

WEST'S NEVADA REVISED STATUTES ANNOTATED
TITLE 32. REVENUE AND TAXATION
CHAPTER 368A. TAX ON LIVE ENTERTAINMENT
GENERAL PROVISIONS

→368A.010. Definitions

As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.110, inclusive, have the meanings ascribed to them in those sections.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.020. "Admission charge" defined

"Admission charge" means the total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live entertainment is provided.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.030. "Board" defined

"Board" means the State Gaming Control Board.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.040. "Business" defined

"Business" means any activity engaged in or caused to be engaged in by a business entity with the object of gain, benefit or advantage, either direct or indirect, to any person or governmental entity.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.050. "Business entity" defined

1. "Business entity" includes:

(a) A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this state or another jurisdiction and any other type of entity that engages in business.

(b) A natural person engaging in a business if he is deemed to be a business entity pursuant to NRS 368A.120.

2. The term does not include a governmental entity.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.060. "Facility" defined

"Facility" means:

1. Any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises if the live entertainment is provided at:

(a) An establishment that is not a licensed gaming establishment; or

(b) A licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits.

2. Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.070. "Game" defined

"Game" has the meaning ascribed to it in NRS 463.0152.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.080. "Licensed gaming establishment" defined

"Licensed gaming establishment" has the meaning ascribed to it in NRS 463.0169.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.090. "Live entertainment" defined

"Live entertainment" means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.100. "Slot machine" defined

"Slot machine" has the meaning ascribed to it in NRS 463.0191.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.110. "Taxpayer" defined

"Taxpayer" means:

1. If live entertainment that is taxable under this chapter is provided at a licensed gaming establishment, the person licensed to conduct gaming at that establishment.
2. Except as otherwise provided in subsection 3, if live entertainment that is taxable under this chapter is not provided at a licensed gaming establishment, the owner or operator of the facility where the live entertainment is provided.
3. If live entertainment that is taxable under this chapter is provided at a publicly owned facility or on public land, the person who collects the taxable receipts.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.120. Natural persons who are deemed to be business entities

A natural person engaging in a business shall be deemed to be a business entity that is subject to the provisions of this chapter if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

[FN1] See Historical and Statutory Notes below for effective date information.

ADMINISTRATION

→368A.130. Adoption by Department of regulations for determining whether activity is taxable

The Department shall provide by regulation for a more detailed definition of "live entertainment" consistent with the general definition set forth in NRS 368A.090 for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.

[FNI] See Historical and Statutory Notes below for effective date information.

→368A.140. Duties of Board and Department; applicability of chapters 360 and 463 of NRS

1. The Board shall:

(a) Collect the tax imposed by this chapter from taxpayers who are licensed gaming establishments; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a). The regulations must be adopted in accordance with the provisions of chapter 233B of NRS and must be codified in the Nevada Administrative Code.

2. The Department shall:

(a) Collect the tax imposed by this chapter from all other taxpayers; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a).

3. For the purposes of:

(a) Subsection 1, the provisions of chapter 463 of NRS relating to the payment, collection, administration and enforcement of gaming license fees and taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.

(b) Subsection 2, the provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.

4. To ensure that the tax imposed by NRS 368A.200 is collected fairly and equitably, the Board and the Department shall:

(a) Jointly, coordinate the administration and collection of that tax and the regulation of taxpayers who are liable for the payment of the tax.

(b) Upon request, assist the other agency in the collection of that tax.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.150.** Establishment of amount of tax liability when Board or Department determines that taxpayer is acting with intent to defraud State or to evade payment of tax

1. If:

(a) The Board determines that a taxpayer who is a licensed gaming establishment is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter, the Board shall establish an amount upon which the tax imposed by this chapter must be based.

(b) The Department determines that a taxpayer who is not a licensed gaming establishment is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter, the Department shall establish an amount upon which the tax imposed by this chapter must be based.

2. The amount established by the Board or the Department pursuant to subsection 1 must be based upon the tax liability of business entities that are deemed comparable by the Board or the Department to that of the taxpayer.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.160.** Maintenance and availability of records for determining liability of taxpayer; liability to taxpayer of lessee, assignee or transferee of certain premises; penalty

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of this chapter;

(b) Preserve those records for:

(1) At least 5 years if the taxpayer is a licensed gaming establishment or until any litigation or prosecution

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pursuant to this chapter is finally determined, whichever is longer; or

(2) At least 4 years if the taxpayer is not a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Board or the Department upon demand at reasonable times during regular business hours.

2. The Board and the Department may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer from whom they are required to collect the tax imposed by this chapter.

3. Any agreement that is entered into, modified or extended after January 1, 2004, for the lease, assignment or transfer of any premises upon which any activity subject to the tax imposed by this chapter is, or thereafter may be, conducted shall be deemed to include a provision that the taxpayer required to pay the tax must be allowed access to, upon demand, all books, records and financial papers held by the lessee, assignee or transferee which must be kept pursuant to this section. Any person conducting activities subject to the tax imposed by NRS 368A.200 who fails to maintain or disclose his records pursuant to this subsection is liable to the taxpayer for any penalty paid by the taxpayer for the late payment or nonpayment of the tax caused by the failure to maintain or disclose records.

4. A person who violates any provision of this section is guilty of a misdemeanor.

[FN1] See Historical and Statutory Notes below for effective date information.

→ 368A.170. Examination of records by Board or Department; payment of expenses of Board or Department for examination of records outside State

1. To verify the accuracy of any report filed or, if no report is filed by a taxpayer, to determine the amount of tax required to be paid:

(a) The Board, or any person authorized in writing by the Board, may examine the books, papers and records of any licensed gaming establishment that may be liable for the tax imposed by this chapter.

(b) The Department, or any person authorized in writing by the Department, may examine the books, papers and records of any other person who may be liable for the tax imposed by this chapter.

2. Any person who may be liable for the tax imposed by this chapter and who keeps outside of this state any books, papers and records relating thereto shall pay to the Board or the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Board or the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.180. Confidentiality of records and files of Board and Department

1. Except as otherwise provided in this section and NRS 360.250, the records and files of the Board and the Department concerning the administration of this chapter are confidential and privileged. The Board, the Department and any employee of the Board or the Department engaged in the administration of this chapter or charged with the custody of any such records or files shall not disclose any information obtained from the records or files of the Board or the Department or from any examination, investigation or hearing authorized by the provisions of this chapter. The Board, the Department and any employee of the Board or the Department may not be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Board and the Department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Board or the Department and production of records, files and information on behalf of the Board or the Department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter, if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any report or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Board or the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

[FN1] See Historical and Statutory Notes below for effective date information.

IMPOSITION AND COLLECTION

→368A.200. Imposition and amount of tax; liability and reimbursement for payment; ticket for live entertainment must indicate whether tax is included in price of ticket; exemptions from tax

1. Except as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in

this state where live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.

(b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

5. The tax imposed by subsection 1 does not apply to:

(a) Live entertainment that this state is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) Any boxing contest or exhibition governed by the provisions of chapter 467 of NRS.

(d) Live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.

(e) *Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.*

(f) Merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.

- (g) Live entertainment that is provided at a trade show.
- (h) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.
- (i) Live entertainment that is provided at a licensed gaming establishment at private meetings or dinners attended by members of a particular organization or by a casual assemblage if the purpose of the event is not primarily for entertainment.
- (j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.

6. As used in this section, "maximum seating capacity" means, in the following order of priority:

- (a) The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;
- (b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or
- (c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

[FN1] See Historical and Statutory Notes below for effective date information.

→ 368A.210. Taxpayer to hold taxes in separate account

A taxpayer shall hold the amount of all taxes for which he is liable pursuant to this chapter in a separate account in trust for the State.

[FN1] See Historical and Statutory Notes below for effective date information.

→ 368A.220. Filing of reports and payment of tax; deposit of amounts received in State General Fund

1. Except as otherwise provided in this section:

- (a) Each taxpayer who is a licensed gaming establishment shall file with the Board, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form

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prescribed by the Board.

(b) All other taxpayers shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.

2. The Board or the Department, if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by NRS 368A.200, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Board and the Department shall deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.230. Extension of time for payment; payment of interest during period of extension**

Upon written application made before the date on which payment must be made, the Board or the Department may, for good cause, extend by 30 days the time within which a taxpayer is required to pay the tax imposed by this chapter. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.240. Credit for amount of tax paid on account of certain charges taxpayer is unable to collect; violations**

1. If a taxpayer:

(a) Is unable to collect all or part of an admission charge or charges for food, refreshments and merchandise which were included in the taxable receipts reported for a previous reporting period; and

(b) Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect,

he is entitled to receive a credit for the amount of tax paid on account of that uncollected amount. The credit may be

used against the amount of tax that the taxpayer is subsequently required to pay pursuant to this chapter.

2. If the Internal Revenue Service disallows a deduction described in paragraph (b) of subsection 1 and the taxpayer claimed a credit on a return for a previous reporting period pursuant to subsection 1, the taxpayer shall include the amount of that credit in the amount of taxes reported pursuant to this chapter in the first return filed with the Board or the Department after the deduction is disallowed.

3. If a taxpayer collects all or part of an admission charge or charges for food, refreshments and merchandise for which he claimed a credit on a return for a previous reporting period pursuant to subsection 2, he shall include:

(a) The amount collected in the charges reported pursuant to paragraph (a) of subsection 1; and

(b) The tax payable on the amount collected in the amount of taxes reported,

in the first return filed with the Board or the Department after that collection.

4. Except as otherwise provided in subsection 5, upon determining that a taxpayer has filed a return which contains one or more violations of the provisions of this section, the Board or the Department shall:

(a) For the first return of any taxpayer that contains one or more violations, issue a letter of warning to the taxpayer which provides an explanation of the violation or violations contained in the return. Green numbers along left margin indicate location on the printed bill (e.g., 5-15 indicates page 5, line 15).

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported.

5. For the purposes of subsection 4, if the first violation of this section by any taxpayer was determined by the Board or the Department through an audit which covered more than one return of the taxpayer, the Board or the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

[FNI] See Historical and Statutory Notes below for effective date information.

OVERPAYMENTS AND REFUNDS

→ 368A.250. Certification of excess amount collected; credit and refund

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If the Department determines that any tax, penalty or interest it is required to collect has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person or his successors in interest.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.260.** Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim

1. Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund may be allowed unless a claim for it is filed with:

- (1) The Board, if the taxpayer is a licensed gaming establishment; or
- (2) The Department, if the taxpayer is not a licensed gaming establishment.

A claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Board or the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in this chapter constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Board or the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.270.** Interest on overpayments; disallowance of interest

1. Except as otherwise provided in this section and NRS 360.320, interest must be paid upon any overpayment of

any amount of the tax imposed by this chapter in accordance with the provisions of NRS 368A.140.

2. If the overpayment is paid to the Department, the interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

3. If the Board or the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Board or the Department shall not allow any interest on the overpayment.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.280.** Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund

1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this state or against any officer of the State to prevent or enjoin the collection under this chapter of the tax imposed by this chapter or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.290.** Action for refund: Period for commencement; venue; waiver

1. Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by:

(a) The Nevada Gaming Commission, the claimant may bring an action against the Board on the grounds set forth in the claim.

(b) The Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set forth in the claim.

2. An action brought pursuant to subsection 1 must be brought in a court of competent jurisdiction in Carson City,

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the county of this state where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Board or the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

3. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

[FN1] See Historical and Statutory Notes below for effective date information.

→ 368A.300. Rights of claimant upon failure of Board or Department to mail notice of action on claim; allocation of judgment for claimant

1. If the Board fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Gaming Commission within 30 days after the last day of the 6-month period.

2. If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period.

3. If the claimant is aggrieved by the decision of:

(a) The Nevada Gaming Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(b) The Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

4. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

5. The balance of the judgment must be refunded to the plaintiff.

[FN1] See Historical and Statutory Notes below for effective date information.

→ 368A.310. Allowance of interest in judgment for amount illegally collected

In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been

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illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Board or the Department.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.320. Standing to recover

A judgment may not be rendered in favor of the plaintiff in any action brought against the Board or the Department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.330. Action for recovery of erroneous refund: Jurisdiction; venue; prosecution

1. The Board or the Department may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.

2. The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.

3. The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

[FN1] See Historical and Statutory Notes below for effective date information.

→368A.340. Cancellation of illegal determination

1. If any amount in excess of \$25 has been illegally determined, either by the person filing the return or by the Board or the Department, the Board or the Department shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Board or the Department.

2. If an amount not exceeding \$25 has been illegally determined, either by the person filing a return or by the Board or the Department, the Board or the Department, without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Board or the Department.

[FN1] See Historical and Statutory Notes below for effective date information.

MISCELLANEOUS PROVISIONS

→ **368A.350. Prohibited acts; penalty**

1. A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any report or declaration, with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by this chapter.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.360. Revocation of gaming license for failure to report, pay or truthfully account for tax**

Any licensed gaming establishment liable for the payment of the tax imposed by NRS 368A.200 who willfully fails to report, pay or truthfully account for the tax is subject to the revocation of his gaming license by the Nevada Gaming Commission.

[FN1] See Historical and Statutory Notes below for effective date information.

→ **368A.370. Remedies of State are cumulative**

The remedies of the State provided for in this chapter are cumulative, and no action taken by the Board, the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

[FN1] See Historical and Statutory Notes below for effective date information.

NEVADA 2005 SESSION LAWS
REGULAR SESSION OF THE 73RD LEGISLATURE

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Additions are indicated by **Text**; deletions by
~~Text~~. Changes in tables are made but not highlighted.

Ch. 484

A.B. No. 554

REVENUE AND TAXATION--ADMINISTRATION--BUSINESS, PROPERTY, AND ENTERTAINMENT
AN ACT relating to taxation; clarifying the definition of "employer" for the purpose of the tax on business; revising the provisions governing the applicability and administration of the tax on live entertainment; clarifying the provisions governing the administration of the use taxes on certain personal property acquired free of charge at public events; expanding the exemptions from the taxes on the transfer of real property; revising the provisions governing the application of sales and use taxes to retail sales of vehicles for which used vehicles are taken in trade; revising the provisions governing the application of sales and use taxes to retail sales of farm machinery and equipment; providing for the submission to the voters of the question whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption from the tax for sales of vehicles for which used vehicles are taken in trade and for farm machinery and equipment; providing exemptions from certain analogous taxes; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT
AS FOLLOWS:

Section 1. NRS 363B.030 is hereby amended to read as follows:

<< NV ST 363B.030 >>

"Employer" means any employer who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter, except a financial institution, an Indian tribe, a nonprofit organization, ~~or a political subdivision~~; ~~or any person who does not supply a product or service, but who only consumes a service.~~ For the purposes of this section:

1. "Financial institution" has the meaning ascribed to it in NRS 363A.050.
2. "Indian tribe" includes any entity described in subsection 10 of NRS 612.055.
3. "Nonprofit organization" means a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).
4. "Political subdivision" means any entity described in subsection 9 of NRS 612.055.

Sec. 2. Chapter 368A of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3.

"Casual assemblage" includes, without limitation:

1. Participants in conventions, business meetings or tournaments governed by chapter 463 of NRS, and their

guests; or

2. Persons celebrating a friend's or family member's wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.

Sec. 4.

"Shopping mall" includes any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises.

Sec. 5.

"Trade show" means an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services or discussing matters of interest to members of that trade or industry.

Sec. 6. NRS 368A.010 is hereby amended to read as follows:

<< NV ST 368A.010 >>

As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.110, inclusive, and sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.

Sec. 7. NRS 368A.020 is hereby amended to read as follows:

<< NV ST 368A.020 >>

"Admission charge" means the total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live entertainment is provided. The term includes, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.

Sec. 8. NRS 368A.060 is hereby amended to read as follows:

<< NV ST 368A.060 >>

1. "Facility" means:

~~1-~~ (a) Any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises if the live entertainment is provided at:

~~(a)~~ (1) An establishment that is not a licensed gaming establishment; or

~~(b)~~ (2) A licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits.

~~2-~~ (b) Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

2. "Facility" encompasses, if live entertainment is provided at a licensed gaming establishment that is licensed for:

(a) Less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those

respective limits, any area or premises where the live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises; or

(b) At least 51 slot machines or at least 6 games, any designated area on the premises of the licensed gaming establishment within which the live entertainment is provided.

Sec. 9. NRS 368A.090 is hereby amended to read as follows:

<< NV ST 368A.090 >>

1. "Live entertainment" means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.

2. The term:

(a) Includes, without limitation, any one or more of the following activities:

- (1) Music or vocals provided by one or more professional or amateur musicians or vocalists;
- (2) Dancing performed by one or more professional or amateur dancers or performers;
- (3) Acting or drama provided by one or more professional or amateur actors or players;
- (4) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;
- (5) Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph (7) of paragraph (b);
- (6) Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes or sportsmen;
- (7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;
- (8) A show or production involving any combination of the activities described in subparagraphs (1) to (7), inclusive; and
- (9) A performance involving one or more of the activities described in this paragraph by a disc jockey who presents recorded music. For the purposes of this subsection, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this paragraph if the disc jockey generally limits his interaction with patrons to introducing the recorded music, making announcements of general interest to patrons, and explaining, encouraging or directing participatory activities between patrons.

(b) Excludes, without limitation, any one or more of the following activities:

- (1) Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to the volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;

(Publication page references are not available for this document.)

- (2) Occasional performances by employees whose primary job function is that of preparing, selling or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public;
- (3) Performances by performers of any type if the performance occurs in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, as long as the performers stroll continuously throughout the facility;
- (4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;
- (5) Television, radio, closed circuit or Internet broadcasts of live entertainment;
- (6) Entertainment provided by a patron or patrons, including, without limitation, singing by patrons or dancing by or between patrons;
- (7) Animal behaviors induced by animal trainers or caretakers primarily for the purpose of education and scientific research; and
- (8) An occasional activity, including, without limitation, dancing, that:
 - (I) Does not constitute a performance;
 - (II) Is not advertised as entertainment to the public;
 - (III) Primarily serves to provide ambience to the facility; and
 - (IV) Is conducted by an employee whose primary job function is not that of an entertainer.

Sec. 10. NRS 368A.200 is hereby amended to read as follows:

<< NV ST 368A.200 >>

1. Except as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in this State where live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.

(b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed,

but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

5. The tax imposed by subsection 1 does not apply to:

(a) Live entertainment that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c) - **or a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS.**

(c) Any boxing contest or exhibition governed by the provisions of chapter 467 of NRS.

(d) Live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum seating capacity of less than ~~300~~ 200.

(e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, if the facility in which the live entertainment is provided has a maximum seating capacity of less than ~~300~~ 200.

(f) Merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.

(g) Live entertainment that is provided at a trade show..

(h) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.

(i) Live entertainment that is provided at a licensed gaming establishment at private meetings or dinners attended by members of a particular organization or by a casual assemblage if the purpose of the event is not primarily for entertainment.

(j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.

(k) Live entertainment that is incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction. For the purposes of this paragraph, live entertainment shall be deemed to be incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction if the live entertainment is:

(1) Not the predominant element of the attraction; and.

(2) Not the primary purpose for which the public rides, attends or otherwise participates in the attraction.

(l) Live entertainment that is provided to the public in an outdoor area, without any requirements for the payment of an admission charge or the purchase of any food, refreshments or merchandise.

