by purchasing tickets directly from Event Organizer Clients' box offices, in which case they pay no Convenience Charge and Processing Fee. Thus, the only consideration that

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<sup>16</sup> The Commissioner attempts to support his argument by quoting a remark in the Eighth Circuit's decision in Campos v. Ticketmaster Corp., 140 F.3d 1166 (8<sup>th</sup> Cir. 1998), *cert. denied*, 525 U.S. 1102 (1999), for the proposition that the Ticketmaster charges and the actual purchase price of the ticket "amount to the single cost of attending the concert." *Id.* at 1171. However, the opinion and language in it are driven by the idiosyncrasies of antitrust law which are not transferable to a case involving the Minneapolis Entertainment Tax.

The remarks on which the Commissioner relies are part of a market and standing analysis performed in connection with an allegation of monopolization in an antitrust case. Such a market analysis that is part of antitrust law has no bearing in the analysis of the transactional tax at issue here, where the issue is what are the terms between two parties to the transaction. In addition, the Campos court, given the procedural context of the case, assumed allegations in the pleadings were true. Thus, the Eighth Circuit accepted as true the statement that Ticketmaster distributed tickets at the Event Organizer Client's box office so that a ticket could not be purchased without paying the Ticketmaster charges. Those facts differ from the facts before this Court where the parties have stipulated that Event Organizer Clients retain control over the sale of Tickets from their box offices and do not charge Ticket buyers a Convenience Charge or Processing Fee. In other words, here Ticket buyers can, in fact, purchase a ticket and gain admission to an event without paying any Ticketmaster charges.

Ticket buyers must pay to gain admission to an event is the amount charged by the Event Organizer Client when it sells tickets from its box office.

Because only the amount paid for the face value of the Ticket constitutes “consideration paid for the privilege of admission,” the face value alone is subject to the 3% Minneapolis Entertainment Tax. The Convenience Charge and Processing Fee are charges for the convenience of buying the Ticket in a certain way and, as such, are separate charges from the Ticket itself. The face value of the Ticket is itemized separately from the Convenience Charge and Processing Fee on statements Ticketmaster transmits to Ticket buyers. The plain language of the 3% tax, therefore, does not encompass either the Convenience Charge or the Processing Fee because they do not constitute consideration paid for the privilege of “admission.” <sup>17</sup>

### **The UPS/Courier Fees**

The Commissioner asserts that Ticketmaster owes sales and use taxes on the UPS/Courier Fees for tax periods after January 1, 2002, under Chapter 297A and under the additional sales tax provisions of Minneapolis, St. Paul, Rochester, and Mankato, which each impose a 0.5% sales tax in addition to Minnesota’s sales tax. We agree for the following reasons.

The Commissioner contends that the UPS/Courier fees are a “gross receipt” upon which the sales tax is imposed. When Ticketmaster receives an additional amount for UPS/Courier Fees as consideration for physical delivery of the Ticket at the time of its sale, the Commissioner argues that such fees are part

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<sup>17</sup> We note that the Commissioner relies heavily upon opinions of foreign jurisdictions to support his position. It is not, however, necessary to resort to opinions of other state courts or federal courts because the terms of the Minneapolis Entertainment Tax are clear on their face.

of the sales price upon which sales tax should be charged. Ticketmaster claims that the fees are not subject to sales tax because they do not fall within the meaning of “sales price” under Minn. Stat. § 197A.61, subd. 7 (2002).

Ticketmaster relies upon the definition of “sales price,” which was changed as of January 2002 to specifically include “delivery charges,” and the definition of “delivery charges” enacted into law at the same time, which “means charges by the seller.”<sup>18</sup> Ticketmaster argues that since the UPS/Courier Fees are charged by Ticketmaster acting as a third-party distribution agent (and not as seller) for its Event Organizer Clients, the Fees are not subject to sales and use tax.

Ticketmaster also cites the Department of Revenue Sales Tax Fact Sheet 155, stating that “[d]elivery services furnished and billed by a third party are not taxable,”<sup>19</sup> as support for its position that the UPS/Courier charges are not subject to state or local sales taxes.

There is a statutory presumption that “all gross receipts are subject to the [sales] tax.”<sup>20</sup> “Gross receipts’ means the total amount received, in money..., for all sales at retail as measured by the sales price.”<sup>21</sup> “Sales price’ means the measure subject to sales tax, and means the total amount of consideration, including cash, [or] credit,..., for which personal property or services are

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<sup>18</sup> Minn. Stat. § 297A.61, subd. 30 (2002).

<sup>19</sup> Fact Sheet 155 (2002) (2003) (2007).

<sup>20</sup> Minn. Stat. § 297A.665(a).

