NEW YORK CITY TAX APPEALS TRIBUNAL
ADMINISTRATIVE LAW JUDGE DIVISION

In the Matter of the Petition	:	DETERMINATION
of	:	TAT(H)20-15(CR)
	:	TAT(H)20-16(CR)
The Phantom Company, LP	:	TAT(H)20-17(CR)
In the Matter of the Petition	:	
	:	TAT(H)20-13(CR)
of	:	TAT(H)20-14(CR)
Kinky Boots, LLC	:	
In the Matter of the Petition	:	
	:	
of	:	TAT(H)20-25(CR)
	:	TAT(H)20-26(CR)
Jersey Boys Broadway Limited Partnership	:	
In the Matter of the Petition	:	
	:	TAT(H)20-29(CR)
of	:	TAT(H)20-30(CR)
Mamma Mia Broadway, LP	:	

Mulligan, C.A.L.J.:

In these matters which were consolidated for hearing, Petitioner The Phantom Company, LP ("Phantom") filed Petitions seeking a redetermination of deficiency of New York City Commercial Rent Tax ("CRT") for the periods ended May 31, 2008 through May 31, 2012; May 31, 2013 through May 31, 2016; and May 31, 2017 through May 31, 2019. Petitioner Kinky Boots, LLC ("Kinky Boots") filed Petitions seeking a redetermination of deficiency of New

York City CRT for the periods ended May 31, 2014 through May 31, 2017 and May 31, 2018 through May 31, 2019. Petitioner Jersey Boys Broadway Limited Partnership ("Jersey Boys") filed Petitions seeking a redetermination of deficiency of New York City CRT for the periods ended May 31, 2008 through May 31, 2012 and May 31, 2013 through May 31, 2017. Petitioner Mamma Mia Broadway, LP ("Mamma Mia") filed Petitions seeking a redetermination of deficiency of New York City CRT for the periods ended May 31, 2008 through May 31, 2012 and May 31, 2013 through May 31, 2015.

On or about October 16, 2020, Respondent the Commissioner of Finance filed Answers in the Phantom matters TAT (H)20-15(CR), TAT (H)20-16(CR) and TAT (H)20-17(CR) ("Phantom matters"). Respondent filed Answers in the matters of Kinky Boots, Jersey Boys and Mamma Mia (the "Other matters") on or about October 7, 2020, December 22, 2020, and February 3, 2021, respectively. Subsequently, the Phantom matters along with the Other matters were consolidated for hearing. The parties designated the Phantom matters as the "lead case" that would proceed to hearing and determination.

On or about May 16, 2024, in the Phantom matters, the parties submitted a stipulation of facts which stipulated to certain facts and agreed to the admission of certain exhibits into evidence. In a joint letter dated June 3, 2024, all parties, including Kinky Boots, Jersey Boys and Mamma Mia along with Respondent agreed to be bound by the final decision on the merits from a court of last resort in the Phantom matters. The factual and legal issues discussed in this Determination involve the Phantom matters. However, pursuant to the agreement of all parties in these consolidated matters mentioned above, this Determination will also be determinative and binding with respect to the Other matters because this determination is binding in the Phantom matters.

On July 23, 2024, a hearing was held in the Phantom matters before former Administrative Law Judge Jarrett Kalish at which testimony was taken, and additional exhibits were admitted into evidence.

In June 2025, these matters were reassigned to the undersigned. Pursuant to a briefing schedule set by the undersigned, the parties filed post-hearing briefs, the last of which was filed on November 5, 2025.

Petitioners were represented by Amy Nogid, Clark Calhoun and Joshua Labat, each of Alston & Bird LLP. Respondent was represented by Adam Dembrow and Joshua Gamboa of the New York City Law Department.

ISSUE

Whether Phantom's contracting with third parties to provide advertising for Phantom on billboards in Manhattan south of the center line of 96th Street is a use of taxable premises subject to the CRT.

FINDINGS OF FACT

The facts below numbered 1 through 4(d)(iii) and 9 were stipulated by the parties and are accepted by the undersigned. The facts below numbered 5 through 8 were found by the undersigned based on review of testimony at the hearing and the documents received into evidence.