- (m) An outdoor concert, unless the concert is provided on the premises of a licensed gaming establishment.
- (n) Beginning July 1, 2007, race events scheduled at a race track in this State as a part of the National Association for Stock Car Auto Racing Nextel Cup Series, or its successor racing series, and all races associated therewith.
- (o) Live entertainment provided in a restaurant which is incidental to any other activities conducted in the restaurant or which only serves as ambience so long as there is no charge to the patrons for that entertainment.

6. The Nevada Gaming Commission may adopt regulations establishing a procedure whereby a taxpayer that is a licensed gaming establishment may request an exemption from the tax pursuant to paragraph (o) of subsection 5. The regulations must require the taxpayer to seek an administrative ruling from the Chairman of the Board, provide a procedure for appealing that ruling to the Nevada Gaming Commission and further describe the forms of incidental or ambient entertainment exempted pursuant to that paragraph.

7. As used in this section, "maximum seating capacity" means, in the following order of priority:

- (a) The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;
- (b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or
- (c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

Sec. 11. NRS 368A.220 is hereby amended to read as follows:

<< NV ST 368A.220 >>

1. Except as otherwise provided in this section:

- (a) Each taxpayer who is a licensed gaming establishment shall file with the Board, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month or the month in which the taxable events occurred. The report must be in a form prescribed by the Board.
- (b) All other taxpayers shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.

2. The Board or the Department, if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by NRS 368A.200, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Board and the Department shall deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

Sec. 12. Chapter 372 of NRS is hereby amended by adding thereto a new section to read as follows:

In its administration of the use tax imposed by NRS 372.185, the Department shall not consider the storage, use or other consumption in this State of tangible personal property which is:

1. Worth \$100 or less; and
2. Acquired free of charge at a convention, trade show or other public event.

Sec. 13. NRS 372.7263 is hereby amended to read as follows:

<< NV ST 372.7263 >>

1. In administering the provisions of NRS 372.335, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

- (a) The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;
- (b) The sale of farm machinery and equipment to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and
- (c) The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

2. As used in this section:

- (a) ~~"Agricultural use" has the meaning ascribed to it in NRS 361A.030.~~
- (b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:
 - (1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or
 - (2) Machinery or equipment only incidentally employed for ~~the agricultural use of real property.~~
- (c) ~~agricultural purposes.~~
- (d) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.
- (e) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 14. NRS 372.7263 is hereby amended to read as follows:

<< NV ST 372.7263 >>

± In administering the provisions of NRS 372.335, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

- (a) 1. The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;
- (b) 2. The sale of farm machinery and equipment , as defined in section 30 of this act, to a nonresident who sub-

mits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and

(e) 3. The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 15. Chapter 374 of NRS is hereby amended by adding thereto the provisions set forth as sections 16 and 17 of this act.

Sec. 16.

In its administration of the use tax imposed by NRS 374.190, the Department shall not consider the storage, use or other consumption in a county of tangible personal property which is:

1. Worth \$100 or less; and

2. Acquired free of charge at a convention, trade show or other public event.

Sec. 17.

1. There are exempted from the taxes imposed by this chapter the gross receipts from the sale, storage, use or other consumption in a county of farm machinery and equipment.

2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(Publication page references are not available for this document.)

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 18. NRS 374.030 is hereby amended to read as follows:

<< NV ST 374.030 >>

1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Department may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the county or has paid the use tax with respect to the property, and has resold the property before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(c) The cost of transportation of the property before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The sale price of property returned by customers when the full sale price is refunded either in cash or credit, but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

~~(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.~~

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Department that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

(Publication page references are not available for this document.)

Sec. 19. NRS 374.070 is hereby amended to read as follows:

<< NV ST 374.070 >>

1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of the materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property before its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded in cash or credit, except that this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
- (c) The amount charged for labor or services rendered in installing or applying the property sold.
- (d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.
- (e) The amount of any tax imposed by the State of Nevada upon or with respect to the storage, use or other consumption of tangible personal property purchased from any retailer.
- (f) The amount of any allowance against the selling price given by a retailer for the value of a used ~~vehicle or vessel~~ which is taken in trade on the purchase of another ~~vehicle or vessel~~.

Sec. 20. NRS 375.090 is hereby amended to read as follows:

<< NV ST 375.090 >>

The taxes imposed by NRS 375.020, 375.023 and 375.026 do not apply to:

1. A mere change in identity, form or place of organization, such as a transfer between a corporation and its parent corporation, a subsidiary or an affiliated corporation if the affiliated corporation has identical common ownership.
2. A transfer of title to the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.
3. A transfer of title recognizing the true status of ownership of the real property.
4. A transfer of title without consideration from one joint tenant or tenant in common to one or more remaining joint

tenants or tenants in common.

5. A transfer of title between spouses, including gifts, or to effect a property settlement agreement or between former spouses in compliance with a decree of divorce.

6. A transfer of title to or from a trust without consideration if a certificate of trust is presented at the time of transfer.

7. Transfers, assignments or conveyances of unpatented mines or mining claims.

8. A transfer, assignment or other conveyance of real property to a corporation or other business organization if the person conveying the property owns 100 percent of the corporation or organization to which the conveyance is made.

9. A transfer, assignment or other conveyance of real property if the owner of the property is related to the person to whom it is conveyed within the first degree of lineal consanguinity or affinity.

10. A conveyance of real property by deed which becomes effective upon the death of the grantor pursuant to NRS 111.109.

11. The making, delivery or filing of conveyances of real property to make effective any plan of reorganization or adjustment:

(a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C. §§ 101 et seq.;

(b) Approved in an equity receivership proceeding involving a railroad, as defined in the Bankruptcy Act; or

(c) Approved in an equity receivership proceeding involving a corporation, as defined in the Bankruptcy Act,

if the making, delivery or filing of instruments of transfer or conveyance occurs within 5 years after the date of the confirmation, approval or change.

12. The making or delivery of conveyances of real property to make effective any order of the Securities and Exchange Commission if:

(a) The order of the Securities and Exchange Commission in obedience to which the transfer or conveyance is made recites that the transfer or conveyance is necessary or appropriate to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79k;

(b) The order specifies and itemizes the property which is ordered to be transferred or conveyed; and

(c) The transfer or conveyance is made in obedience to the order.

13. A transfer to an educational foundation. As used in this subsection, "educational foundation" has the meaning ascribed to it in subsection 3 of NRS 388.750.

14. A transfer to a university foundation. As used in this subsection, "university foundation" has the meaning ascribed to it in subsection 3 of NRS 396.405.

Sec. 21. NRS 374.265 is hereby amended to read as follows:

<< NV ST 374.265 >>

"Exempted from the taxes imposed by this chapter," as used in NRS 374.265 to 374.355, inclusive, and section 17 of this act means exempted from the computation of the amount of taxes imposed.

Sec. 22. NRS 374.286 is hereby amended to read as follows:

<< NV ST 374.286 >>

1. There are exempted from the taxes imposed by this chapter the gross receipts from the sale, of, and the storage, use or other consumption in a county of ; farm machinery and equipment . ~~employed for the agricultural use of real property.~~

2. As used in this section:

(a) ~~"Agricultural use" has the meaning ascribed to it in NRS 361A.030.~~

(b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for ~~the agricultural use of real property.~~

(c) ~~agricultural purposes.~~

(d) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(e) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 23. NRS 374.7273 is hereby amended to read as follows:

1. In administering the provisions of NRS 374.340, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

(a) The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;

(b) The sale of farm machinery and equipment to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and

(c) The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

2. As used in this section:

(a) ~~"Agricultural use" has the meaning ascribed to it in NRS 361A.030.~~

(b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(Publication page references are not available for this document.)

(2) Machinery or equipment only incidentally employed for the agricultural use of real property:

(e) agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(d) (c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 24. NRS 374.7273 is hereby amended to read as follows:

<< NV ST 374.7273 >>

± In administering the provisions of NRS 374.340, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

(a) 1. The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;

(b) 2. The sale of farm machinery and equipment, as defined in section 30 of this act, to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and

(e) 3. The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(e) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 25. Section 64 of Chapter 400, Statutes of Nevada 2003, at page 2374, is hereby amended to read as follows:

Sec. 64. NRS 374.070 is hereby amended to read as follows:

1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold.

(Publication page references are not available for this document.)

(b) The cost of the materials used, labor or service cost, interest charged, losses, or any other expenses.

(c) The cost of transportation of the property before its purchase.

2. The total amount for which property is sold includes all of the following:

(a) Any services that are a part of the sale.

(b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit; but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The amount charged for labor or services rendered in installing or applying the property sold.

(d) The amount of any tax, (not including , however, any manufacturers' or importers' excise tax ,) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount of any tax imposed by the State of Nevada upon or with respect to the storage, use or other consumption of tangible personal property purchased from any retailer.

(f) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.

~~4. For the purpose of a sale of a vehicle by a seller who is not required to be registered with the Department of Taxation, the sales price is the value established in the manner set forth in NRS 374.112.~~

Sec. 26. Section 138 of Chapter 400, Statutes of Nevada 2003, at page 2409, is hereby amended to read as follows:

Sec. 138. NRS ~~374.107~~, 374.112, 374.113, 374.286, 374.291, 374.2911, 374.322 and 374.323 are hereby repealed.

Sec. 27. Section 139 of Chapter 400, Statutes of Nevada 2003, at page 2409, is hereby amended to read as follows:

Sec. 139. 1. This section and section 102 of this act become effective upon passage and approval.

2. Sections 103 to 135, inclusive, of this act become effective on July 1, 2003.

3. Sections 1 to 29, inclusive, 32 to 38, inclusive, 40 to 50, inclusive, 52 to 57, inclusive, 66, 67, 69 to 72, inclusive, 74 to 80, inclusive, 83, 84, 85, 87 to 92, inclusive, 94 to 101, inclusive, 136 and 137 of this act become effective:

(a) Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2006, for all other purposes.

4. Sections 30 and 39 of this act become effective on January 1, 2006, only if the proposal submitted pursuant to

(Publication page references are not available for this document.)

sections 103 to 107, inclusive, of this act is approved by the voters at the General Election on November 2, 2004.

5. Sections 31, 51, ~~58~~ 60 to 65, inclusive, 68, 73, 81, 82, 86, 93 and 138 of this act become effective on January 1, 2006, only if the proposal submitted pursuant to sections 103 to 107, inclusive, of this act is not approved by the voters at the General Election on November 2, 2004.

Sec. 28.

At the General Election on November 7, 2006, a proposal must be submitted to the registered voters of this State to amend the Sales and Use Tax Act, which was enacted by the 47th session of the Legislature of the State of Nevada and approved by the Governor in 1955, and subsequently approved by the people of this State at the General Election held on November 6, 1956.

Sec. 29.

At the time and in the manner provided by law, the Secretary of State shall transmit the proposed Act to the several county clerks, and the county clerks shall cause it to be published and posted as provided by law.

Sec. 30.

The proclamation and notice to the voters given by the county clerks pursuant to law must be in substantially the following form:

Notice is hereby given that at the General Election on November 7, 2006, a question will appear on the ballot for the adoption or rejection by the registered voters of the State of the following proposed Act:

AN ACT to amend an Act entitled "An Act to provide revenue for the State of Nevada; providing for sales and use taxes; providing for the manner of collection; defining certain terms; providing penalties for violation, and other matters properly relating thereto." approved March 29, 1955, as amended.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. The above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto a new section to be designated as section 18.2, immediately following section 18.1, to read as follows:

Sec. 18.2. "Vehicle" has the meaning ascribed to it in NRS 482.135.

Sec. 2. The above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto a new section to be designated section 55.5, immediately following section 55 to read as follows:

Sec. 55.5. 1. There are exempted from the taxes imposed by this Act the gross receipts from the sale, storage, use or other consumption in a county of farm machinery and equipment.

2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(Publication page references are not available for this document.)

(2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 3. Section 11 of the above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 764, is hereby amended to read as follows:

Sec. 11. 1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property prior to before its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit ~~but~~, **except that this exclusion shall does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.**
- (c) The amount charged for labor or services rendered in installing or applying the property sold.
- (d) The amount of any tax, { not including ~~however,~~ any manufacturers' or importers' excise tax, } imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.
- (e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.**

Sec. 4. Section 12 of the above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 764, is hereby amended to read as follows:

Sec. 12. 1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(Publication page references are not available for this document.)

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property ~~prior to~~ before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(c) The cost of transportation of the property ~~prior to~~ before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits, and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" ~~do~~ does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) ~~Sale~~ The sale price of property returned by customers when the full sale price is refunded either in cash or credit, but this exclusion ~~shall~~ does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, (not including, ~~however,~~ any manufacturers' or importers' excise tax,) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Sec. 5. This Act becomes effective on January 1, 2007.

Sec. 31.

The ballot page assemblies and the paper ballots to be used in voting on the question must present the question in substantially the following form:

Shall the Sales and Use Tax Act of 1955 be amended to exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of any used vehicle taken in trade on the purchase of another vehicle and to exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of farm machinery and equipment?

Yes (BOX) No (BOX)

Sec. 32.

The explanation of the question which must appear on each paper ballot and sample ballot and in every publication and posting of notice of the question must be in substantially the following form:

(Explanation of Question)

The proposed amendment to the Sales and Use Tax Act of 1955 would exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of any used vehicle taken in trade on the purchase of another vehicle and the value of farm machinery and equipment. The Legislature has amended the Local School Support Tax Law and the City-County Relief Tax Law to provide the same exemption for farm machinery and equipment if this proposal is adopted.

Sec. 33.

If a majority of the votes cast on the question submitted to the voters is yes, the amendment to the Sales and Use Tax Act of 1955 becomes effective on January 1, 2007. If less than a majority of votes cast on the question submitted to the voters is yes, the question fails and the amendment to the Sales and Use Tax Act of 1955 does not become effective.

Sec. 34.

All general election laws not inconsistent with this act are applicable.

Sec. 35.

Any informalities, omissions or defects in the content or making of the publications, proclamations or notices provided for in this act and by the general election laws under which this election is held must be so construed as not to invalidate the adoption of the act by a majority of the registered voters voting on the question if it can be ascertained with reasonable certainty from the official returns transmitted to the Office of the Secretary of State whether the proposed amendment was adopted by a majority of those registered voters.

<< Repealed: NV ST 368A.130, 368A.210, 374.107 >>

Sec. 36.

1. NRS 368A.130 and 368A.210 are hereby repealed.
2. NRS 374.107 is hereby repealed.
3. Sections 58 and 59 of Chapter 400, Statutes of Nevada 2003, at page 2371, are hereby repealed.

Sec. 37. 1. This section becomes effective upon passage and approval.

2. Section 22 of this act:

(a) Becomes effective upon passage and approval for the purpose of adopting regulations and on July 1, 2005, for all other purposes; and

(b) Expires by limitation on December 21, 2005.

3. Sections 1 to 12, inclusive, 15, 16, 20 and subsection 1 of section 36 of this act become effective on July 1, 2005.

(Publication page references are not available for this document.)

4. Sections 25 to 35, inclusive, and subsection 3 of section 36 of this act become effective on October 1, 2005.

5. Sections 13 and 23 of this act become effective on January 1, 2006.

6. Sections 14, 17, 21 and 24 of this act become effective on January 1, 2007, only if the proposal submitted pursuant to sections 28 to 35, inclusive, of this act is approved by the voters at the General Election on November 7, 2006.

7. Sections 18, 19 and subsection 2 of section 36 of this act become effective on January 1, 2007, only if the proposal submitted pursuant to sections 28 to 35, inclusive, of this act is not approved by the voters at the General Election on November 7, 2006.

Approved by the Governor June 17, 2005.

NV LEGIS 484 (2005)

END OF DOCUMENT

IN THE SUPREME COURT FOR STATE OF NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*,

Appellants,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her Official Capacity Only,

Respondents.

Electronically Filed
Supreme Court Case No. 60037
Jan 04 2013 08:07 a.m.
Tracie K. Lindeman
District Court Case Clerk of Supreme Court

CORRECTED APPELLANTS' APPENDIX
VOLUME 8, PAGES 1589-1831

INDEX TO CORRECTED APPELLANTS' APPENDIX

Filing Date	Description	Vol.	Page
05/05/2011	3 rd Amended Order Setting Civil Non-Jury Trial and Calendar Call	7	1470-1472
11/29/2011	Amended Case Appeal Statement	10	2113-2121
12/19/2011	Amended Order (Dismissing Case 2 to Proceed as a Petition for Judicial review)	10	2135-2138
03/17/2009	Amended Order Setting Non-Jury Civil Trial	1	230-231
08/04/2009	Amended Order Setting Non-Jury Civil Trial	2	250-251
07/20/2009	Amended Scheduling Order	1	247-249
04/09/2007	Amended Summons – Nevada Board of Examiners	1	52-55
04/09/2007	Amended Summons – Nevada Tax Commission	1	48-51
03/03/2008	Answer to Complaint	1	127-136
04/06/2011	Answer to Verified Amended Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs	7	1433-1449
01/17/2012	Appeal Statement (Case No. 06A533273)	10	2174-2182
11/28/2011	Case Appeal Statement	10	2106-2112
03/22/2011	Certificate of Service – Verified Amended Complaint	7	1429-1430
03/23/2011	Certificate of Service – Verified Amended Complaint	7	1431-1432
01/28/2009	Certificate of Service (Motion to Amend Complaint and Amended Complaint)	1	224-225
03/30/2009	Certificate of Service (Plaintiffs' First Set of Interrogatories and Plaintiffs' First Request for Production of Documents)	1	232-233
04/20/2009	Certificate of Service (Plaintiffs' Notice 30(b)(6) Depositions and Subpoenas)	1	236-237
04/24/2007	Certificate of Service (Substitution of Attorney and Verification)	1	71-101
05/03/2007	Civil Court Minutes	1	102
07/31/2008	Civil Court Minutes	1	137
08/14/2008	Civil Court Minutes	1	172

Filing Date	Description	Vol.	Page
09/18/2008	Civil Court Minutes	1	173
10/16/2008	Civil Court Minutes	1	174
11/06/2008	Civil Court Minutes	1	175
11/13/2008	Civil Court Minutes	1	176
12/11/2008	Civil Court Minutes	1	180
12/16/2008	Civil Court Minutes	1	181
01/15/2009	Civil Court Minutes	1	191
02/03/2009	Civil Court Minutes	1	226
02/12/2009	Civil Court Minutes	1	227
04/02/2009	Civil Court Minutes	1	234
04/16/2009	Civil Court Minutes	1	235
06/17/2009	Court Minutes	1	246
11/13/2009	Court Minutes	3	548
06/30/2010	Court Minutes	4	902-903
08/12/2010	Court Minutes	4	908-909
08/24/2010	Court Minutes	4	910
09/16/2010	Court Minutes	4	911-912
12/09/2010	Court Minutes	4	913
12/28/2010	Court Minutes	5	1057-1058
01/13/2011	Court Minutes	5	1062-1063
01/26/2011	Court Minutes	5	1103
02/10/2011	Court Minutes	5	1105
03/15/2011	Court Minutes	6	1396
05/27/2011	Court Minutes	7	1473
06/24/2011	Court Minutes	7	1474
08/16/2011	Court Minutes	7	1547
08/23/2011	Court Minutes	8	1704-1705
10/20/2011	Court Minutes	9	2014
11/08/2011	Court Minutes	9	2067-2068
11/10/2011	Court Minutes	10	2095
12/16/2011	Court Minutes	10	2122
02/10/2011	Court Minutes (Case No. 08A554970)	5	1104
08/16/2011	Defendants Motion to Compel on an Order Shortening Time	7	1548-1588
08/16/2011	Defendants Motion to Compel - Exhibit A Defendants' Requests for Production of Documents to Plaintiffs	8	1589-1661