<sup>21</sup> Minn. Stat. § 297A.61, subd. 8.

sold....”<sup>22</sup> That is, Minn. Stat. § 297A.61 broadly includes “the total amount of consideration” as the measure of the tax, and then reiterates that broad inclusion by listing six items that cannot be deducted from the sales price:

- (1) the seller’s cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges;
- (5) installation charges; and
- (6) the value of exempt property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

Under the statute, there are only three limited exceptions to the general rule that all money received for which personal property or services are sold is subject to sales tax.<sup>23</sup> Ticketmaster does not contend that any of the exceptions applies, nor do we find that the UPS/Courier Fees fall within any of the exceptions. However, Ticketmaster argues that the UPS/Courier Fees at issue herein do not fall within the definition of “delivery charges” which are specifically included as part of “the total amount of consideration” under Minn. Stat. § 297A.61. Ticketmaster contends that since “delivery charges” means “charges by the seller” and it is not a “seller” but, rather, a third-party distribution agent, the UPS/Courier charges do not fall within the six items that cannot be deducted from sales price under Minn. Stat. § 297A.61.

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<sup>22</sup> Minn. Stat. § 197A.61, subd. 7.

<sup>23</sup> Minn. Stat. § 297A.61, subd. 7(b).

At the outset, it should be noted that the factual premise for Ticketmaster's contention that it is not a seller is contradicted by Paragraph 7 of the Stipulation, in which the parties agree that "Ticketmaster, acting as an exclusive agent for its Event Organizer Clients, sells Tickets...." Moreover, Minn. Stat. § 297A.61, subd. 9 defines a "seller" as "any person making sales, leases, or rentals of personal property or services." Ticketmaster appears to concede that a Ticket is personal property under the statute. Inasmuch as Ticketmaster makes sales of personal property—that is, a Ticket—it is, therefore, a "seller."<sup>24</sup> Finally, Ticketmaster charges the purchaser a UPS/Courier Fee for delivery of the Ticket "to a location designated by the purchaser of personal property," which fits the definition of delivery charges under Minn. Stat. § 197A.61, subd. 30.

Ticketmaster also argues that it should not be liable for sales taxes charged on the UPS/Courier Fees based upon the Department of Revenue's Sales Tax Fact Sheet 155, stating that "[d]elivery charges mean charges by the seller..." and that "[d]elivery services furnished and billed by a third party are not taxable."<sup>25</sup> Even if Ticketmaster's interpretation of Fact Sheet 155 was correct, it could not change the underlying law governing the application of sales tax to sales of personal property. "[W]hen a statute is clear on its face, there is no need to look further for aids in its interpretation."<sup>26</sup> We cannot write a provision into

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<sup>24</sup> Even if Ticketmaster were not a "seller" under Minn. Stat. § 297A.61, subd. 7 and 30, we find that the UPS/Courier Fees would still be subject to sales tax because the Fees are part of "the total amount of consideration" and not specifically exempt under the statute.

<sup>25</sup> Department of Revenue Fact Sheet 155 (2002) (2003) (2007).

<sup>26</sup> Northwestern Bell Telephone Co. v. Commissioner of Revenue, Docket No. 3803 (Minn. Tax Ct. Aug. 11, 1986).

law even if there exists contrary administrative interpretations.<sup>27</sup> The Minnesota Supreme Court has stated that “these instructions have no legal effect.”<sup>28</sup> This Court has previously rejected the argument that the Commissioner must be bound by his instructions where they conflict with the law passed by the legislature. “Instructions are merely a guide to the taxpayer. If they are incorrect, they must be corrected when the error is called to the Commissioner’s attention.”<sup>29</sup>

Therefore, the plain language of the statute demonstrates that Ticketmaster is a seller, Ticketmaster’s UPS/Courier Fees constitute delivery charges, and delivery charges by a seller cannot be deducted from the sales price as part of the total consideration upon which sales tax is charged. As a result, Ticketmaster is liable for Minnesota and local sales taxes on the UPS/Courier Fees for tax periods after January 1, 2002.

### **Conclusion**

Since no material facts are in dispute, this case is ripe for summary judgment as to whether Ticketmaster’s Convenience Charge and Processing Fee are subject to the Minneapolis Entertainment Tax and whether Ticketmaster’s UPS/Courier Fee is subject to Minnesota and local sales taxes.

For the foregoing reasons, we grant Ticketmaster’s Motion for Summary Judgment in part, finding that Ticketmaster’s Convenience Charge and Processing Fee are not part of the consideration paid for the privilege of

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<sup>27</sup> Mankato Citizens Telephone Co. v. Commissioner of Taxation, 275 Minn. 107, 145 N.W.2d 313 (1966).

<sup>28</sup> Commissioner of Revenue v. Richardson, 302 N.W.2d 23, 26 (Minn. 1981).

<sup>29</sup> Birkel v. Commissioner of Revenue, Docket No. 5514 (Minn. Tax Ct. Oct. 15, 1990).

admission to places of amusement or athletic events and therefore are not subject to the Minneapolis Entertainment Tax. The remainder of Ticketmaster's Motion is denied.

We also grant the Commissioner's Motion for Summary Judgment inasmuch as we find that Ticketmaster's UPS/Courier Fee is part of the total amount of consideration for which personal property or services are sold to a Ticket buyer and, therefore, subject to Minnesota and local sales taxes. We deny the remaining portion of the Commissioner's Motion.

S.A.R.