1. Phantom is a limited partnership maintaining its principal place of business in New York City.

2. Until April 16, 2023, Phantom operated a Broadway show in New York City named Phantom of the Opera.

3. Agents of Phantom entered into four contracts for the display of advertising content.

4. The contracts for advertising services provided to Phantom for the periods at issue were as follows:

   a. **OOH Media Contract between NYM worldgroup inc. on behalf of Serino Coyne, as Agent for Phantom, dated September 27, 2006**

      i. NYM Worldgroup inc., on behalf of Serino Coyne, as Agent for Phantom entered into an OOH (out-of-home) Media Contract dated September 27, 2006 with City Outdoor/NPA.

      ii. City Outdoor is an outdoor advertising company that offers premium large format out-of-home advertising in New York City.

      iii. Serino Coyne is, among other things, an advertising agency.

   b. **OOH Media Contract between NYM worldgroup inc. on behalf of Serino Coyne, as Agent for Phantom, dated August 29, 2010**

      i. NYM Worldgroup inc., on behalf of Serino Coyne, as Agent for Phantom entered into an OOH (out-of-home) Media Contract dated August 29, 2010, for the outdoor

advertising mediums located 701 7th Avenue -7C-07 for the "advertiser" Phantom of the Opera.

c. **OOH Media Contract between NYM worldgroup inc. on behalf of Serino Coyne, as Agent for Various Shows, dated December 14, 2012**

   i. Various Broadway shows, namely Phantom of the Opera, Wicked, Jersey Boys and Mamma Mia, through their agent, Serino Coyne entered into an OOH Media Contract, with NYM worldgroup, inc. dated December 14, 2012, to display advertising content on an "outdoor advertising medium" on the "Double Tree Hotel between 46th and 47th Streets."

d. **Advertiser Agreement between AKA Media, as Agent for Advertisers Les Misérables and Phantom of the Opera, and Outfront Media, dated April 15, 2015**

   i. Phantom of the Opera and Les Misérables, as advertisers, through their agent, AKA Media entered into an Advertising Agreement, with Outfront Media, dated April 15, 2015 "for the display of advertising . . . on the outdoor advertising display(s) described below" as Units M-140-B and M-150-B located at 7th Avenue and 48th Street and 7th Avenue and 49th Street, respectively.

   ii. Outfront Media is a publicly traded company.

   iii. AKA Media is an advertising agency that "combine[s] the art of design and storytelling with the science of data and technology to respond to the complex challenges brands face in todays fragmented landscape."

5. Under the contracts, Phantom or its agent would provide advertising copy, *i.e.*, the actual specific content of the particular advertisement, to the entities that maintained the billboard such as City Outdoor or Outfront Media ("Billboard Entities"), who would then place the advertising copy on the billboard.

6. The advertising copy was subject to the approval of the Billboard Entity that maintained the billboard as well as the owner of the billboard if the owner was different from the Billboard Entity.

7. Neither Phantom nor its agent could directly place any advertising copy on the billboard. Nor did they have access to the billboard of any kind, either physically or virtually. Any issues or problems with the advertising copy on the billboard had to be dealt with through the Billboard Entity that maintained the billboard.

8. In 2014, the New York City Department of Finance ("DOF") issued an Update on Audit Issues which stated the CRT is imposed on payments for the use or occupancy of premises in Manhattan below the center line of 96th Street, if those payments exceed $250,000 on an annualized basis and no exceptions are applicable. This 2014 Update on Audit Issues further stated that billboards were taxable premises under the CRT.

9. DOF conducted three CRT audits for the periods here in issue. Following these audits, DOF issued Notices of Determination

dated April 14, 2020, asserting CRT due along with interest and penalties which are under challenge in these matters.[1]

STATEMENTS OF POSITIONS

Phantom claims the contracts it entered into with the Billboard Entities were for advertising services and did not constitute a lease or a license for the use of any space. Hence, these contracts were not a lease or a license of taxable premises and the payments it made under these contracts were not "rent" within the meaning of the CRT. Phantom further asserts that if the placement of its advertising copy on billboards constitutes a premises, its use of the billboards is not commercial and therefore not subject to CRT.

Phantom also argues that if the placement of its advertising copy on billboards under the contracts is subject to CRT, it should only be liable for periods after DOF published the Update on Audit Issues in 2014 which stated billboards in Manhattan were taxable premises for purposes of the CRT based on DOF's failure to follow City Administrative Procedure Act ("CAPA") and on due process principles. Finally, Phantom argues that the application of the CRT to advertising billboards targets and unduly burdens speech, in violation of free speech principles under the federal and New York State constitutions.

Respondent contends that the billboards are taxable premises under the CRT, and that the placement of Phantom's advertising copy on billboards pursuant to the contracts constituted at least

[1] DOF also issued Notices of Determination in the Other matters. These Notices of Determination were dated March 18, 2020 in the Kinky Boots matters and July 22, 2020 in the Jersey Boys matters and the Mamma Mia matters.

a license for Phantom to use taxable premises and that the payments made under the contracts were, therefore, "rent" subject to the CRT. Respondent further contends that the placement of advertising copy is an integral part of Phantom's business and, therefore, a commercial use of taxable premises subject to CRT. Respondent also argues that the 2014 Update on Audit Issues was merely intended to provide guidance to taxpayers and was advisory in nature and did not constitute a rule subject to CAPA and did not violate due process principles. In addition, Respondent argues that the application to advertising billboards does not violate free speech principles because it is a generally applicable tax that is content-neutral in its application to speech.