Filing Date	Description	Vol.	Page
08/16/2011	Defendants Motion to Compel - Exhibit B Plaintiffs Shac, LLC's Response to Defendants' Requests for Production of Documents	8	1662-1673
08/16/2011	Defendants Motion to Compel - Exhibit C Responses to Defendants' Requests for Production of Documents	8	1674-1689
08/16/2011	Defendants Motion to Compel - Exhibit D Email to Roos from Rakowsky - Dated June 28, 2011	8	1690-1691
08/16/2011	Defendants Motion to Compel - Exhibit E Email to Rakowsky from Roos – Dated July 15, 1011	8	1692-1694
08/16/2011	Defendants Motion to Compel - Exhibit F Email to Brown and Pritzlaff from Doerr – Dated July 13, 2011	8	1695-1696
08/16/2011	Defendants Motion to Compel - Exhibit G Correspondence to Shafer and Sullivan from Diciano (Nevada Dep. of Taxation) Dated October 12, 2007	8	1697-1699
08/16/2011	Defendants Motion to Compel - Exhibit H Email to Roos from Rakowsky – Dated June 29, 2011	8	1700-1701
08/16/2011	Defendants Motion to Compel - Exhibit I Email to Roos from Rakowsky – Dated July 1, 2011	8	1702-1703
05/28/2010	Discovery Commissioner's Report and Recommendations (05/19/2010)	4	886-891
12/09/2010	Memorandum Supporting Request for Specific Discovery Rulings	5	980-982
12/09/2010	Memorandum Supporting Request – Exhibit 1 Correspondence to Hon. Jennifer Tagliatti from Brad Shafer of 12/06/2010	5	983-1042
04/08/2011	Minute Order	7	1456-1457
09/30/2009	Motion to Compel Discovery of Defendants	2	257-280
09/30/2009	Motion to Compel - Exhibit 1 Plaintiffs' First Set of Interrogatories to Defendants	2	281-293
09/30/2009	Motion to Compel - Exhibit 2	2	294-305

Filing Date	Description	Vol.	Page
	Plaintiffs' First Request for the Production of Documents and Things to Defendants		
09/30/2009	Motion to Compel - Exhibit 3 Responses to Plaintiffs' First Set of Interrogatories	2	306-331
09/30/2009	Motion to Compel - Exhibit 4a Responses to Plaintiffs' First Request for the Production of Documents and Things	2	332-395
09/30/2009	Motion to Compel - Exhibit 4b Responses to Plaintiffs' First Request for the Production of Documents and Things	2	396-465
09/30/2009	Motion to Compel - Exhibit 4c Responses to Plaintiffs' First Request for the Production of Documents and Things	3	466-538
09/30/2009	Motion to Compel - Exhibit 5 Affidavit of Matthew J. Hoffer	3	539-540
09/30/2009	Motion to Compel - Exhibit 6 LET Return Forms – Non-Gaming Facilities	3	541-547
11/28/2011	Notice of Appeal	10	2096-2105
01/09/2011	Notice of Appeal (Case No. 06A533273)	10	2171-2173
12/19/2011	Notice of Entry of Amended Order – 12/19/2011	10	2155-2161
01/14/2011	Notice of Entry of Order – (01/13/2011)	5	1086-1090
12/19/2011	Notice of Entry of Order – 12/16/2011	10	2139-2154
12/20/2011	Notice of Entry of Order – 12/19/2011	10	2162-2169
11/02/2011	Notice of Entry of Order – Entered 10/27/2011 – e-filed 11/01/2011	9	2060-2066
04/12/2011	Notice of Entry of Order – Motion for Partial Summary Judgment and Motion to Dismiss – 04/05/2011	7	1464-1469
12/15/2010	Notice of Entry of Order – Motion for Summary Judgment	5	1047-1051
12/15/2010	Notice of Entry of Order – Motion to Dismiss	5	1052-1056
04/12/2011	Notice of Entry of Order – Renewed Motion for Preliminary Injunction – 04/05/2011	7	1458-1463
04/10/2007	Notice of Entry of Order (04/03/2007)	1	60-70
05/15/2009	Notice of Entry of Order (05/11/2009)	1	240-245

Filing Date	Description	Vol.	Page
06/11/2010	Notice of Entry of Order (05/19/2010)	4	892-901
12/22/2008	Notice of Entry of Order (12/19/2008)	1	185-190
04/06/2011	Order (Defendants' Motion for Partial Summary Judgment and Motion to Dismiss)	7	1450-1452
11/01/2011	Order (Granting in Part/Denying in Part Defendant's Motion for Partial Summary)	9	2056-2059
04/03/2007	Order Admitting (Brad Shafer) to Practice	1	46-47
01/05/2011	Order Denying Defendants' Res Judicata Claim	5	1059-1061
01/13/2011	Order Denying Motion for Preliminary Injunction Without Prejudice (hearing held on July 31, 2008)	5	1064-1065
12/10/2010	Order Denying Motion for Summary Judgment without Prejudice	5	1043-1044
12/10/2010	Order Denying Motion to Dismiss Without Prejudice	5	1045-1046
12/16/2011	Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendants' Counter-Motion for Summary Judgment	10	2123-2134
04/06/2011	Order Denying Plaintiffs' Renewed Motion for Preliminary Injunction on Order Shortening Time	7	1453-1455
12/19/2008	Order Granting Motion to Withdraw as Local Counsel of Record for Plaintiffs	1	182-184
05/11/2009	Order Granting Plaintiffs' Motion for Leave to Amend Complaint	1	238-239
03/04/2009	Order Setting Civil Jury Trial	1	228-229
01/03/2011	Order to Statistically Close Case	10	2170
08/04/2010	Order Vacating Prior Order and Coordinating Case	4	904-907
09/23/2011	Plaintiffs' Motion for Summary Judgment on Facial Challenge, for Permanent Injunction, and for Return of Taxes	8	1738-1796
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 1 Copy of the Version of Chapter 368A adopted in 2003	8	1797-1812
09/23/2011	Plaintiffs' Motion for Summary Judgment -	8	1813-1831

Filing Date	Description	Vol.	Page
	Exhibit 2 Assembly Bill No. 554		
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 3 2005 Nevada Laws (S.B. 3) - Occupancy	9	1832-1852
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 4 2007 Nevada Laws (A.B. 487) - Baseball	9	1853-1855
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 5 Current Codified Version of Chapter 368A	9	1856-1871
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 6 TN Attorney General Opinion	9	1872-1876
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 7 United States District Court Order Dismissing Lawsuit	9	1877-1883
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 8 United States Court of Appeals for the Ninth Circuit Memorandum Affirming Dismissal	9	1884-1885
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 9 Redacted Sample Copy of Administrative Request for Refund	9	1886-1891
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 10 Sample Copy of Defendant's Denial of Request for Refund	9	1892
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 11 Sample Copy of Department's Acknowledgment of Appeal	9	1893
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 12 Nevada Tax Commission's Order Denying Appeal	9	1894-1895

Filing Date	Description	Vol.	Page
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 13 Department of Taxation's Responses to Plaintiffs' First set of Interrogatories	9	1896-1920
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 14 Minutes of the Meeting on May 16, 2005	9	1921-1936
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 15 Memorandum – Analysis of Revenue Impact	9	1937-1938
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 16 LET by venue	9	1939-1941
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 17 Memorandum of November 9, 2004 - Cathy Chambers	9	1942
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 18 Dicianno Email of April 24, 2005	9	1943
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 19 Memorandum to Bill Bible re proposed regulations	9	1944-1945
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 20 Senate Committee on Taxation - April 12, 2005	9	1946-1956
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 21 Senate Committee on Taxation - June 5, 2005	9	1957-1965
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 22 Excerpts of Transcripts of Hearing before the Nevada Tax Commission on July 9, 2007	9	1966-1968
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 23 Excerpts of Transcript of Hearing Before the Nevada Tax Commission on August 6, 2007	9	1969-1978

Filing Date	Description	Vol.	Page
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 24 Excerpts of Defendants Answering Brief	9	1979-1987
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 25 Affidavits of Representatives of Plaintiffs Produced Before the Tax Commission	9	1988-1995
09/23/2011	Plaintiffs' Motion for Summary Judgment - Exhibit 26 Excerpts of Transcript of December 9, 2010, Hearing before Judge Togliatti	9	1996-2013
03/03/2010	Plaintiffs' Objection to the Discovery Commissioner's Report and Recommendation Regarding Plaintiffs' Motion to Compel Discovery of Defendants	3	551-575
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 1 Plaintiffs' First Set of Interrogatories to Defendants	3	576-588
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 2 Plaintiffs' First Request for the Production of Documents and Things to Defendants	3	589-600
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 3 Responses to Plaintiffs' First Set of Interrogatories	3	601-626
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 4a Responses to Plaintiffs' First Request for Production of Documents and Things	3	627-690
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 4b	4	691-760

Filing Date	Description	Vol.	Page
	Responses to Plaintiffs' First Request for Production of Documents and Things		
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 4c Responses to Plaintiffs' First Request for Production of Documents and Things	4	761-833
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 5 Affidavit of Matthew J. Hoffer	4	834-835
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 6 Report and Recommendation of Discovery Commissioner - 2010-02-22	4	836-842
03/03/2010	Plaintiffs' Objection to Discovery Commissioners Report and Recommendation – Exhibit 7 LET Return Forms – Non-Gaming Facilities	4	843-849
05/13/2010	Plaintiffs' Objection to the Discovery Commissioner's Report and Recommendation Regarding Plaintiffs' Motion to Compel Discovery of Defendants (without exhibits)	4	860-885
10/28/2011	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment	9	2015-2040
10/28/2011	Plaintiffs' Opposition to Defendants Motion for Summary Judgment – Exhibit A Deposition Notices/Subpoena	9	2041-2048
10/28/2011	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment – Exhibit B Minutes of August 16, 2011 – Register of Actions	9	2049-2051
10/28/2011	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment – Exhibit C	9	2052-2054

Filing Date	Description	Vol.	Page
	Minutes of August 23, 2011 – Register of Actions		
10/28/2011	Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment – Exhibit D Casino Entertainment Tax	9	2055
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection to Subpoena Duces Tecum and Subpoena, Motion to Quash Subpoenas and Motion for Sanctions Pursuant to NRCP 45(C)(1) on Order Shortening Time	7	1475-1490
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection to Subpoena - Exhibit 1 Email dated March 12, 2009 regarding availability of DiCianno	7	1491-1493
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection to Subpoena - Exhibit 2 2009 Deposition Notices	7	1494-1516
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection to Subpoena - Exhibit 3 Email dated May 1, 2009 regarding rescheduling of Depositions	7	1517-1519
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection to Subpoena - Exhibit 4 Email dated June 29, 2011 from Doerr regarding who will be deposed	7	1520-1521
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection to Subpoena - Exhibit 5 2011 Deposition Subpoena	7	1522-1537
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection to Subpoena - Exhibit 6 Defendants' Certificates of Service showing facsimile	7	1538-1541
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection to Subpoena - Exhibit 7 Plaintiffs' Certificates of Service showing facsimile	7	1542-1544
08/15/2011	Plaintiffs’ Opposition to Defendants’ Objection	7	1545-1546

Filing Date	Description	Vol.	Page
	to Subpoena - Exhibit 8 Email dated August 10, 2011 forwarding info to new email addresses		
01/25/2011	Plaintiffs' Supplemental Brief Summarizing Separation of Powers Issue and Outstanding Discovery Issues		1091-1102
03/05/2010	Receipt of Copy (Pope's Receipt of Plaintiffs' Objection to Discovery Commissioner's Report and Recommendation)	4	850-851
02/18/2011	Renewed Motion for Preliminary Injunction on Order Shortening Time	6	1157-1204
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 1 Copy of the version of Chapter 368A adopted in 2003	6	1205-1221
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 2 Assembly Bill No. 554	6	1222-1241
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 3 Current codified version of Chapter 368A	6	1242-1258
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 4 Texas Decision and Statute	6	1259-1284
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 5 TN Attorney General Opinion	6	1285-1290
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 6 United States District Court Order Dismissing Lawsuit	6	1291-1298
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 7 United States Court of Appeals for the Ninth Circuit Memorandum Affirming Dismissal	6	1299-1301
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 8 Redacted Sample Copy of Administrative	6	1302-1308

Filing Date	Description	Vol.	Page
	Request for Refund		
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 9 Sample Copy of Department's Denial of Request for Refund	6	1309-1310
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 10 Sample Copy of Department's Acknowledgment of Appeal	6	1311-1312
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 11 Nevada Tax Commission's Order Denying Appeal	6	1313-1315
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 12 Orders of Judge Togliatti, December 9, 2010.	6	1316-1320
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 13 Minutes of the Meeting of the Assembly Committee on Commerce and Labor recorded during the 73rd Congressional Session on May 16, 2005	6	1321-1337
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 14 Chart of LET Collections Created by the Nevada Department of Taxation	6	1338-1340
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 15 Excerpts of Transcript of Hearing Before the Nevada Tax Commission on July 9, 2007	6	1341-1344
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 16 N.A.C. § 368A.170	6	1345-1346
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 17 Excerpts of Defendants' (Appellees') Answering Brief to the United States Court of Appeals for the Ninth Circuit	6	1347-1356

Filing Date	Description	Vol.	Page
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 18 Excerpts of Transcript of Hearing Before the Nevada Tax Commission on August 6, 2007	6	1357-1367
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 19 Affidavits of Representatives of Plaintiffs Produced Before the Tax Commission	6	1368-1376
02/18/2011	Renewed Motion for Preliminary Injunction - Exhibit 20 Excerpts of Transcript of December 9, 2010, Hearing before Judge Togliatti	6	1377-1395
12/02/2008	Scheduling Order (Discovery)	1	177-179
12/01/2009	Second Amended Order Setting Civil Non-Jury Trial	3	549-550
09/28/2009	Stipulation and Order for Extension of Time to Complete Discovery and to Continue Trial (Second Request)	2	252-256
03/24/2010	Stipulation and Order to Extension of time to Complete Discovery (Third Request)	4	852-857
01/09/2007	Summons – Jacobs	1	34-36
04/09/2007	Summons – Nevada Attorney General	1	56-59
01/09/2007	Summons – Nevada Department of Taxations	1	37-39
01/09/2007	Summons – Nevada Tax Commission	1	40-42
01/09/2007	Summons – State Board of Examiners	1	43-45
04/01/2010	Third Amended Order Setting Non-Jury Civil Trial	4	858-859
07/31/2008	Transcript – Defendants Department of Taxation, Nevada Tax Commission, and Nevada State Board of Examiner’s Motion to Dismiss/and Motion for Preliminary Injunction – Entered 08/13/2008	1	138-171
08/23/2011	Transcript – Hearing on Defendant’s Motion for Partial Summary Judgment – Entered 10/24/2011	8	1706-1737
03/15/2011	Transcript – Hearing on Motions – Entered 04/13/2011	7	1397-1428
12/09/2010	Transcript - Plaintiff’s Motion for Preliminary	5	914-979

Filing Date	Description	Vol.	Page
	Injunction/Separation of Powers Issue, Discovery Issues; and Trial Scheduling Issues – Entered 02/22/2011		
01/13/2011	Transcript – Request of Court (Transferring Case to Judge Gonzalez) – Entered 02/25/2011	5	1066-1085
02/10/2011	Transcript – Status Check – Entered 02/22/2011	5	1106-1156
11/08/2011	Transcript (Defendant’s Motion for Partial Summary Judgment)	10	2069-2094
05/15/2007	Verification – D. Westwood, Inc.	1	109-111
05/15/2007	Verification – D.I. Food & Beverage of Las Vegas, LLC	1	121-123
05/15/2007	Verification – Deja Vu Showgirls of Las Vegas, LLC	1	106-108
05/15/2007	Verification – Don Krontz	1	118-120
05/15/2007	Verification – K-Kel, Inc.	1	124-126
05/15/2007	Verification – Olympus Garden, Inc.	1	112-114
05/15/2007	Verification – Shac, LLC	1	115-117
05/15/2007	Verification – The Power Company	1	103-105
01/28/2009	Verified Amended Complaint - Exhibit A Chapter 368A	1	207-223
01/28/2009	Verified Amended Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs	1	192 -206
12/19/2006	Verified Complaint - Exhibit A Chapter 368A	1	17-33
12/19/2006	Verified Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs	1	1-16

EXHIBIT “A”

Attorney General's Office
555 E. Washington Ave. Ste. 3900
Las Vegas, NV 89101

1 **REQT**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
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16 F: (702) 486-3416
17 dpope@ag.nv.gov
18 bdoerr@ag.nv.gov
19 vrakowsky@ag.nv.gov
20 Attorneys for Nevada Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

21 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
22 L.L.C., d/b/a Déjà vu Showgirls, LITTLE)
23 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little)
24 Darlings, K-KEL, INC. d/b/a Spearmint Rhino)
25 Gentlemen's Club, OLYMPUS GARDEN, INC.,
26 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a)
27 Sapphire, THE POWER COMPANY, INC., d/b/a)
28 Crazy Horse Too Gentlemen's Club, D.)
WESTWOOD, INC., d/b/a Treasures, and D.I.)
FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,
d/b/a Scores,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION,
NEVADA TAX COMMISSION, NEVADA
STATE BOARD OF EXAMINERS, and
MICHELLE JACOBS, in her official capacity
only,

Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

**DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS TO
PLAINTIFF OLYMPUS GARDEN, INC.,
D/B/A OLYMPIC GARDEN**

26 ...
27 ...
28 ...

Case No. 08A554970
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a
5 *Crazy Horse Too Gentlemen's Club*; D.)
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

11 NEVADA DEPARTMENT OF TAXATION;
12 NEVADA TAX COMMISSION; and NEVADA
13 STATE BOARD OF EXAMINERS,

14 Defendants.

15 TO: OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff:

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFFS, pursuant to Rule 34 of the
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes
23 without limiting the generality of its meaning, all originals, or copies where originals are
24 unavailable and non identical copies (whether different from originals by reason of notation
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or
2 other graphic representation, logs, investigators' reports or papers similar of any of the
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is
23 not presently in your possession or control, you shall describe the writing, the date of its loss,
24 destruction, purge or separation from possession or control, and the circumstances surrounding
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term OLYMPUS GARDEN, INC., d/b/a
27 Olympic Garden or any version thereof, is intended to, and shall, embrace and include any of
28 ...

1 the locations operated by OLYMPUS GARDEN, INC., d/b/a Olympic Garden who are Plaintiffs
2 in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;
5 OLYMPUS GARDEN, INC., d/b/a Olympic Garden and any of its agents, officers, directors,
6 employees, representatives, and any others who are in possession of, or who may have
7 obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is
9 intended to and shall, embrace any portions of, any areas related to, or under the control of
10 OLYMPUS GARDEN, INC., d/b/a Olympic Garden.

11 7. As used throughout these Requests, the term "person" or its plural or any
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any
18 synonym thereof, is intended to and shall embrace and include all employees of OLYMPUS
19 GARDEN, INC., d/b/a Olympic Garden.

20 10. As used throughout these requests the term "food" or "meals" or any synonym
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of
25 OLYMPUS GARDEN, INC., d/b/a Olympic Garden.

26 12. A request that you produce the source of information about certain facts includes
27 a request that you state the means by which such knowledge has been preserved; if such
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be
6 construed by reference to any other Request if the result is a limitation of the scope of the
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as
9 necessary, in order to bring within the scope of the Request all responses which might otherwise
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,
13 please set forth fully each objection, describe generally the information which is withheld, and
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production
16 in full, after exercising diligence to secure the request, please so state and provide the
17 production to the extent possible, specifying your inability to produce the remainder and stating
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information
20 contained in writings) as is known or reasonably available to you, your attorney or any
21 investigator or representative or others acting on their behalf or under their direction of control,
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event
24 you discover information that has been requested, you are to supplement the Request for
25 Production by supplementing your production.

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REQUEST FOR PRODUCTION OF DOCUMENTS

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1. Any and all documents constituting monthly financial statements with departmental breakouts for all periods prepared internally or externally from January 2001 through the present.
2. Any and all audited financial statements for all periods prepared from January 2001 through the present.
3. All Sales and Use Tax Returns for the period starting January 2001 through the present, along with all back -up work papers.
4. Any and all documents constituting periodic profit and loss statements from January 2001 through the present.
5. Cash receipts journal(s), bank statements and cancelled checks from January 2001 through the present.
6. Any and all documents constituting General Ledgers from January 2001 through the present, including all sales invoices, daily sales reports and/or register tapes and/or contracts from January 2001 through the present.
7. Any and all documents constituting all versions and revisions of periodic budgets, variance analyses and related presentations, reports and communication from January 2001 to the present.
8. Any and all documents constituting all versions and revisions of periodic financial forecasts, projections and related strategic presentations, reports and communication from January 2001 to the present.
9. Any and all documents constituting all versions and revisions of periodic business plans, market studies, industry and competitor analyses and/or reports from January 2001 to the present.
10. Any and all documents constituting data related to the monitoring and reporting of daily and monthly information and statistics of customer volume, activities, and spending from January 2001 to the present.

...

1 11. Any and all documents constituting all customer data from any loyalty club or
2 similar databases from January 2001 through the present.

3 12. Any and all documents constituting all information and data gathered related to
4 customer satisfaction, suggestions and/or complaints from January 2003 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since
7 January 1, 2001 to the present.

8 14. Any and all documents constituting records of employees including, but not limited
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report
10 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to
12 payments made to limousines, taxis or car services from January 2001 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
16 business plans, valuations or other information forming the basis for the loss from January 2001
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,
20 accountants, or other third parties at any time from January 2001 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the
22 Company for the actual or potential purchase of any and all its assets (including real property)
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other
24 third parties at any time from January 2001 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual
26 and prospective) entered into by the Company including, but not limited to, loan agreements,
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,
28 or other contractual documents at any time from January 2001 to the present.

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20. Any and all documents constituting the correspondence, loan and/or credit applications, proposals, and other agreements between the Company and financial institutions, accountants, financial consultants, or other third parties prepared at any time from January 2001 to the present.

21. All Federal Tax returns and schedules filed by the Plaintiffs from January 2001 to the present.

22. Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2001 to the present.

23. All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to the present.

24. Copies of all signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the each sign is posted from January 2003 to the present.

DATED this 25 day of May, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: *David J. Pope*
DAVID J. POPE
Senior Deputy Attorney General
BLAKE A. DOERR
Senior Deputy Attorney General
VIVIENNE RAKOWSKY
Deputy Attorney General
Attorneys for Defendants

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing
3 DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by
4 causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,
5 a true copy thereof, addressed to:

6 William H. Brown, Esq.
7 Turco & Draskovich
8 815 S. Casino Center Blvd.
9 Las Vegas, NV 89101

10 Bradley J. Shafer
11 Shafer & Associates, P.C.
12 3800 Capital City Blvd., Ste. 2
13 Lansing, MI 48906-2110

14 *Liaai Plotnick*
15 An employee of Office of Attorney General
16
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27
28

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1 **REQT**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
10 VIVIENNE RAKOWSKY
11 Deputy Attorney General
12 Nevada Bar No. 009160
13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 P: (702) 486-3095
16 F: (702) 486-3416
17 dpope@ag.nv.gov
18 bdoerr@ag.nv.gov
19 vrakowsky@ag.nv.gov
20 Attorneys for Nevada Department of Taxation

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
15 L.L.C., d/b/a Déjà vu Showgirls, LITTLE)
16 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little)
17 Darlings, K-KEL, INC. d/b/a Spearmint Rhino)
18 Gentlemen's Club, OLYMPUS GARDEN, INC.,
19 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a
20 Sapphire, THE POWER COMPANY, INC., d/b/a
21 Crazy Horse Too Gentlemen's Club, D.)
22 WESTWOOD, INC., d/b/a Treasures, and D.I.)
23 FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,
24 d/b/a Scores,

20 Plaintiffs,

21 vs.

22 NEVADA DEPARTMENT OF TAXATION,
23 NEVADA TAX COMMISSION, NEVADA
24 STATE BOARD OF EXAMINERS, and
25 MICHELLE JACOBS, in her official capacity
26 only,

25 Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

**DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS TO
PLAINTIFF SHAC, L.L.C., D/B/A
SAPPHIRE**

26 ...
27 ...
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Case No. 08A554970
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*)
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,)
3 d/b/a *Olymic Garden*; SHAC, LLC, d/b/a)
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a)
5 *Crazy Horse Too Gentlemen's Club*; D.)
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,)
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

11 NEVADA DEPARTMENT OF TAXATION;)
12 NEVADA TAX COMMISSION; and NEVADA)
13 STATE BOARD OF EXAMINERS,)

14 Defendants.

15 TO: SHAC, L.L.C., d/b/a *Sapphire*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff;

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFF, pursuant to Rule 34 of the
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes
23 without limiting the generality of its meaning, all originals, or copies where originals are
24 unavailable and non identical copies (whether different from originals by reason of notation
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or
2 other graphic representation, logs, investigators' reports or papers similar of any of the
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is
23 not presently in your possession or control, you shall describe the writing, the date of its loss,
24 destruction, purge or separation from possession or control, and the circumstances surrounding
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term SHAC, L.L.C., d/b/a Sapphire or
27 any version thereof, is intended to, and shall, embrace and include any of the locations
28 operated by SHAC, L.L.C., d/b/a Sapphire who is a Plaintiff in this action.

1 5. As used in this Request for Production, the term the "Company," "you" or "your"
2 or any version thereof, is intended to, and shall, embrace and include any or all of the following;
3 SHAC, L.L.C., d/b/a Sapphire and any of its agents, officers, directors, employees,
4 representatives, and any others who are in possession of, or who may have obtained,
5 information for or on behalf of them.

6 6. As used throughout these Requests, the term "gentlemen's club" or "club" is
7 intended to and shall, embrace any portions of, any areas related to, or under the control of
8 SHAC, L.L.C., d/b/a Sapphire.

9 7. As used throughout these Requests, the term "person" or its plural or any
10 synonym thereof, is intended to and shall embrace and include any individual, partnership,
11 corporation or any other entity.

12 8. As used throughout these Requests, the term "communication," its plural or any
13 synonym thereof, is intended to and shall embrace and include all written, oral or electronic
14 communications of any kind.

15 9. As used throughout these Requests, the term "employee," its plural or any
16 synonym thereof, is intended to and shall embrace and include all employees of SHAC, L.L.C.,
17 d/b/a Sapphire.

18 10. As used throughout these requests the term "food" or "meals" or any synonym
19 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any
20 prepared food for human consumption.

21 11. As used throughout these Requests, the term "customer," its plural or any
22 synonym thereof, is intended to and shall embrace and include all patrons or clients of SHAC,
23 L.L.C., d/b/a Sapphire.

24 12. A request that you produce the source of information about certain facts includes
25 a request that you state the means by which such knowledge has been preserved; if such
26 source of information or facts is an oral communication, its date or origin, sender and recipient
27 should be stated; if such source of preservation is in writing, its date or origin, its nature,
28 originator, recipient and last known custodian should be stated.

- 1 2. Any and all audited financial statements for all periods prepared from January
2 2001 through the present.
- 3 3. All Sales and Use Tax Returns for the period starting January 2001 through the
4 present, along with all back –up work papers.
- 5 4. Any and all documents constituting periodic profit and loss statements from
6 January 2001 through the present.
- 7 5. Cash receipts journal(s), bank statements and cancelled checks from January
8 2001 through the present.
- 9 6. Any and all documents constituting General Ledgers from January 2001 through
10 the present, including all sales invoices, daily sales reports and/or register tapes and/or
11 contracts from January 2001 through the present.
- 12 7. Any and all documents constituting all versions and revisions of periodic budgets,
13 variance analyses and related presentations, reports and communication from January 2001 to
14 the present.
- 15 8. Any and all documents constituting all versions and revisions of periodic financial
16 forecasts, projections and related strategic presentations, reports and communication from
17 January 2001 to the present.
- 18 9. Any and all documents constituting all versions and revisions of periodic business
19 plans, market studies, industry and competitor analyses and/or reports from January 2001 to
20 the present.
- 21 10. Any and all documents constituting data related to the monitoring and reporting of
22 daily and monthly information and statistics of customer volume, activities, and spending from
23 January 2001 to the present.
- 24 11. Any and all documents constituting all customer data from any loyalty club or
25 similar databases from January 2001 through the present.
- 26 12. Any and all documents constituting all information and data gathered related to
27 customer satisfaction, suggestions and/or complaints from January 2003 to the present.
- 28 ...

1 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports
2 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since
3 January 1, 2001 to the present.

4 14. Any and all documents constituting records of employees including, but not limited
5 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report
6 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

7 15. Any and all incentive payments or referral payments including, but not limited to
8 payments made to limousines, taxis or car services from January 2001 to the present.

9 16. Any and all documents constituting the plaintiff's loss analysis including, but not
10 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
11 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
12 business plans, valuations or other information forming the basis for the loss from January 2001
13 to the present.

14 17. Any and all documents constituting valuations or appraisals of the Company or its
15 assets (including real property) prepared by financial consultants, appraisers, CPAs,
16 accountants, or other third parties at any time from January 2001 to the present.

17 18. Any and all documents constituting offers, bids, or proposals received by the
18 Company for the actual or potential purchase of any and all its assets (including real property)
19 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other
20 third parties at any time from January 2001 to the present.

21 19. Any and all documents reflecting all debt or other financing arrangements (actual
22 and prospective) entered into by the Company including, but not limited to, loan agreements,
23 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,
24 or other contractual documents at any time from January 2001 to the present.

25 20. Any and all documents constituting the correspondence, loan and/or credit
26 applications, proposals, and other agreements between the Company and financial institutions,
27 accountants, financial consultants, or other third parties prepared at any time from January
28 2001 to the present.

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21. All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to the present.

22. Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2001 to the present.

23. All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to the present.

24. Copies of all signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the each sign is posted from January 2003 to the present.

DATED this 25 day of May, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: _____

Vivienne Rakowsky
DAVID J. POPE
Senior Deputy Attorney General
BLAKE A. DOERR
Senior Deputy Attorney General
VIVIENNE RAKOWSKY
Deputy Attorney General
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
Turco & Draskovich
815 S. Casino Center Blvd.
Las Vegas, NV 89101

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110


An employee of Office of Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

Attorney General's Office
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

1 **REQT**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
10 VIVIENNE RAKOWSKY
11 Deputy Attorney General
12 Nevada Bar No. 009160
13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 P: (702) 486-3095
16 F: (702) 486-3416
17 dpope@ag.nv.gov
18 bdoerr@ag.nv.gov
19 vrakowsky@ag.nv.gov
20 Attorneys for Nevada Department of Taxation

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
15 L.L.C., d/b/a Déjà vu Showgirls, LITTLE)
16 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little)
17 Darlings, K-KEL, INC. d/b/a Spearmint Rhino)
18 Gentlemen's Club, OLYMPUS GARDEN, INC.,
19 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a)
20 Sapphire, THE POWER COMPANY, INC., d/b/a)
21 Crazy Horse Too Gentlemen's Club, D.)
22 WESTWOOD, INC., d/b/a Treasures, and D.I.)
23 FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,
24 d/b/a Scores,

20 Plaintiffs,

21 vs.

22 NEVADA DEPARTMENT OF TAXATION,
23 NEVADA TAX COMMISSION, NEVADA
24 STATE BOARD OF EXAMINERS, and
25 MICHELLE JACOBS, in her official capacity
26 only,

25 Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

**DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS TO
PLAINTIFF LITTLE DARLINGS OF LAS
VEGAS, L.L.C., D/B/A LITTLE DARLINGS**

26 ...
27 ...
28 ...

1 K-KEL, INC., d/b/a *Spearmint Rhino*)
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,
3 d/b/a *Olymic Garden*; SHAC, LLC, d/b/a
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a
5 *Crazy Horse Too Gentlemen's Club*; D.)
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,
8 d/b/a *Scores*;

Plaintiffs,

v.

9 NEVADA DEPARTMENT OF TAXATION;
10 NEVADA TAX COMMISSION; and NEVADA
11 STATE BOARD OF EXAMINERS,

Defendants.

12 TO: LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, Plaintiff; and

13 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff;

14 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFFS, pursuant to Rule 34 of the
15 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days
16 from the receipt of this Request for Production of Documents, at the Office of the Attorney
17 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

18 **DEFINITIONS AND INSTRUCTIONS**

19 1. As used in this Request for Production of Documents, the term "writing" includes
20 without limiting the generality of its meaning, all originals, or copies where originals are
21 unavailable and non identical copies (whether different from originals by reason of notation
22 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced
23 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,
24 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes
25 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and
26 results of investigations and test, reviews, contracts, agreements, working papers, tax returns,
27 statistical records, ledgers, books of account, vouchers, bank checks, bank statements,
28 invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or
2 other graphic representation, logs, investigators' reports or papers similar of any of the
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is
23 not presently in your possession or control, you shall describe the writing, the date of its loss,
24 destruction, purge or separation from possession or control, and the circumstances surrounding
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term LITTLE DARLINGS OF LAS
27 VEGAS, L.L.C., d/b/a Little Darlings or any version thereof, is intended to, and shall, embrace
28 ...

1 and include any of the locations operated by LITTLE DARLINGS OF LAS VEGAS, L.L.C.,
2 d/b/a Little Darlings who are Plaintiffs in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;
5 LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings and any of its agents,
6 officers, directors, employees, representatives, and any others who are in possession of, or who
7 may have obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is
9 intended to and shall, embrace any portions of, any areas related to, or under the control of
10 LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings.

11 7. As used throughout these Requests, the term "person" or its plural or any
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any
18 synonym thereof, is intended to and shall embrace and include all employees of LITTLE
19 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings.

20 10. As used throughout these requests the term "food" or "meals" or any synonym
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of LITTLE
25 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings.

26 12. A request that you produce the source of information about certain facts includes
27 a request that you state the means by which such knowledge has been preserved; if such
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be
6 construed by reference to any other Request if the result is a limitation of the scope of the
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as
9 necessary, in order to bring within the scope of the Request all responses which might otherwise
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,
13 please set forth fully each objection, describe generally the information which is withheld, and
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production
16 in full, after exercising diligence to secure the request, please so state and provide the
17 production to the extent possible, specifying your inability to produce the remainder and stating
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information
20 contained in writings) as is known or reasonably available to you, your attorney or any
21 investigator or representative or others acting on their behalf or under their direction of control,
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event
24 you discover information that has been requested, you are to supplement the Request for
25 Production by supplementing your production.

26 ...

27 ...

28 ...

1 REQUEST FOR PRODUCTION OF DOCUMENTS

2 1. Any and all documents constituting monthly financial statements with
3 departmental breakouts for all periods prepared internally or externally from January 2002
4 through the present.

5 2. Any and all audited financial statements for all periods prepared from January
6 2002 through the present.

7 3. All Sales and Use Tax Returns for the period starting January 2002 through the
8 present, along with all back-up work papers.

9 4. Any and all documents constituting periodic profit and loss statements from
10 January 2002 through the present.

11 5. Cash receipts journal(s), bank statements and cancelled checks from January
12 2002 through the present.

13 6. Any and all documents constituting General Ledgers from January 2002 through
14 the present, including all sales invoices, daily sales reports and/or register tapes and/or
15 contracts from January 2002 through the present.

16 7. Any and all documents constituting all versions and revisions of periodic budgets,
17 variance analyses and related presentations, reports and communication from January 2002 to
18 the present.

19 8. Any and all documents constituting all versions and revisions of periodic financial
20 forecasts, projections and related strategic presentations, reports and communication from
21 January 2002 to the present.

22 9. Any and all documents constituting all versions and revisions of periodic business
23 plans, market studies, industry and competitor analyses and/or reports from January 2002 to
24 the present.

25 10. Any and all documents constituting data related to the monitoring and reporting of
26 daily and monthly information and statistics of customer volume, activities, and spending from
27 January 2002 to the present.

28 ...

1 11. Any and all documents constituting all customer data from any loyalty club or
2 similar databases from January 2002 through the present.

3 12. Any and all documents constituting all information and data gathered related to
4 customer satisfaction, suggestions and/or complaints from January 2005 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since
7 January 1, 2002 to the present.

8 14. Any and all documents constituting records of employees including, but not limited
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report
10 form(s) NUCS 4072, incentive compensation and benefits from January 2002 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to
12 payments made to limousines, taxis or car services from January 2002 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
16 business plans, valuations or other information forming the basis for the loss from January 2002
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,
20 accountants, or other third parties at any time from January 2002 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the
22 Company for the actual or potential purchase of any and all its assets (including real property)
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other
24 third parties at any time from January 2002 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual
26 and prospective) entered into by the Company including, but not limited to, loan agreements,
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,
28 or other contractual documents at any time from January 2002 to the present.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
Turco & Draskovich
815 S. Casino Center Blvd.
Las Vegas, NV 89101

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110


An employee of Office of Attorney General

Attorney General's Office
555 E. Washoe, Suite 3900
Las Vegas, NV 89101

1 REQT
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
10 VIVIENNE RAKOWSKY
11 Deputy Attorney General
12 Nevada Bar No. 009160
13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 P: (702) 486-3095
16 F: (702) 486-3416
17 dpope@ag.nv.gov
18 bdoerr@ag.nv.gov
19 vrakowsky@ag.nv.gov
20 Attorneys for Nevada Department of Taxation

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
15 L.L.C., d/b/a Déjà vu Showgirls, LITTLE)
16 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little)
17 Darlings, K-KEL, INC. d/b/a Spearmint Rhino)
18 Gentlemen's Club, OLYMPUS GARDEN, INC.,
19 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a)
20 Sapphire, THE POWER COMPANY, INC., d/b/a)
21 Crazy Horse Too Gentlemen's Club, D.)
22 WESTWOOD, INC., d/b/a Treasures, and D.I.)
23 FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,)
24 d/b/a Scores,

20 Plaintiffs,

21 vs.

22 NEVADA DEPARTMENT OF TAXATION,
23 NEVADA TAX COMMISSION, NEVADA
24 STATE BOARD OF EXAMINERS, and
25 MICHELLE JACOBS, in her official capacity
26 only,

25 Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS TO
PLAINTIFF K-KEL, INC. D/B/A
SPEARMINT RHINO GENTLEMEN'S CLUB

26 ...
27 ...
28 ...

Case No. 08A554970
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a
5 *Crazy Horse Too Gentlemen's Club*; D.)
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,
8 d/b/a *Scores*;

6 Plaintiffs,

7 v.