CONCLUSIONS OF LAW

Section 11-702 of the New York City Administrative Code (the "Code") imposes the CRT on every tenant of taxable premises. A "tenant" is defined at section 11-701(3) of the Code as a "person paying or required to pay rent for premises as a lessee, sublessee, licensee or concessionaire." A "landlord" is defined at section 11-701(2) of the Code as a "person who grants the right to use or occupy premises to any lessee, sublessee, licensee or concessionaire, whether or not such person is the owner of the premises." "Rent" is defined at section 11-701(6) of the Code as the "consideration paid or required to be paid by a tenant for the use or occupancy of premises. . . ." "Taxable premises" are defined at section 11-701(5) of the Code as "[a]ny premises in the city occupied, used or intended to be occupied or used for the purpose of carrying on or exercising any trade, business, profession, vocation or commercial activity. . . ." Under Title 19 of the Rules

of the City of New York ("19 RCNY") section 7-01, the term taxable premises include: "Advertising signs on the tops of buildings or outside of buildings or structures, or located on otherwise unoccupied land." 19 RCNY § 7-01.

Respondent contends that the billboards are premises under the CRT, and that the placement of Phantom's advertising copy on the billboards pursuant to the contracts constituted at least a license for Phantom to use taxable premises and that the payments made under the contracts were, therefore, "rent" subject to the CRT. Phantom counters the contracts it entered into with the Billboard Entities were for advertising services and did not constitute a lease or a license for the use of any space. Hence, these contracts were not a lease or a license of taxable premises and the payments it made under these contracts were not "rent" within the meaning of the CRT.

The CRT applies if a person, including an entity, uses the premises of another and pays for such use regardless of how the relationship between these persons may be described as a lease or a license. (*Matter of Square Plus Operating Corp.*, TAT No. 90-1221, [NYC Tax Appeals Tribunal, October 29, 1992] *aff'd* 212 AD2d 448 [1st Dept], *lv. denied* 87 NY2d 804 [1995]. See *Matter of Air Pegasus Corp.*, TAT [E] 00-23[CR] [NYC Tax Appeals Tribunal, February 4, 2005]). Accordingly, the issue distills to whether the contracts Phantom entered into with the Billboard Entities were simply about providing advertising services to Phantom or whether

these contracts granted Phantom the use of the Billboard Entities' premises, i.e., the use of space on the billboards.

In support of its contention the contracts are in essence payments for the use of space on the billboards, Respondent points out the contracts provide for the display of Phantom's advertising copy on specific billboards for certain periods of time, or for substantial portions of certain periods of time. However, as Phantom points out, the contracts do not grant access to the billboards of any kind. Indeed, Phantom had no means for actual, physical access or even virtual access to the billboards. The Billboard Entities placed Phantom's advertising copy on the billboards. If there was any issue or problem with the display of that advertising copy, Phantom's only recourse was to go to the Billboard Entities.

For this reason, the situation here presented is very different from the cases Respondent has cited and on which it relies. (See *Matter of Square Plus Operating Corp.*, TAT No. 90-1221, [NYC Tax Appeals Tribunal, October 29, 1992], *aff'd* 212 AD2d 448 [1st Dept], *lv. denied* 87 NY2d 804 [1995]. See also *Matter of Air Pegasus Corp.*, TAT [E] 00-23[CR] [NYC Tax Appeals Tribunal, February 4, 2005]; *Matter of Plaza 43 Associates*, TAT [E] 93-127[CR] [NYC Tax Appeals Tribunal, November 15, 2004]). In each of these cases, the petitioner payor entity had physical access to space which the payee either owned or leased and had a certain amount of control over that space.

For example, in *Square Plus*, the payor entity operated a garage in space owned by a hospital and clearly had access to the space and a certain amount of control over that space. Similarly, in *Air Pegasus*, the payor entity operated a heliport on land the Port Authority of New York and New Jersey leased from New York City and had physical access to the heliport space and exclusive or nonexclusive control over that space. Further, in *Plaza 43*, in which the payor entity operated a membership-based tennis facility in a Manhattan apartment complex, the payor entity also had physical access to the tennis facility space and a certain amount of control over that space.