8 NEVADA DEPARTMENT OF TAXATION;
9 NEVADA TAX COMMISSION; and NEVADA
10 STATE BOARD OF EXAMINERS;

10 Defendants.

12 TO: K-KEL, INC. d/b/a *Spearmint Rhino Gentlemen's Club*, Plaintiff; and

13 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff:

14 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFFS, pursuant to Rule 34 of the
15 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days
16 from the receipt of this Request for Production of Documents, at the Office of the Attorney
17 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

18 **DEFINITIONS AND INSTRUCTIONS**

19 1. As used in this Request for Production of Documents, the term "writing" includes
20 without limiting the generality of its meaning, all originals, or copies where originals are
21 unavailable and non identical copies (whether different from originals by reason of notation
22 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced
23 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,
24 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes
25 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and
26 results of investigations and test, reviews, contracts, agreements, working papers, tax returns,
27 statistical records, ledgers, books of account, vouchers, bank checks, bank statements,
28 invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

Attorney General's Office
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or
2 other graphic representation, logs, investigators' reports or papers similar of any of the
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is
23 not presently in your possession or control, you shall describe the writing, the date of its loss,
24 destruction, purge or separation from possession or control, and the circumstances surrounding
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term K-KEL, INC. d/b/a Spearmint Rhino
27 Gentlemen's Club or any version thereof, is intended to, and shall, embrace and include any of
28 ...

1 the locations operated by K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club who are
2 Plaintiffs in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;
5 K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club and any of its agents, officers, directors,
6 employees, representatives, and any others who are in possession of, or who may have
7 obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is
9 intended to and shall, embrace any portions of, any areas related to, or under the control of K-
10 KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club.

11 7. As used throughout these Requests, the term "person" or its plural or any
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any
18 synonym thereof, is intended to and shall embrace and include all employees of K-KEL, INC.
19 d/b/a Spearmint Rhino Gentlemen's Club.

20 10. As used throughout these requests the term "food" or "meals" or any synonym
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of K-KEL,
25 INC. d/b/a Spearmint Rhino Gentlemen's Club.

26 12. A request that you produce the source of information about certain facts includes
27 a request that you state the means by which such knowledge has been preserved; if such
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be
6 construed by reference to any other Request if the result is a limitation of the scope of the
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as
9 necessary, in order to bring within the scope of the Request all responses which might otherwise
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,
13 please set forth fully each objection, describe generally the information which is withheld, and
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production
16 in full, after exercising diligence to secure the request, please so state and provide the
17 production to the extent possible, specifying your inability to produce the remainder and stating
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information
20 contained in writings) as is known or reasonably available to you, your attorney or any
21 investigator or representative or others acting on their behalf or under their direction of control,
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event
24 you discover information that has been requested, you are to supplement the Request for
25 Production by supplementing your production.

26 ...

27 ...

28 ...

1 REQUEST FOR PRODUCTION OF DOCUMENTS

2 1. Any and all documents constituting monthly financial statements with
3 departmental breakouts for all periods prepared internally or externally from January 2001
4 through the present.

5 2. Any and all audited financial statements for all periods prepared from January
6 2001 through the present.

7 3. All Sales and Use Tax Returns for the period starting January 2001 through the
8 present, along with all back -up work papers.

9 4. Any and all documents constituting periodic profit and loss statements from
10 January 2001 through the present.

11 5. Cash receipts journal(s), bank statements and cancelled checks from January
12 2001 through the present.

13 6. Any and all documents constituting General Ledgers from January 2001 through
14 the present, including all sales invoices, daily sales reports and/or register tapes and/or
15 contracts from January 2001 through the present.

16 7. Any and all documents constituting all versions and revisions of periodic budgets,
17 variance analyses and related presentations, reports and communication from January 2001 to
18 the present.

19 8. Any and all documents constituting all versions and revisions of periodic financial
20 forecasts, projections and related strategic presentations, reports and communication from
21 January 2001 to the present.

22 9. Any and all documents constituting all versions and revisions of periodic business
23 plans, market studies, industry and competitor analyses and/or reports from January 2001 to
24 the present.

25 10. Any and all documents constituting data related to the monitoring and reporting of
26 daily and monthly information and statistics of customer volume, activities, and spending from
27 January 2001 to the present.

28 ...

Attorney General's Office
555 E. Washington Suite 3900
Las Vegas, NV 89101

1 11. Any and all documents constituting all customer data from any loyalty club or
2 similar databases from January 2001 through the present.

3 12. Any and all documents constituting all information and data gathered related to
4 customer satisfaction, suggestions and/or complaints from January 2003 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since
7 January 1, 2001 to the present.

8 14. Any and all documents constituting records of employees including, but not limited
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report
10 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to
12 payments made to limousines, taxis or car services from January 2001 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
16 business plans, valuations or other information forming the basis for the loss from January 2001
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,
20 accountants, or other third parties at any time from January 2001 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the
22 Company for the actual or potential purchase of any and all its assets (including real property)
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other
24 third parties at any time from January 2001 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual
26 and prospective) entered into by the Company including, but not limited to, loan agreements,
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,
28 or other contractual documents at any time from January 2001 to the present.

Attorney General's Office
555 E. Washoe Suite 3900
Las Vegas, NV 89101

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20. Any and all documents constituting the correspondence, loan and/or credit applications, proposals, and other agreements between the Company and financial institutions, accountants, financial consultants, or other third parties prepared at any time from January 2001 to the present.

21. All Federal Tax returns and schedules filed by the Plaintiffs from January 2001 to the present.

22. Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2001 to the present.

23. All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to the present.

24. Copies of all signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the each sign is posted from January 2003 to the present.

DATED this 25 day of May, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: *David J. Pope*
DAVID J. POPE
Senior Deputy Attorney General
BLAKE A. DOERR
Senior Deputy Attorney General
VIVIENNE RAKOWSKY
Deputy Attorney General
Attorneys for Defendants

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY, that on the 20th day of May, 2011, I served the foregoing
3 DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by
4 causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,
5 a true copy thereof, addressed to:

6 William H. Brown, Esq.
7 Turco & Draskovich
8 815 S. Casino Center Blvd.
9 Las Vegas, NV 89101

10 Bradley J. Shafer
11 Shafer & Associates, P.C.
12 3800 Capital City Blvd., Ste. 2
13 Lansing, MI 48906-2110

14 

15 An employee of Office of Attorney General

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Attorney General's Office
555 E. Washburne Suite 3900
Las Vegas, NV 89101

1 **REQT**
 2 CATHERINE CORTEZ MASTO
 3 Attorney General
 4 DAVID J. POPE
 5 Senior Deputy Attorney General
 6 Nevada Bar No. 008617
 7 BLAKE A. DOERR
 8 Senior Deputy Attorney General
 9 Nevada Bar No. 009001
 10 VIVIENNE RAKOWSKY
 11 Deputy Attorney General
 12 Nevada Bar No. 009160
 13 555 E. Washington Ave., Ste. 3900
 14 Las Vegas, Nevada 89101
 15 P: (702) 486-3095
 16 F: (702) 486-3416
 17 dpope@ag.nv.gov
 18 bdoerr@ag.nv.gov
 19 vrakowsky@ag.nv.gov
 20 Attorneys for Nevada Department of Taxation

21
 22 **DISTRICT COURT**
 23 **CLARK COUNTY, NEVADA**

24 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
 25 L.L.C., d/b/a Déjà vu Showgirls, LITTLE)
 26 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little)
 27 Darlings, K-KEL, INC. d/b/a Spearmint Rhino)
 28 Gentlemen's Club, OLYMPUS GARDEN, INC.,)
 29 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a)
 30 Sapphire, THE POWER COMPANY, INC., d/b/a)
 31 Crazy Horse Too Gentlemen's Club, D.)
 32 WESTWOOD, INC., d/b/a Treasures, and D.I.)
 33 FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,)
 34 d/b/a Scores,)

35 Plaintiffs,)

36 vs.)

37 NEVADA DEPARTMENT OF TAXATION,)
 38 NEVADA TAX COMMISSION, NEVADA)
 39 STATE BOARD OF EXAMINERS, and)
 40 MICHELLE JACOBS, in her official capacity)
 41 only,)

42 Defendants.)

Case No. 06A533273
 Dept. No. XI

Coordinated with:

Case No. 08A554970
 Dept. No. XI

**DEFENDANTS' REQUEST FOR
 PRODUCTION OF DOCUMENTS TO
 PLAINTIFF D. WESTWOOD, INC., D/B/A
 TREASURES**

43 ...
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 45 ...

Attorney General's Office
 555 E. Washington Ave., Suite 3900
 Las Vegas, NV 89101

Case No. 08A554970
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*)
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,)
3 d/b/a *Olymic Garden*; SHAC, LLC, d/b/a)
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a)
5 *Crazy Horse Too Gentlemen's Club*; D.)
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

11 NEVADA DEPARTMENT OF TAXATION;)
12 NEVADA TAX COMMISSION; and NEVADA)
13 STATE BOARD OF EXAMINERS,

14 Defendants.

15 TO: D. WESTWOOD, INC., d/b/a *Treasures*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff.

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFF, pursuant to Rule 34 of the
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes
23 without limiting the generality of its meaning, all originals, or copies where originals are
24 unavailable and non identical copies (whether different from originals by reason of notation
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or
2 other graphic representation, logs, investigators' reports or papers similar of any of the
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is
23 not presently in your possession or control, you shall describe the writing, the date of its loss,
24 destruction, purge or separation from possession or control, and the circumstances surrounding
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term D. WESTWOOD, INC., d/b/a
27 Treasures or any version thereof, is intended to, and shall, embrace and include any of the
28 locations operated by D. WESTWOOD, INC., d/b/a Treasures who is a Plaintiff in this action.

1 5. As used in this Request for Production, the term the "Company," "you" or "your"
2 or any version thereof, is intended to, and shall, embrace and include any or all of the following:
3 D. WESTWOOD, INC., d/b/a Treasures and any of its agents, officers, directors, employees,
4 representatives, and any others who are in possession of, or who may have obtained,
5 information for or on behalf of them.

6 6. As used throughout these Requests, the term "gentlemen's club" or "club" is
7 intended to and shall, embrace any portions of, any areas related to, or under the control of D.
8 WESTWOOD, INC., d/b/a Treasures.

9 7. As used throughout these Requests, the term "person" or its plural or any
10 synonym thereof, is intended to and shall embrace and include any individual, partnership,
11 corporation or any other entity.

12 8. As used throughout these Requests, the term "communication," its plural or any
13 synonym thereof, is intended to and shall embrace and include all written, oral or electronic
14 communications of any kind.

15 9. As used throughout these Requests, the term "employee," its plural or any
16 synonym thereof, is intended to and shall embrace and include all employees of D.
17 WESTWOOD, INC., d/b/a Treasures.

18 10. As used throughout these requests the term "food" or "meals" or any synonym
19 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any
20 prepared food for human consumption.

21 11. As used throughout these Requests, the term "customer," its plural or any
22 synonym thereof, is intended to and shall embrace and include all patrons or clients of D.
23 WESTWOOD, INC., d/b/a Treasures.

24 12. A request that you produce the source of information about certain facts includes
25 a request that you state the means by which such knowledge has been preserved; if such
26 source of information or facts is an oral communication, its date or origin, sender and recipient
27 should be stated; if such source of preservation is in writing, its date or origin, its nature,
28 originator, recipient and last known custodian should be stated.

1 13. If a request has more than one part, each part should be separated so that the
2 answer is clearly understandable.

3 14. Each Request should be construed independently. No Request should be
4 construed by reference to any other Request if the result is a limitation of the scope of the
5 answer to such Request.

6 15. The words "and" and "or" shall be construed conjunctively or disjunctively as
7 necessary, in order to bring with the scope of the Request all responses which might otherwise
8 be construed to be outside of its scope.

9 16. If a Request for Production is objected to, in whole or in part, or if information
10 responsive to a Request for Production is withheld on the ground of privilege or otherwise,
11 please set forth fully each objection, describe generally the information which is withheld, and
12 set for the facts upon which you rely on as the basis for each objection.

13 17. If you cannot produce any portion of any of the following Requests for Production
14 in full, after exercising diligence to secure the request, please so state and provide the
15 production to the extent possible, specifying your inability to produce the remainder and stating
16 whatever information or knowledge you have concerning the unproduced portions.

17 18. These Requests for Production call for information (including information
18 contained in writings) as is known or reasonably available to you, your attorney or any
19 investigator or representative or others acting on their behalf or under their direction of control,
20 or any information in the actual or constructive possession custody, care, or control of them.

21 19. These Requests for Production shall be deemed to be continuing and in the event
22 you discover information that has been requested, you are to supplement the Request for
23 Production by supplementing your production.

24 **REQUEST FOR PRODUCTION OF DOCUMENTS**

25 1. Any and all documents constituting monthly financial statements with
26 departmental breakouts for all periods prepared internally or externally from January 2001
27 through the present.

28 ...

- 1 2. Any and all audited financial statements for all periods prepared from January
2 2001 through the present.
- 3 3. All Sales and Use Tax Returns for the period starting January 2001 through the
4 present, along with all back –up work papers.
- 5 4. Any and all documents constituting periodic profit and loss statements from
6 January 2001 through the present.
- 7 5. Cash receipts journal(s), bank statements and cancelled checks from January
8 2001 through the present.
- 9 6. Any and all documents constituting General Ledgers from January 2001 through
10 the present, including all sales invoices, daily sales reports and/or register tapes and/or
11 contracts from January 2001 through the present.
- 12 7. Any and all documents constituting all versions and revisions of periodic budgets,
13 variance analyses and related presentations, reports and communication from January 2001 to
14 the present.
- 15 8. Any and all documents constituting all versions and revisions of periodic financial
16 forecasts, projections and related strategic presentations, reports and communication from
17 January 2001 to the present.
- 18 9. Any and all documents constituting all versions and revisions of periodic business
19 plans, market studies, industry and competitor analyses and/or reports from January 2001 to
20 the present.
- 21 10. Any and all documents constituting data related to the monitoring and reporting of
22 daily and monthly information and statistics of customer volume, activities, and spending from
23 January 2001 to the present.
- 24 11. Any and all documents constituting all customer data from any loyalty club or
25 similar databases from January 2001 through the present.
- 26 12. Any and all documents constituting all information and data gathered related to
27 customer satisfaction, suggestions and/or complaints from January 2003 to the present.
- 28 ...

1 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports
2 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since
3 January 1, 2001 to the present.

4 14. Any and all documents constituting records of employees including, but not limited
5 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report
6 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

7 15. Any and all incentive payments or referral payments including, but not limited to
8 payments made to limousines, taxis or car services from January 2001 to the present.

9 16. Any and all documents constituting the plaintiff's loss analysis including, but not
10 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
11 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
12 business plans, valuations or other information forming the basis for the loss from January 2001
13 to the present.

14 17. Any and all documents constituting valuations or appraisals of the Company or its
15 assets (including real property) prepared by financial consultants, appraisers, CPAs,
16 accountants, or other third parties at any time from January 2001 to the present.

17 18. Any and all documents constituting offers, bids, or proposals received by the
18 Company for the actual or potential purchase of any and all its assets (including real property)
19 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other
20 third parties at any time from January 2001 to the present.

21 19. Any and all documents reflecting all debt or other financing arrangements (actual
22 and prospective) entered into by the Company including, but not limited to, loan agreements,
23 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,
24 or other contractual documents at any time from January 2001 to the present.

25 20. Any and all documents constituting the correspondence, loan and/or credit
26 applications, proposals, and other agreements between the Company and financial institutions,
27 accountants, financial consultants, or other third parties prepared at any time from January
28 2001 to the present.

1 21. All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to
2 the present.

3 22. Any and all documents constituting agreements and/or contracts with vendors,
4 suppliers, lessees, lessors or other providers or recipients of products or services from January
5 2001 to the present.

6 23. All correspondence to and from the Department of Taxation regarding Live
7 Entertainment Tax from January 2003 to the present.

8 24. Copies of all signs referencing any applicable tax, including information regarding
9 the location of all of the signs, the dates each sign was posted and time of day that the each
10 sign is posted from January 2003 to the present.

11 DATED this 25 day of May, 2011.

12 CATHERINE CORTEZ MASTO
13 Attorney General

14 By: *David J. Pope*
15 DAVID J. POPE
16 Senior Deputy Attorney General
17 BLAKE A. DOERR
18 Senior Deputy Attorney General
19 VIVIENNE RAKOWSKY
20 Deputy Attorney General
21 Attorneys for Defendants
22
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Attorney General's Office
555 E. Washington Street, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
Turco & Draskovich
815 S. Casino Center Blvd.
Las Vegas, NV 89101

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110


An employee of Office of Attorney General

Attorney General's Office
555 E. Washburn Suite 3900
Las Vegas, NV 89101

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Attorney General's Office
555 E. Wash. Ste. 3900
Las Vegas, NV 89101

1 REQT
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
10 VIVIENNE RAKOWSKY
11 Deputy Attorney General
12 Nevada Bar No. 009160
13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 P: (702) 486-3095
16 F: (702) 486-3416
17 dpope@ag.nv.gov
18 bdoerr@ag.nv.gov
19 vrakowsky@ag.nv.gov
20 Attorneys for Nevada Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

14 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
15 L.L.C., d/b/a Déjà vu Showgirls, LITTLE
16 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little
17 Darlings, K-KEL, INC. d/b/a Spearmint Rhino
18 Gentlemen's Club, OLYMPUS GARDEN, INC.,
19 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a
20 Sapphire, THE POWER COMPANY, INC., d/b/a
21 Crazy Horse Too Gentlemen's Club, D.)
22 WESTWOOD, INC., d/b/a Treasures, and D.I.)
23 FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,
24 d/b/a Scores,

Plaintiffs,

vs.

22 NEVADA DEPARTMENT OF TAXATION,
23 NEVADA TAX COMMISSION, NEVADA
24 STATE BOARD OF EXAMINERS, and
25 MICHELLE JACOBS, in her official capacity
26 only,

Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

**DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS TO
PLAINTIFF D.I. FOOD & BEVERAGE OF
LAS VEGAS, L.L.C., D/B/A SCORES**

26 ...
27 ...
28 ...

Case No. 08A554970
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*)
Gentlemen's Club; OLYMPUS GARDEN, INC.,)
2 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a)
Sapphire; THE POWER COMPANY, INC., d/b/a)
3 *Crazy Horse Too Gentlemen's Club*; D.)
WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
4 FOOD & BEVERAGE OF LAS VEGAS, LLC,)
d/b/a *Scores*;

5)
6) Plaintiffs,

7 v.

8 NEVADA DEPARTMENT OF TAXATION;)
9 NEVADA TAX COMMISSION; and NEVADA)
STATE BOARD OF EXAMINERS,

10) Defendants.
11)

12 TO: D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a *Scores*, Plaintiff; and

13 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff.

14 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFF, pursuant to Rule 34 of the
15 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days
16 from the receipt of this Request for Production of Documents, at the Office of the Attorney
17 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

18 **DEFINITIONS AND INSTRUCTIONS**

19 1. As used in this Request for Production of Documents, the term "writing" includes
20 without limiting the generality of its meaning, all originals, or copies where originals are
21 unavailable and non identical copies (whether different from originals by reason of notation
22 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced
23 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,
24 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes
25 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and
26 results of investigations and test, reviews, contracts, agreements, working papers, tax returns,
27 statistical records, ledgers, books of account, vouchers, bank checks, bank statements,
28 invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

Attorney General's Office
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or
2 other graphic representation, logs, investigators' reports or papers similar of any of the
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is
23 not presently in your possession or control, you shall describe the writing, the date of its loss,
24 destruction, purge or separation from possession or control, and the circumstances surrounding
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term D.I. FOOD & BEVERAGE OF
27 LAS VEGAS, L.L.C., d/b/a Scores or any version thereof, is intended to, and shall, embrace
28 ...

1 and include any of the locations operated by D.I. FOOD & BEVERAGE OF LAS VEGAS,
2 L.L.C., d/b/a Scores who is a Plaintiff in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;
5 D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores and any of its agents,
6 officers, directors, employees, representatives, and any others who are in possession of, or who
7 may have obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is
9 intended to and shall, embrace any portions of, any areas related to, or under the control of D.I.
10 FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores.

11 7. As used throughout these Requests, the term "person" or its plural or any
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any
18 synonym thereof, is intended to and shall embrace and include all employees of D.I. FOOD &
19 BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores.

20 10. As used throughout these requests the term "food" or "meals" or any synonym
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of D.I.
25 FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores.

26 12. A request that you produce the source of information about certain facts includes
27 a request that you state the means by which such knowledge has been preserved; if such
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be
6 construed by reference to any other Request if the result is a limitation of the scope of the
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as
9 necessary, in order to bring within the scope of the Request all responses which might otherwise
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,
13 please set forth fully each objection, describe generally the information which is withheld, and
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production
16 in full, after exercising diligence to secure the request, please so state and provide the
17 production to the extent possible, specifying your inability to produce the remainder and stating
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information
20 contained in writings) as is known or reasonably available to you, your attorney or any
21 investigator or representative or others acting on their behalf or under their direction of control,
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event
24 you discover information that has been requested, you are to supplement the Request for
25 Production by supplementing your production.

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Attorney General's Office
555 E. Washi Suite 3900
Las Vegas, NV 89101

REQUEST FOR PRODUCTION OF DOCUMENTS

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1. Any and all documents constituting monthly financial statements with departmental breakouts for all periods prepared internally or externally from January 2001 through the present.

2. Any and all audited financial statements for all periods prepared from January 2001 through the present.

3. All Sales and Use Tax Returns for the period starting January 2001 through the present, along with all back –up work papers.

4. Any and all documents constituting periodic profit and loss statements from January 2001 through the present.

5. Cash receipts journal(s), bank statements and cancelled checks from January 2001 through the present.

6. Any and all documents constituting General Ledgers from January 2001 through the present, including all sales invoices, daily sales reports and/or register tapes and/or contracts from January 2001 through the present.

7. Any and all documents constituting all versions and revisions of periodic budgets, variance analyses and related presentations, reports and communication from January 2001 to the present.

8. Any and all documents constituting all versions and revisions of periodic financial forecasts, projections and related strategic presentations, reports and communication from January 2001 to the present.

9. Any and all documents constituting all versions and revisions of periodic business plans, market studies, industry and competitor analyses and/or reports from January 2001 to the present.

10. Any and all documents constituting data related to the monitoring and reporting of daily and monthly information and statistics of customer volume, activities, and spending from January 2001 to the present.

...

1 11. Any and all documents constituting all customer data from any loyalty club or
2 similar databases from January 2001 through the present.

3 12. Any and all documents constituting all information and data gathered related to
4 customer satisfaction, suggestions and/or complaints from January 2003 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since
7 January 1, 2001 to the present.

8 14. Any and all documents constituting records of employees including, but not limited
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report
10 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to
12 payments made to limousines, taxis or car services from January 2001 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
16 business plans, valuations or other information forming the basis for the loss from January 2001
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,
20 accountants, or other third parties at any time from January 2001 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the
22 Company for the actual or potential purchase of any and all its assets (including real property)
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other
24 third parties at any time from January 2001 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual
26 and prospective) entered into by the Company including, but not limited to, loan agreements,
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,
28 or other contractual documents at any time from January 2001 to the present.

Attorney General's Office
555 E. Washoe, Suite 3900
Las Vegas, NV 89101

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20. Any and all documents constituting the correspondence, loan and/or credit applications, proposals, and other agreements between the Company and financial institutions, accountants, financial consultants, or other third parties prepared at any time from January 2001 to the present.

21. All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to the present.


22. Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2001 to the present.

23. All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to the present.

24. Copies of all signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the each sign is posted from January 2003 to the present.

DATED this 25 day of May, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: 
DAVID J. POPE
Senior Deputy Attorney General
BLAKE A. DOERR
Senior Deputy Attorney General
VIVIENNE RAKOWSKY
Deputy Attorney General
Attorneys for Defendants

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
Turco & Draskovich
815 S. Casino Center Blvd.
Las Vegas, NV 89101

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110


An employee of Office of Attorney General

Attorney General's Office
555 E. Washie
Las Vegas, NV 89101

1 **REQT**
 2 CATHERINE CORTEZ MASTO
 3 Attorney General
 4 DAVID J. POPE
 5 Senior Deputy Attorney General
 6 Nevada Bar No. 008617
 7 BLAKE A. DOERR
 8 Senior Deputy Attorney General
 9 Nevada Bar No. 009001
 10 VIVIENNE RAKOWSKY
 11 Deputy Attorney General
 12 Nevada Bar No. 009160
 13 555 E. Washington Ave., Ste. 3900
 14 Las Vegas, Nevada 89101
 15 P: (702) 486-3095
 16 F: (702) 486-3416
 17 dpope@ag.nv.gov
 18 bdoerr@ag.nv.gov
 19 vrakowsky@ag.nv.gov
 20 Attorneys for Nevada Department of Taxation

12 DISTRICT COURT
 13 CLARK COUNTY, NEVADA

14 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
 15 L.L.C., d/b/a Déjà vu Showgirls, LITTLE)
 16 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little)
 17 Darlings, K-KEL, INC. d/b/a Spearmint Rhino)
 18 Gentlemen's Club, OLYMPUS GARDEN, INC.,
 19 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a)
 20 Sapphire, THE POWER COMPANY, INC., d/b/a)
 21 Crazy Horse Too Gentlemen's Club, D.)
 22 WESTWOOD, INC., d/b/a Treasures, and D.I.)
 23 FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,
 24 d/b/a Scores,

20 Plaintiffs,

21 vs.

22 NEVADA DEPARTMENT OF TAXATION,
 23 NEVADA TAX COMMISSION, NEVADA
 24 STATE BOARD OF EXAMINERS, and
 25 MICHELLE JACOBS, in her official capacity
 26 only,

25 Defendants.

Case No. 06A533273
 Dept. No. XI

Coordinated with:

Case No. 08A554970
 Dept. No. XI

**DEFENDANTS' REQUEST FOR
 PRODUCTION OF DOCUMENTS TO
 PLAINTIFF THE POWER COMPANY, INC.,
 D/B/A CRAZY HORSE TOO
 GENTLEMEN'S CLUB**

26 ...
 27 ...
 28 ...

Attorney General's Office
 555 E. Washington Ave., Suite 3900
 Las Vegas, NV 89101

1 K-KEL, INC., d/b/a *Spearmint Rhino*)
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,)
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a)
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a)
5 *Crazy Horse Too Gentlemen's Club*; D.)
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
7 FOOD & BEVERAGE OF LAS VEGAS, LLC.)
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

11 NEVADA DEPARTMENT OF TAXATION;)
12 NEVADA TAX COMMISSION; and NEVADA)
13 STATE BOARD OF EXAMINERS,

14 Defendants.

Case No. 08A554970
Dept. No. XI

15 TO: THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, Plaintiff;

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff;

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFF, pursuant to Rule 34 of the
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes
23 without limiting the generality of its meaning, all originals, or copies where originals are
24 unavailable and non identical copies (whether different from originals by reason of notation
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or
2 other graphic representation, logs, investigators' reports or papers similar of any of the
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is
23 not presently in your possession or control, you shall describe the writing, the date of its loss,
24 destruction, purge or separation from possession or control, and the circumstances surrounding
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term THE POWER COMPANY, INC.,
27 d/b/a Crazy Horse Too Gentlemen's Club or any version thereof, is intended to, and shall,
28 ...

1 embrace and include any of the locations operated by THE POWER COMPANY, INC., d/b/a
2 Crazy Horse Too Gentlemen's Club who is a Plaintiff in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;
5 THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club and any of its
6 agents, officers, directors, employees, representatives, and any others who are in possession
7 of, or who may have obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is
9 intended to and shall, embrace any portions of, any areas related to, or under the control of
10 THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club.

11 7. As used throughout these Requests, the term "person" or its plural or any
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any
18 synonym thereof, is intended to and shall embrace and include all employees of THE POWER
19 COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club.

20 10. As used throughout these requests the term "food" or "meals" or any synonym
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of THE
25 POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club.

26 12. A request that you produce the source of information about certain facts includes
27 a request that you state the means by which such knowledge has been preserved; if such
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be
6 construed by reference to any other Request if the result is a limitation of the scope of the
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as
9 necessary, in order to bring within the scope of the Request all responses which might otherwise
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,
13 please set forth fully each objection, describe generally the information which is withheld, and
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production
16 in full, after exercising diligence to secure the request, please so state and provide the
17 production to the extent possible, specifying your inability to produce the remainder and stating
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information
20 contained in writings) as is known or reasonably available to you, your attorney or any
21 investigator or representative or others acting on their behalf or under their direction of control,
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event
24 you discover information that has been requested, you are to supplement the Request for
25 Production by supplementing your production.

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REQUEST FOR PRODUCTION OF DOCUMENTS

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1. Any and all documents constituting monthly financial statements with departmental breakouts for all periods prepared internally or externally from January 2001 through the present.
2. Any and all audited financial statements for all periods prepared from January 2001 through the present.
3. All Sales and Use Tax Returns for the period starting January 2001 through the present, along with all back -up work papers.
4. Any and all documents constituting periodic profit and loss statements from January 2001 through the present.
5. Cash receipts journal(s), bank statements and cancelled checks from January 2001 through the present.
6. Any and all documents constituting General Ledgers from January 2001 through the present, including all sales invoices, daily sales reports and/or register tapes and/or contracts from January 2001 through the present.
7. Any and all documents constituting all versions and revisions of periodic budgets, variance analyses and related presentations, reports and communication from January 2001 to the present.
8. Any and all documents constituting all versions and revisions of periodic financial forecasts, projections and related strategic presentations, reports and communication from January 2001 to the present.
9. Any and all documents constituting all versions and revisions of periodic business plans, market studies, industry and competitor analyses and/or reports from January 2001 to the present.
10. Any and all documents constituting data related to the monitoring and reporting of daily and monthly information and statistics of customer volume, activities, and spending from January 2001 to the present.

1 11. Any and all documents constituting all customer data from any loyalty club or
2 similar databases from January 2001 through the present.

3 12. Any and all documents constituting all information and data gathered related to
4 customer satisfaction, suggestions and/or complaints from January 2003 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since
7 January 1, 2001 to the present.

8 14. Any and all documents constituting records of employees including, but not limited
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report
10 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to
12 payments made to limousines, taxis or car services from January 2001 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
16 business plans, valuations or other information forming the basis for the loss from January 2001
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,
20 accountants, or other third parties at any time from January 2001 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the
22 Company for the actual or potential purchase of any and all its assets (including real property)
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other
24 third parties at any time from January 2001 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual
26 and prospective) entered into by the Company including, but not limited to, loan agreements,
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,
28 or other contractual documents at any time from January 2001 to the present.

1 20. Any and all documents constituting the correspondence, loan and/or credit
2 applications, proposals, and other agreements between the Company and financial institutions,
3 accountants, financial consultants, or other third parties prepared at any time from January
4 2001 to the present.

5 21. All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to
6 the present.

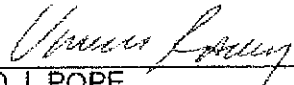
7 22. Any and all documents constituting agreements and/or contracts with vendors,
8 suppliers, lessees, lessors or other providers or recipients of products or services from January
9 2001 to the present.

10 23. All correspondence to and from the Department of Taxation regarding Live
11 Entertainment Tax from January 2003 to the present.

12 24. Copies of all signs referencing any applicable tax, including information regarding
13 the location of all of the signs, the dates each sign was posted and time of day that the each
14 sign is posted from January 2003 to the present.

15 DATED this 25 day of May, 2011.

16 CATHERINE CORTEZ MASTO
17 Attorney General

18
19 By: 
20 DAVID J. POPE
21 Senior Deputy Attorney General
22 BLAKE A. DOERR
23 Senior Deputy Attorney General
24 VIVIENNE RAKOWSKY
25 Deputy Attorney General
26 Attorneys for Defendants

CERTIFICATE OF SERVICE

1
2 I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing
3 DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by
4 causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,
5 a true copy thereof, addressed to:

6 William H. Brown, Esq.
7 Turco & Draskovich
8 815 S. Casino Center Blvd.
9 Las Vegas, NV 89101

10 Bradley J. Shafer
11 Shafer & Associates, P.C.
12 3800 Capital City Blvd., Ste. 2
13 Lansing, MI 48906-2110

14 
15 _____
16 An employee of Office of Attorney General

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Attorney General's Office
555 E. Wash. Suite 3900
Las Vegas, NV 89101

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1 **REQT**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
10 VIVIENNE RAKOWSKY
11 Deputy Attorney General
12 Nevada Bar No. 009160
13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 P: (702) 486-3095
16 F: (702) 486-3416
17 dpope@ag.nv.gov
18 bdoerr@ag.nv.gov
19 vrakowsky@ag.nv.gov
20 Attorneys for Nevada Department of Taxation

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
15 L.L.C., d/b/a Déjà vu Showgirls, LITTLE)
16 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little
17 Darlings, K-KEL, INC. d/b/a Spearmint Rhino)
18 Gentlemen's Club, OLYMPUS GARDEN, INC.,
19 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a
20 Sapphire, THE POWER COMPANY, INC., d/b/a
21 Crazy Horse Too Gentlemen's Club, D.)
22 WESTWOOD, INC., d/b/a Treasures, and D.I.)
23 FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,
24 d/b/a Scores,

20 Plaintiffs,

21 vs.

22 NEVADA DEPARTMENT OF TAXATION,
23 NEVADA TAX COMMISSION, NEVADA
24 STATE BOARD OF EXAMINERS, and
25 MICHELLE JACOBS, in her official capacity
26 only,

25 Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

**DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS TO
PLAINTIFF DÉJÀ VU SHOWGIRLS OF
LAS VEGAS, L.L.C., D/B/A DÉJÀ VU
SHOWGIRLS**

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Case No. 08A554970
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,
3 d/b/a *Olymic Garden*; SHAC, LLC, d/b/a
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a
5 *Crazy Horse Too Gentlemen's Club*; D.
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

11 NEVADA DEPARTMENT OF TAXATION;
12 NEVADA TAX COMMISSION; and NEVADA
13 STATE BOARD OF EXAMINERS,

14 Defendants.

15 TO: DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Déjà vu Showgirls*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff.

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFFS, pursuant to Rule 34 of the
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes
23 without limiting the generality of its meaning, all originals, or copies where originals are
24 unavailable and non identical copies (whether different from originals by reason of notation
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or
2 other graphic representation, logs, investigators' reports or papers similar of any of the
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing
5 includes, stating:

- 6 (a) The nature of the writing;
7 (b) The date, if any, appearing thereon;
8 (c) The date, if known, on which the writing was prepared;
9 (d) The title of the writing;
10 (e) The general subject matter of the writing;
11 (f) The number of pages comprising the writing;
12 (g) The identity of each person who wrote, dictated or otherwise participated in the
13 preparation of the writing;
14 (h) The identity of each person who signed or initialed the writing;
15 (i) The identity of each person to whom the writing was addressed;
16 (j) The identity of each person who received the writing or reviewed it;
17 (k) The location of the writing; and
18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is
23 not presently in your possession or control, you shall describe the writing, the date of its loss,
24 destruction, purge or separation from possession or control, and the circumstances surrounding
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term DÉJÀ VU SHOWGIRLS OF LAS
27 VEGAS, L.L.C., d/b/a Déjà vu Showgirls or any version thereof, is intended to, and shall,

28 ...

1 embrace and include any of the locations operated by DÉJÀ VU SHOWGIRLS OF LAS
2 VEGAS, L.L.C., d/b/a Déjà vu Showgirls who are Plaintiffs in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;
5 DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls and any of its
6 agents, officers, directors, employees, representatives, and any others who are in possession
7 of, or who may have obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is
9 intended to and shall, embrace any portions of, any areas related to, or under the control of
10 DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls.

11 7. As used throughout these Requests, the term "person" or its plural or any
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any
18 synonym thereof, is intended to and shall embrace and include all employees of DÉJÀ VU
19 SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls.

20 10. As used throughout these requests the term "food" or "meals" or any synonym
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of DÉJÀ
25 VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls.

26 12. A request that you produce the source of information about certain facts includes
27 a request that you state the means by which such knowledge has been preserved; if such
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be
6 construed by reference to any other Request if the result is a limitation of the scope of the
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as
9 necessary, in order to bring within the scope of the Request all responses which might otherwise
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,
13 please set forth fully each objection, describe generally the information which is withheld, and
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production
16 in full, after exercising diligence to secure the request, please so state and provide the
17 production to the extent possible, specifying your inability to produce the remainder and stating
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information
20 contained in writings) as is known or reasonably available to you, your attorney or any
21 investigator or representative or others acting on their behalf or under their direction of control,
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event
24 you discover information that has been requested, you are to supplement the Request for
25 Production by supplementing your production.

26 ...

27 ...

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REQUEST FOR PRODUCTION OF DOCUMENTS

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1. Any and all documents constituting monthly financial statements with departmental breakouts for all periods prepared internally or externally from January 2002 through the present.
2. Any and all audited financial statements for all periods prepared from January 2002 through the present.
3. All Sales and Use Tax Returns for the period starting January 2002 through the present, along with all back –up work papers.
4. Any and all documents constituting periodic profit and loss statements from January 2002 through the present.
5. Cash receipts journal(s), bank statements and cancelled checks from January 2002 through the present.
6. Any and all documents constituting General Ledgers from January 2002 through the present, including all sales invoices, daily sales reports and/or register tapes and/or contracts from January 2002 through the present.
7. Any and all documents constituting all versions and revisions of periodic budgets, variance analyses and related presentations, reports and communication from January 2002 to the present.
8. Any and all documents constituting all versions and revisions of periodic financial forecasts, projections and related strategic presentations, reports and communication from January 2002 to the present.
9. Any and all documents constituting all versions and revisions of periodic business plans, market studies, industry and competitor analyses and/or reports from January 2002 to the present.
10. Any and all documents constituting data related to the monitoring and reporting of daily and monthly information and statistics of customer volume, activities, and spending from January 2002 to the present.

1 11. Any and all documents constituting all customer data from any loyalty club or
2 similar databases from January 2002 through the present.

3 12. Any and all documents constituting all information and data gathered related to
4 customer satisfaction, suggestions and/or complaints from January 2005 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since
7 January 1, 2002 to the present.

8 14. Any and all documents constituting records of employees including, but not limited
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report
10 form(s) NUCS 4072, incentive compensation and benefits from January 2002 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to
12 payments made to limousines, taxis or car services from January 2002 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
16 business plans, valuations or other information forming the basis for the loss from January 2002
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,
20 accountants, or other third parties at any time from January 2002 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the
22 Company for the actual or potential purchase of any and all its assets (including real property)
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other
24 third parties at any time from January 2002 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual
26 and prospective) entered into by the Company including, but not limited to, loan agreements,
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,
28 or other contractual documents at any time from January 2002 to the present.