Similarly misplaced is Respondent's reliance on *American Jewish Theatre v. Roundabout Theatre Co.*, (203 AD2d 155 [1st Dept. 1994]), and *JCF Assoc., LLC v. Sign Up USA, Inc.*, (59 Misc3d 135[A] [Sup Ct. App. T., 2d Dept 2018]). In *American Jewish Theatre*, plaintiff had access to and actually occupied and used theater space the property owner had leased to defendant Roundabout as the primary tenant. And in *JCF*, respondent Sign Up had access to JCF's advertising billboard.

In addition, without any access to the billboards, Phantom cannot be characterized as a licensee of the billboards. Case law has stated "a licensee is one who *enters upon or occupies* lands by permission, express or implied, from the owner, or under a personal, revocable and nonassignable privilege from the owner, without possessing any interest in the property. . . ." (*Rosenstiel v. Rosenstiel*, 20 AD2d 71, 76 [1st Dept 1963] [Emphasis added];

2601-2609 Bainbridge Ave. LLC v. Algernon, 82 Misc3d 1208[A] [Civil Ct., Bronx County 2024] *Waldman v. Abt*, 73 Misc3d 1232)[A] [Civil Ct., Kings County 2021]. See *Kohman v. Rochambeau Realty & Dev. Corp*, 17 AD3d 151, 153 [1st Dept 2005] ["A license is a personal, revocable and non-assignable privilege . . . *to do one or more acts upon land* without possessing any interest therein" Id. at 153] quoting *Greenwood Lake & Port Jervis R.R. Co. v. New York & Greenwood Lake R.R. Co.*, 134 N.Y. 435, 440, 31 N.E. 874 [1892] [emphasis added]. *East Ramapo Cen. Sch. Dist. v. Mosdos Chofetz Chaim, Inc.*, 52 Misc.3d 49, 51 [Sup Ct App. Term, 2d Dept 2016] [same]. See also *Ark Bryant Park Corp. v. Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001] ["A license . . . grants the licensee a revocable non-assignable privilege *to do one or more acts upon the land of the licensor*, without granting possession of any interest therein" Id. at 150.] [Emphasis added.]) Further, without access to the billboards, it is difficult to see how Phantom could be a user of the billboards. To use property, one has to be able to have access to that property. (See *Kohman*, 17 AD3d at 153 [1st Dept 2005]; *Rosenstiel*, 20 AD2d at 76 [1st Dept 1963].) Instead, it would appear that a more accurate description of the situation here is that the Billboard Entities were the users of those billboards and they used those billboards to provide advertising services to Phantom.[2]

[2] Respondent makes much of Phantom's allegedly misplaced reliance on *Peat Marwick Main & Co. v. New York City Dept. of Finance*, (76 NY2d 527 [1990]). While the circumstances presented in *Peat Marwick* were very different than those presented here, and that case may well be inapposite, Phantom's argument concerning *Peat Marwick* is just one of its several arguments. Phantom also argues that the contracts with the Billboard Entities did not create a license or similar relationship subject to the CRT.

In sum, Respondent has not cited any case which has upheld the imposition of the CRT on a payor as a "tenant" who does not have any access to the space or premises of which they are allegedly the "tenant." Further, Respondent has not provided any legislative history or any policy reasons in support of such a result. The very broad interpretation of the CRT necessary to support that result cannot be accepted in the absence of case law, legislative history or compelling policy reasons. Moreover, to be a licensee or a user of property, one must have access to that property. Here, Phantom does not have access to the billboards.

For the above reasons, the contracts between Phantom and the Billboard Entities did not create an agreement or arrangement for the license to use or the use of the billboards. Hence, Phantom's payments pursuant to its contacts with the Billboard Entities were not subject to CRT because they were payments for advertising services and not payments for the use of taxable premises.[3]

ACCORDINGLY, Phantom's Petitions are granted and DOF's Notices of Determination dated April 14, 2020 imposing CRT are cancelled. Further, pursuant to the joint letter dated June 3, 2024 in which all parties including Kinky Boots, Jersey Boys and Mamma Mia along with Respondent agreed to be bound by the final decision on the merits from a court of last resort in the Phantom matters, the Petitions in the Kinky Boots matters are granted and

[3] In light of the outcome of this Determination, it is unnecessary to address Phantom's other arguments.

the Notices of Determination dated March 18, 2020 are cancelled; the Petitions in the Jersey Boys matters are granted and the Notices of Determination dated July 22, 2020 are cancelled; and the Petitions in the Mamma Mia matters are granted and the Notices of Determination dated July 22, 2020 are cancelled.

DATED: April 22, 2026
New York, New York

/s/
John J. Mulligan
Chief Administrative Law Judge