Attorney General's Office
555 E. Washington Avenue, Suite 1900
Las Vegas, NV 89101

1 20. Any and all documents constituting the correspondence, loan and/or credit
2 applications, proposals, and other agreements between the Company and financial institutions,
3 accountants, financial consultants, or other third parties prepared at any time from January
4 2002 to the present.

5 21. All Federal Tax returns and schedules filed by the Plaintiffs from January 2002 to
6 the present.

7 22. Any and all documents constituting agreements and/or contracts with vendors,
8 suppliers, lessees, lessors or other providers or recipients of products or services from January
9 2002 to the present.

10 23. All correspondence to and from the Department of Taxation regarding Live
11 Entertainment Tax from January 2005 to the present.

12 24. Copies of all signs referencing any applicable tax, including information regarding
13 the location of all of the signs, the dates each sign was posted and time of day that the each
14 sign is posted from January 2005 to the present.

15 DATED this 25 day of May, 2011.

16 CATHERINE CORTEZ MASTO
17 Attorney General

18
19 By: 


20 DAVID J. POPE
21 Senior Deputy Attorney General
22 BLAKE A. DOERR
23 Senior Deputy Attorney General
24 VIVIENNE RAKOWSKY
25 Deputy Attorney General
26 Attorneys for Defendants
27
28

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing
3 DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by
4 causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,
5 a true copy thereof, addressed to:

6 William H. Brown, Esq.
7 Turco & Draskovich
8 815 S. Casino Center Blvd.
9 Las Vegas, NV 89101

10 Bradley J. Shafer
11 Shafer & Associates, P.C.
12 3800 Capital City Blvd., Ste. 2
13 Lansing, MI 48906-2110

14 
15 _____
16 An employee of Office of Attorney General

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Attorney General's Office
555 E. Washin. Suite 3900
Las Vegas, NV 89101

EXHIBIT “B”

1 **RSPN**
Mark E. Ferrario, ESQ.
2 Nevada Bar No. 1625
Brandon E. Roos, ESQ.
3 Nevada Bar No. 7888
GREENBERG TRAUERIG, LLP
4 3773 Howard Hughes Parkway
Suite 400 North
5 Las Vegas, Nevada 89169
Telephone: (702) 792-3773
6 Facsimile: (702) 792-9002
Emails: FerrarioM@gtlaw.com
7 RoosB@gtlaw.com
Counsel for Sapphire
8

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
LLC., d/b/a Déjà Vu Showgirls, LITTLE
12 DARLINGS OF LAS VEGAS, LLC, dba Little
Darlings, K-KEL, INC. dba Spearmint Rhino
13 Gentlemen's Club, OLYMPUS GARDEN,
INC., dba Olympic Garden, SHAC, LLC dba,
14 Sapphire, THE POWER COMPANY, INC, dba
Crazy Horse Too Gentlemen's Club, D.
15 WETWOOD, INC., dba Treasures, and D.I.
FOOD & BEVERAGE OF LAS VEGAS, LLC
16 dba Scores

17 Plaintiffs,

18 - vs. -

19 NEVADA DEPARTMENT OF TAXATION,
NEVADA TAX COMMISSION, NEVADA
20 STATE BOARD OF EXAMINERS, and
MICHELLE JACOBS, in her official capacity
21 only,

22 Defendants.

23 K-KEL INC., dba/ Spearmint Rhino
Gentlemen's Club; OLYMPUS GARDEN,
24 INC., dba Olympic Garden SHAC, LLC dba
Sapphire; THE POWER COMPANY, INC.,
25 dba Crazy Horse Too Gentlemen's Club;
D.WESTWOOD, INC., dba Treasures; and D.I.
26 FOOD & BEVERAGE OF LAS VEGAS, LLC
dba Scores;

27 Plaintiffs,
28

Case No. 06A533273-C
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

**PLAINTIFFS SHAC, LLC d/b/a/ SAPPHIRE'S
RESPONSE TO DEFENDANTS' REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Case No. 08A554970
Dept. No. XI

GREENBERG TRAUERIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
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-- vs. --

NEVADA DEPARTMENT OF TAXATION;
NEVADA TAX COMMISSION; and
NEVADA STATE BOARD OF EXAMINERS,

Defendant.

TO: NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, Defendants; and

TO: CATHERINE CORTEZ MASTO, ESQ., Attorney for Defendants:

Pursuant to Rule 34 of the Nevada Rules of Civil Procedure ("NRCP"), Plaintiff, SHAC, LLC d/b/a Sapphire, by and through its attorneys of record, the law firm of Greenberg Traurig, LLP, hereby responds to Defendants' Requests for Production of Documents, as follows:

REQUEST NO. 1

Any and all documents constituting monthly financial statements with departmental breakouts for all periods prepared internally or externally from January 2001 through the present.

RESPONSE

Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.

REQUEST NO. 2

Any and all audited financial statements for all periods prepared from January 2001 through the present.

RESPONSE

Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.

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GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

1 **REQUEST NO. 3**

2 All Sales and Use Tax Returns for the period starting January 2001 through the present,
3 along with all back-up work papers.

4 **RESPONSE**

5 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
6 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
7 also vague and ambiguous and seeks confidential and privileged information that is protected from
8 discovery.

9 **REQUEST NO. 4**

10 Any and all documents constituting periodic profit and loss statements from January 2001
11 through the present.

12 **RESPONSE**

13 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
14 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
15 also vague and ambiguous and seeks confidential and privileged information that is protected from
16 discovery.

17 **REQUEST NO. 5**

18 Cash receipts journal(s), bank statements and cancelled checks from January 2001 through
19 the present

20 **RESPONSE**

21 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
22 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
23 also vague and ambiguous and seeks confidential and privileged information that is protected from
24 discovery.

25 **REQUEST NO. 6**

26 Any and all documents constituting General Ledgers from January 2001 through the present,
27 including all sales invoices, daily sales reports, and/or register tape and/or contracts from January
28 2001 through the present.

1 **RESPONSE**

2 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
3 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
4 also vague and ambiguous and seeks confidential and privileged information that is protected from
5 discovery.

6 **REQUEST NO. 7**

7 Any and all documents constituting all versions and revisions of periodic budgets, variance
8 analyses and related presentations, reports and communication from January 2001 to the present.

9 **RESPONSE**

10 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
11 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
12 also vague and ambiguous and seeks confidential and privileged information that is protected from
13 discovery.

14 **REQUEST NO. 8**

15 Any and all documents constituting all versions and revision of periodic financial forecasts,
16 projections, and related strategic presentations, reports and communication from January 2001 to
17 the present.

18 **RESPONSE**

19 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
20 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
21 also vague and ambiguous and seeks confidential and privileged information that is protected from
22 discovery.

23 **REQUEST NO. 9**

24 Any and all documents constituting all versions and revisions of periodic business plans,
25 market studies, industry and competitor analyses and/or reports from January 2001 to the present.

26 **RESPONSE**

27 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
28 and not calculated to lead to the discovery of admissible evidence in this matter. The request is

1 also vague and ambiguous and seeks confidential and privileged information that is protected from
2 discovery.

3 **REQUEST NO. 10**

4 Any and all documents constituting data related to the monitoring and reporting of daily and
5 monthly information and statistics of customer volume, activities, and spending from January 2001
6 to the present.

7 **RESPONSE**

8 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
9 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
10 also vague and ambiguous and seeks confidential and privileged information that is protected from
11 discovery.

12 **REQUEST NO. 11**

13 Any and all documents constituting all customer data from any loyalty club or similar
14 databases from January 2001 through the present.

15 **RESPONSE**

16 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
17 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
18 also vague and ambiguous and seeks confidential and privileged information that is protected from
19 discovery.

20 **REQUEST NO. 12**

21 Any and all documents constituting all information and data gathered related to customer
22 satisfaction, suggestions and/or complaints from January 2003 to the present.

23 **RESPONSE**

24 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
25 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
26 also vague and ambiguous and seeks confidential and privileged information that is protected from
27 discovery.

28

1 **REQUEST NO. 13**

2 Any and all documents constituting Monthly Gross Revenue or Statistical Reports or the
3 equivalent submitted to the Nevada Department of Taxation or equivalent agency since January 1,
4 2001 to the present. .

5 **RESPONSE**

6 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
7 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
8 also vague and ambiguous and seeks confidential and privileged information that is protected from
9 discovery.

10 **REQUEST NO. 14**

11 Any and all documents constituting records of employees including, but not limited to,
12 departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report from(s)
13 NUCS 4072, incentive compensation and benefits from January 2001 to the present.

14 **RESPONSE**

15 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
16 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
17 also vague and ambiguous and seeks confidential and privileged information that is protected from
18 discovery.

19 **REQUEST NO. 15**

20 Any and all incentive payments or referral payments including, but not limited to payments
21 made to limousines, taxis or car services from January 2001 to the present

22 **RESPONSE**

23 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
24 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
25 also vague and ambiguous and seeks confidential and privileged information that is protected from
26 discovery.

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1 **REQUEST NO. 16**

2 Any and all documents constituting the plaintiff's loss analysis including, but not limited to,
3 plaintiff's schedule of lost revenue and any and all supporting documents constituting calculations,
4 spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts, business plans,
5 valuations or other information forming the basis for the loss from January 2011 to the present.

6 **RESPONSE**

7 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
8 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
9 also vague and ambiguous and seeks confidential and privileged information that is protected from
10 discovery.

11 **REQUEST NO. 17**

12 Any and all documents constituting valuations or appraisals of the Company or its assets
13 (including real property) prepared by financial consultants, appraisers, CPAs, accountants, or other
14 third parties at any time from January 2001 to the present.

15 **RESPONSE**

16 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
17 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
18 also vague and ambiguous and seeks confidential and privileged information that is protected from
19 discovery.

20 **REQUEST NO. 18**

21 Any and all documents constituting offers, bids, or proposals received by the Company for
22 the actual or potential purchase of any and all its assets (including real property) prepared by actual
23 or potential buyers, accountants, investment bankers, contractors, or other third parties at any time
24 from January 2001 to the present.

25 **RESPONSE**

26 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
27 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
28 also vague and ambiguous and seeks confidential and privileged information that is protected from

1 discovery.

2 **REQUEST NO. 19**

3 Any and all documents reflecting all debt or other financing arrangements (actual and
4 prospective) entered into by the Company including, but not limited to, loan agreements, line of
5 credit agreements, promissory notes, letter of credit agreements, guarantee agreements, or other
6 contractual documents at any time from January 2001 to the present.

7 **RESPONSE**

8 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
9 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
10 also vague and ambiguous and seeks confidential and privileged information that is protected from
11 discovery.

12 **REQUEST NO. 20**

13 Any and all documents constituting the correspondence, loan and/or credit applications,
14 proposals, and other agreements between the Company and financial institutions, accountants,
15 financial consultants, or other third parties prepared at any time from January 2001 to the present.

16 **RESPONSE**

17 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
18 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
19 also vague and ambiguous and seeks confidential and privileged information that is protected from
20 discovery.

21 **REQUEST NO. 21**

22 All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to the
23 present.

24 **RESPONSE**

25 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
26 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
27 also vague and ambiguous and seeks confidential and privileged information that is protected from
28 discovery.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

1 REQUEST NO. 22

2 Any and all documents constituting agreements and/or contracts with vendors, suppliers,
3 lessees, lessors or other providers or recipients of products or services from January 2001 to the
4 present.

5 RESPONSE

6 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
7 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
8 also vague and ambiguous and seeks confidential and privileged information that is protected from
9 discovery.

10 REQUEST NO. 23

11 All correspondence to and from the Department of Taxation regarding Live Entertainment
12 Tax from January 2003 to the present.

13 RESPONSE

14 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
15 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
16 also vague and ambiguous and seeks confidential and privileged information that is protected from
17 discovery.

18 REQUEST NO. 24

19 Copies of all signs referencing any applicable tax, including information regarding the
20 location of all the signs, the dates each sign was posted and time of day that the [sic] each sign is
21 posted from January 2003 to the present.

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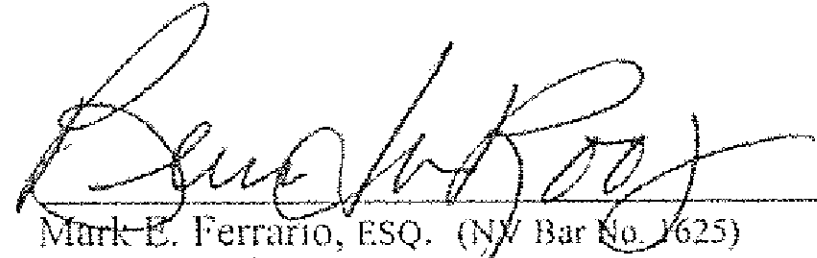
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1 RESPONSE

2 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant
3 and not calculated to lead to the discovery of admissible evidence in this matter. The request is
4 also vague and ambiguous and seeks confidential and privileged information that is protected from
5 discovery.

6
7 DATED this 27th day of June, 2011.

9 GREENBERG TRAURIG, LLP

10
11 

12 Mark E. Ferrario, ESQ. (NV Bar No. 1625)

13 Brandon E. Roos, ESQ. (NV Bar No. 7888)

14 3773 Howard Hughes Parkway

15 Suite 400 North

16 Las Vegas, Nevada 89169

17 *Counsel for Defendant SHAC, LLC d/b/a Sapphire*

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

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CERTIFICATE OF SERVICE

I hereby certify that on June 27th, 2011, I served the foregoing **PLAINTIFFS SHAC, LLC d/b/a/ SAPPHIRE'S RESPONSE TO DEFENDANTS' REQUESTS FOR PRODUCTION OF DOCUMENTS** upon:

Catherine Cortez Masto
David J. Pope
Blake A. Doerr
Vivienne Rakowsky
Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

- by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- by hand delivery.
- by sending via overnight courier in a sealed envelope.
- by faxing to the attorney at the fax number that is the last-known fax number.
- by electronic mail to the last known e-mail address.

Valena Larsen
AN EMPLOYEE OF GREENBERG TRAUIG, LLP

GREENBERG TRAUIG, LLP
3775 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone (702) 762-3773
Facsimile (702) 792-9002

EXHIBIT “C”

1 **RSPN**
 2 WILLIAM H. BROWN, ESQ. (7623)
 3 **TURCO & DRASKOVICH**
 4 815 S. Casino Center Blvd.
 5 Las Vegas, Nevada 89101
 6 Phone: (702) 474-4222
 7 Fax: (702) 474-1320
 8 Will@whbesq.com
 9 *Counsel for Plaintiffs*

10 BRADLEY J. SHAFER, ESQ.
 11 Michigan State Bar P36604
 12 **SHAFER & ASSOCIATES, P.C.**
 13 3800 Capital City Boulevard, Suite 2
 14 Lansing, Michigan 48906
 15 Telephone: (517) 886-6560
 16 Facsimile: (517) 886-6565
 17 *Co-Counsel for Plaintiffs*
 18 *Admitted Pro Hac Vice*

19 **DISTRICT COURT**
 20 **CLARK COUNTY, NEVADA**

21	DÉJÀ VU SHOWGIRLS OF LAS VEGAS,)	CASE NO.: A533273
22	LLC, d/b/a <i>Déjà Vu Showgirls</i> , LITTLE)	
23	DARLINGS OF LAS VEGAS, et al.,)	DEPT. NO.: 11
24)	<i>Coordinated with</i>
25	Plaintiffs,)	CASE NO.: A533273
26	vs.)	
27	NEVADA DEPARTMENT OF TAXATION;)	DEPT. NO.: 11
28	NEVADA TAX COMMISSION, et al.)	
)	
	Defendants.)	

1 Plaintiff hereby submits the following responses to Defendants' Request for Production
2 of Documents.

3 **REQUEST NO. 1:**

4 Any and all documents constituting monthly financial statements with departmental
5 breakouts for all periods prepared internally or externally from January 2001 through the present.

6 **RESPONSE:**

7
8 Objection. This request is not reasonably calculated to lead to the discovery of
9 admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant
10 to the subject tax (the "tax") is already within Defendants' custody and control. Plaintiff's
11 financial information is confidential and/or proprietary. Also, it is neither relevant, nor
12 calculated to lead to the discovery of admissible evidence concerning the constitutionality of the
13 tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not
14 disputed. Finally, the term "periods" is vague and ambiguous.

15
16 **REQUEST NO. 2:**

17 Any and all audited financial statements for all periods prepared from January 2001
18 through the present.

19
20 **RESPONSE:**

21 Objection. This request is not reasonably calculated to lead to the discovery of
22 admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant
23 to the tax is already within Defendants' custody and control. Plaintiff's financial information,
24 including audited financial statements, is confidential and/or proprietary. Also, it is neither
25 relevant, nor calculated to lead to the discovery of admissible evidence concerning the
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1 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the
2 tax, which is not disputed.

3 **REQUEST NO. 3:**

4 All Sales and Use Tax Returns for the period starting January 2001 through the present,
5 along with all back-up work papers.

6 **RESPONSE:**

7
8 Objection. Sales and Use Tax Returns are filed with the State; thus, the information
9 sought by this request is obtainable from some other source that is more convenient, less
10 burdensome, or less expensive, including without limitation the requesting parties themselves.
11 Also, the term "back-up papers" is vague and ambiguous.

12
13 **REQUEST NO. 4:**

14 Any and all documents constituting periodic profit and loss statements from January 2001
15 through the present.

16 **RESPONSE:**

17
18 Objection. This request is not reasonably calculated to lead to the discovery of
19 admissible evidence. Plaintiff's financial information, including periodic profit and loss
20 statements, if such information exists, is confidential and/or proprietary. Also, it is neither
21 relevant, nor calculated to lead to the discovery of admissible evidence concerning the
22 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the
23 tax, which is not disputed.

24
25 **REQUEST NO. 5:**

26 Cash receipts journal(s), bank statements and cancelled checks from January 2001
27 through the present.

28

1 **RESPONSE:**

2 Objection. This request is not reasonably calculated to lead to the discovery of
3 admissible evidence. Plaintiff's financial information, including cash receipt journals(s), bank
4 statements and cancelled checks is confidential and/or proprietary. Also, it is neither relevant,
5 nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of
6 the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not
7 disputed. Finally, this request is unduly burdensome, as it would require, among other things,
8 Plaintiff to collect and produce every cash receipt, for every transaction, from the last 3,467 days
9 (since January, 2002).
10

11 **REQUEST NO. 6:**

12 Any and all documents constituting General Ledgers from January 2001 through the
13 present, including all sales invoices, daily sales reports and/or register tapes and/or contracts
14 from January 2001 through the present.
15

16 **RESPONSE:**

17 Objection. This request is not reasonably calculated to lead to the discovery of
18 admissible evidence. Plaintiff's financial information is confidential and/or proprietary. Also, it
19 is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the
20 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the
21 tax, which is not disputed. Finally, this request is unduly burdensome, as it seeks, among other
22 things an individual "sales reports and/or register tape" for each register, from the last 3,467 days
23 (since January, 2002).
24

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26 ///

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REQUEST NO. 7:

1
2 Any and all documents constituting all versions and revisions of periodic budgets,
3 variance analyses and related presentations, reports and communication from January 2001 to the
4 present.

RESPONSE:

5
6
7 Objection. This request is not reasonably calculated to lead to the discovery of
8 admissible evidence. Plaintiff's financial information, including periodic budgets, variance
9 analyses and related presentations, reports and communication, if such information exists, is
10 confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the
11 discovery of admissible evidence concerning the constitutionality of the tax, which is the sole
12 matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Additionally,
13 "variance analyses and related presentations, reports and communications" is vague and
14 ambiguous. Finally, this request is unduly burdensome.

REQUEST NO. 8:

15
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17
18 Any and all documents constituting all versions and revisions of periodic financial
19 forecasts, projections and related strategic presentations, reports and communication from
20 January 2001 to the present.

RESPONSE:

21
22
23 Objection. This request is not reasonably calculated to lead to the discovery of
24 admissible evidence. Plaintiff's financial information, including periodic financial forecasts,
25 projections and related strategic presentations, reports and communication, if such information
26 exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the
27 discovery of admissible evidence concerning the constitutionality of the tax, which is the sole
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1 matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this
2 request is unduly burdensome and overbroad.

3 **REQUEST NO. 9:**

4 Any and all documents constituting all versions and revisions of periodic business plans,
5 market studies, industry and competitor analyses and/or reports from January 2001 to the
6 present.
7

8 **RESPONSE:**

9 Objection. This request is not reasonably calculated to lead to the discovery of
10 admissible evidence. Plaintiff's financial information, including versions and revisions of
11 periodic business plans, market studies, industry and competitor analyses and/or reports, if such
12 information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated
13 to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which
14 is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.
15 Finally, this request is unduly burdensome.
16

17 **REQUEST NO. 10:**

18 Any and all documents constituting data related to the monitoring and reporting of daily
19 and monthly information and statistics of customer volume, activities, and spending from
20 January 2001 to the present.
21

22 **RESPONSE:**

23 Objection. This request is not reasonably calculated to lead to the discovery of
24 admissible evidence. Plaintiff's financial information, including data related to the monitoring
25 and reporting of daily and monthly information and statistics of customer volume, activities, and
26 spending is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to
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1 the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole
 2 matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this
 3 request is unduly burdensome.

4 **REQUEST NO. 11:**

5 Any and all documents constituting all customer data from any loyalty club or similar
 6 databases from January 2001 through the present.

8 **RESPONSE:**

9 Objection. This request is not reasonably calculated to lead to the discovery of
 10 admissible evidence. Plaintiff's business information, including customer data, if such
 11 information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated
 12 to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which
 13 is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.
 14 Finally, this request is unduly burdensome.

16 **REQUEST NO. 12:**

17 Any and all documents constituting all information and data gathered related to customer
 18 satisfaction, suggestions and/or complaints from January 2003 to the present.

20 **RESPONSE:**

21 Objection. This request is not reasonably calculated to lead to the discovery of
 22 admissible evidence. Plaintiff's business information, including customer data/satisfaction, if
 23 such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor
 24 calculated to lead to the discovery of admissible evidence concerning the constitutionality of the
 25 tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not
 26 disputed. Finally, this request is unduly burdensome.

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REQUEST NO. 13:

Any and all documents constituting Monthly Gross Revenue or Statistical Reports or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since January 1, 2001 to the present.

RESPONSE:

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant to the tax is already within Defendants' custody and control. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Moreover, it appears one of the requesting parties (the Nevada Department of Taxation) is actually requesting that Plaintiff produce information "submitted to the Nevada Department of Taxation". In other words, Defendants are specifically requesting information that, by definition, Plaintiff's have already produced and thus, that Defendants already possess. As such, the information sought by this request is obtainable from some other source that is more convenient, less burdensome, or less expensive, including without limitation the requesting parties themselves.

REQUEST NO. 14:

Any and all documents constituting records of employees including, but not limited to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report form(s), NUCS 4072, incentive compensation and benefits from January 2001 to the present.

///

RESPONSE:

1
2 Objection. This request is not reasonably calculated to lead to the discovery of
3 admissible evidence. Plaintiff's business information, including personal information
4 concerning employees, wages, benefits, etc., if such information exists, is confidential and/or
5 proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible
6 evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the
7 amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly
8 burdensome.
9

REQUEST NO. 15:

10
11 Any and all incident payments or referral payments including, but not limited to
12 payments made to limousines, taxis or car services from January 2001 to the present.
13

RESPONSE:

14
15 Objection. This request is not reasonably calculated to lead to the discovery of
16 admissible evidence. Plaintiff's business information, including "incentive payments or referral
17 payments", if such information exists, is confidential and/or proprietary. Also, it is neither
18 relevant, nor calculated to lead to the discovery of admissible evidence concerning the
19 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the
20 tax, which is not disputed. Finally, this request is unduly burdensome.
21

REQUEST NO. 16:

22
23 Any and all documents constituting the plaintiff's loss analysis including, but not limited
24 to, plaintiff's schedule of lost revenue and any and all supporting documents constituting
25 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,
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1 business plans, valuations or other information forming the basis for the loss from January 2001
2 to the present.

3 **RESPONSE:**

4 Objection. Plaintiff does not have any documents constituting a "loss analysis" (a term
5 that is vague and ambiguous), other than those documents setting forth and documenting all
6 sums paid pursuant to the tax, all of which are already within Defendants' custody and control,
7 as are all individual and aggregate calculations arising there from. Also, this information is
8 neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the
9 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the
10 tax, which is not disputed. Plaintiff's financial information is otherwise wholly irrelevant to the
11 constitutionality of the subject tax, which is the sole matter at issue. Finally, it is overbroad and
12 unduly burdensome.
13

14 **REQUEST NO. 17:**

15 Any and all documents constituting valuations or appraisals of the Company or its assets
16 (including real property) prepared by financial consultants, appraisers, CPAs, accountants, or
17 other third parties at any time from January 2001 to the present.
18

19 **RESPONSE:**

20 Objection. This request is not reasonably calculated to lead to the discovery of
21 admissible evidence. Plaintiff's business information, including documents constituting
22 valuations or appraisals of the Company or its assets (including real property) prepared by
23 financial consultants, appraisers, CPAs, accountants, or other third parties, etc., if such
24 information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated
25 to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which
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1 is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.

2 Additionally, this request is unduly burdensome and overly broad.

3 **REQUEST NO. 18:**

4 Any and all documents constituting offers, bids, or proposals received by the Company
5 for the actual or potential purchase of any and all its assets (including real property) prepared by
6 actual or potential buyers, accountants, investment bankers, contractors, or other third parties at
7 any time from January 2001 to the present.

9 **RESPONSE:**

10 Objection. This request is not reasonably calculated to lead to the discovery of
11 admissible evidence. Information concerning offers or potential offers to purchase any or all of
12 Plaintiff's assets, if such information exists, is confidential and/or proprietary. Also, it is neither
13 relevant, nor calculated to lead to the discovery of admissible evidence concerning the
14 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the
15 tax, which is not disputed. Finally, this request is overly broad and unduly burdensome.

17 **REQUEST NO. 19:**

18 Any and all documents reflecting all debt or other financial arrangements (actual and
19 prospective) entered into by the Company including, but not limited to, loan agreements, line of
20 credit agreements, promissory notes, letter of credit agreements, guarantee agreements, or other
21 contractual documents at any time from January 2001 to the present.

22 **RESPONSE:**

23 Objection. This request is not reasonably calculated to lead to the discovery of
24 admissible evidence. Information concerning Plaintiff's debt or other financial arrangements, if
25 such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor
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1 calculated to lead to the discovery of admissible evidence concerning the constitutionality of the
 2 tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not
 3 disputed. Finally, this request is overly broad and unduly burdensome.

4
 5 **REQUEST NO. 20:**

6 Any and all documents constituting the correspondence, loan and/or credit applications,
 7 proposals, and other agreements between the Company and financial institutions, accountants,
 8 financial consultants, or other third parties prepared at any time from January 2001 to the
 9 present.
 10

11 **RESPONSE:**

12
 13 Objection. This request is not reasonably calculated to lead to the discovery of
 14 admissible evidence. Information concerning Plaintiff's correspondence, loan and/or credit
 15 applications, proposals, and other agreements between the Company and financial institutions,
 16 accountants, financial consultants, or other third parties, if such information exists, is
 17 confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the
 18 discovery of admissible evidence concerning the constitutionality of the tax, which is the sole
 19 matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this
 20 request is overly broad and unduly burdensome.
 21

22
 23 **REQUEST NO. 21:**

24
 25 All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to the
 26 present.

27 ///

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RESPONSE:

1
2 Objection. Federal Tax returns are privileged and confidential. Also, it is neither
3 relevant, nor calculated to lead to the discovery of admissible evidence concerning the
4 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the
5 tax, which is not disputed.
6

REQUEST NO. 22:

7
8 Any and all documents constituting agreements and/or contracts with vendors, suppliers,
9 lessees, lessors or other providers or recipients of products or services from January 2001 to the
10 present.
11

RESPONSE:

12
13 Objection. This request is not reasonably calculated to lead to the discovery of
14 admissible evidence. Information concerning Plaintiff's agreements and/or contracts with
15 vendors, suppliers, lessees, lessors or other providers or recipients of products or services, if such
16 information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated
17 to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which
18 is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.
19 Finally, this request is overly broad and unduly burdensome.
20

REQUEST NO. 23:

21
22 All correspondence to and from the Department of Taxation regarding Live
23 Entertainment Tax from January 2003 to the present.
24

RESPONSE:

25
26 Objection. This request is not reasonably calculated to lead to the discovery of
27 admissible evidence. Moreover, it appears one of the requesting parties (the Nevada Department
28

1 of Taxation) is actually requesting that Plaintiff produce correspondence "to and from the
 2 Nevada Department of Taxation"). In other words, Defendants are specifically requesting
 3 information that by definition Plaintiffs have already produced and thus, is already in their
 4 possession. As such, the information sought by this request is obtainable from some other
 5 source that is more convenient, less burdensome, or less expensive, including without limitation
 6 the requesting parties themselves.
 7

8 **REQUEST NO. 24:**


9 Copies of all signs referencing any applicable tax, including information regarding the
 10 location of all of the signs, the dates each sign was posted and time of day that the [sic] each sign
 11 is posted from January 2003 to the present.
 12

13 **RESPONSE:**

14 Objection. This request is not reasonably calculated to lead to the discovery of
 15 admissible evidence. Information concerning Plaintiff's signs referencing any applicable tax,
 16 including information regarding the location of all of the signs, the dates each sign was posted
 17 and time of day that the [sic] each sign is posted, if such information exists, it is neither relevant,
 18 nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of
 19 the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not
 20 disputed.
 21

22 **DATED:** July 1, 2011

23
 24 **TURCO & DRASKOVICH
 SHAFER & ASSOCIATES, P.C.**

25 By 
 26 WILLIAM H. BROWN, ESQ. (7623)
 27 BRADLEY J. SHAFER, ESQ.
 28 Counsel for Plaintiffs

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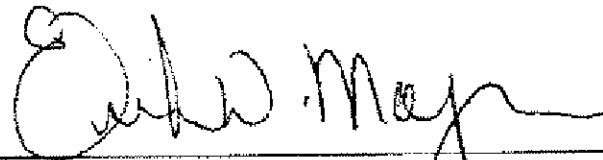
CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2011, service of the forgoing:

RESPONSES TO DEFENDANTS' REQUESTS FOR PRODUCTION OF DOCUMENTS

was made this date by e-serving, and by faxing a true and correct copy of same to the address listed below:

David J. Pope, Esq.
Blake A. Doerr, Esq.
Vivienne Rakowsky, Esq.
Nevada Attorney General
555 E. Washington Ave., Ste. 3900
LV, NV 89101
Fax: 486-3416
Counsel for Defendants



An employee of Turco & Draskovich, LLP.
SHAFFER & ASSOCIATES, P.C.

EXHIBIT “D”

title

Vivienne Rakowsky

From: Vivienne Rakowsky
Sent: Tuesday, June 28, 2011 4:16 PM
To: 'roosb@gtlaw.com'
Cc: Blake A. Doerr; David J. Pope
Subject: Shac LLC

Dear Mr. Roos:

Pursuant to EDCR 2.34 I am requesting a meet and confer regarding your deficient and boilerplate responses to the Defendants' Request for Production of Documents. Please contact me no later than 5:00 p.m. on Thursday, June 30, 2011 to schedule this discussion.

I look forward to hearing from you.

Sincerely,
Vivienne

Vivienne Rakowsky, Deputy Attorney General
State of Nevada
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
vrakowsky@ag.nv.gov
Phone: (702) 486-3103
Fax: (702) 486-3416

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EXHIBIT “E”

title

Vivienne Rakowsky

From: roosb@gtlaw.com
Sent: Friday, July 15, 2011 4:34 PM
To: Vivienne Rakowsky
Cc: ferrariom@gtlaw.com
Subject: FW: Shac LLC

Vivienne,

I have reviewed the NAC provision you referenced in our call. If I understand the NAC provision and your argument, the State is taking the position that if the LET is deemed unconstitutional, and by virtue of that decision the tax collected is therefore deemed to be an "over-collection" pursuant to NAC 368A.170, then the "taxpayer" (in this instance SHAC, LLC) is not entitled to any of the refund for that over-collection *unless* SHAC, LLC pays that money back to the "patron" from whom it was collected. Under NAC 368A.170(4), the State is taking the position if SHAC, LLC cannot identify the patrons from whom it collected the tax, then it cannot pay over the refund to those patrons. And, if SHAC, LLC cannot pay the refund to the patron, then the money essentially escheats to the State. Thus, the State is claiming that the refund portion of the case does not present a viable claim for relief by SHAC, LLC. I cannot determine from the transcripts whether Judge Gonzalez ultimately made a determination regarding that argument, but she certainly raised concerns as to the validity of that contention.

With that understanding, I have again reviewed the discovery requests based on your arguments and the law you have cited. In its Requests for Production, the State has generally asked for records regarding how much money SHAC, LLC actually made (or lost) from 2001 to present, or forecasted it would make during that same timeframe; how much money SHAC has paid in SalesTax, Use Tax and LET to the State; statistical information regarding customer volume, spending, satisfaction, complaints, etc.; comprehensive employee records; taxicab payment records; business valuations of the company, and offers, bids or proposals to purchase or sell the company; and contracts with vendors or suppliers. None of the foregoing information has anything to do with the question before the Court regarding the facial and "as applied" validity of the statute under the First Amendment, or even the refund issue you have raised. I simply do not see how the information that the State has requested from SHAC bears any relationship to proving or disproving its legal position, or furthermore how the information requested will lead to the discovery of admissible evidence related to any of the claims pending in the lawsuit. Moreover, the accumulation and production of the volume of information that the State has requested would place a significant burden on SHAC.

The State has collected a fixed sum of money from SHAC in LET. That fixed sum will not change based upon any of the information requested by the State. Either the fixed sum will be paid back to SHAC, or it will not be paid back to SHAC depending upon the ruling of the Court. Based on the foregoing, I do not think we will be able to reach an agreement on the responses to Requests for Production. Therefore, I think it would be best to address these issues with Judge Gonzalez through motion practice.

Call me with any questions.

Brandon E. Roos
Shareholder
Greenberg Traurig, LLP | Suite 400 North
3773 Howard Hughes Parkway | Las Vegas, Nevada 89169
Tel 702.938.6872 | Cell 702.370.0782
roosb@gtlaw.com | www.gtlaw.com



Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we

title

inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to postmaster@gtlaw.com.

From: Vivienne Rakowsky [mailto:VRakowsky@ag.nv.gov]
Sent: Thursday, July 14, 2011 10:40 AM
To: Roos, Brandon E. (Shld-LV-LT)
Subject: Shac LLC

Thanks for taking part in the 2.34 conference yesterday. Just to follow up, you were going to review the applicable statutes and regulations and get back to me with respect to providing the documentation requested in the Requests for Production. If there is anything else that you need, please let me know.

I look forward to hearing from you.

Sincerely,
Vivienne

Vivienne Rakowsky, Deputy Attorney General
State of Nevada
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
vrakowsky@ag.nv.gov
Phone: (702) 486-3103
Fax: (702) 486-3416

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at vrakowsky@ag.nv.gov and delete the message and attachments from your computer and network. Thank you.

EXHIBIT “F”

title

Vivienne Rakowsky

From: Blake A. Doerr
Sent: Wednesday, July 13, 2011 8:54 AM
To: Will Brown; Andrea Pritzlaff
Cc: Vivienne Rakowsky
Subject: EDCR 2.34

Will and Andrea,
During the meet and confer, I asked you to let me know before this Friday July 15, 2011 if you remained unwilling to provide any of the requested documents.
If I haven't heard from you by that date we intend to proceed with the filing of a Motion to Compel.
Blake

Blake A. Doerr, Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
bdoerr@ag.nv.gov
Phone: (702) 486-3095
Fax: (702) 486-3416

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EXHIBIT “G”



JIM GIBBONS
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION

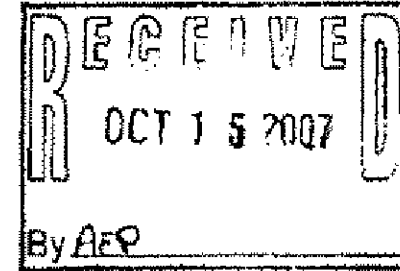
Web Site: <http://tax.state.nv.us>
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
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October 12, 2007



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IN THE MATTER OF:

The Appeal of Olympic Gardens, Inc., D.I. Food & Beverage of Las Vegas, Shac, LLC, D. Westwood, Inc., K-Kel, Inc., The Power Co., Inc. ("Appellants") from the Department of Taxation's Denial of their refund request pursuant to NRS 368A.260

The above matter came before the Nevada Tax Commission ("the Commission") for hearing on August 6, 2007. Bradley Shafer, Esq. and Dianna Sullivan, Esq. appeared on behalf of Appellants. Senior Deputy Attorney General David J. Pope and Deputy Attorney General Dennis Belcourt appeared on behalf of the Department of Taxation ("the Department").

The Commission hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

1. Appellants, as providers of live entertainment, are or have been taxpayers under NRS chapter 368A, through which is imposed the Live Entertainment Tax ("LET").
2. Appellants filed timely requests for refunds pursuant to NRS 368A.260 for the tax periods of January, February 2004, March 2004 and April 2004, claiming that the LET is facially unconstitutional, that it unconstitutionally targets them or their message, and that they are entitled to refunds for the taxes paid by them, pursuant to NRS 368A.200(5)(a).
3. The Department denied Appellants' requests.
4. Appellants filed timely appeals from the Department's denials of their refund requests.
5. In this appeal, Appellants contend that a tax on live entertainment is per se unconstitutional, that the LET is rendered unconstitutional by the number of statutory exemptions, which Appellants claim make the tax one targeted at live adult entertainment, and that the legislative record shows an intent to tax based on content, to the detriment of providers of live adult entertainment.
6. If any Finding of Fact is more properly classified as a Conclusion of Law, then it shall be deemed such.

CONCLUSIONS OF LAW

1. NRS 368A.200(5)(a) exempts from the live entertainment tax "(l)ive entertainment that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution."
2. Entertainment can be a form of speech protected under the First Amendment of the United States Constitution and Article I, section 9 of the Nevada Constitution.
3. The United States and Nevada Constitutions do not forbid taxation of live entertainment as such.
4. NRS 368A.090 contains a definition of live entertainment. Regulations and an amendment to NRS 368A.090 define what is not live entertainment.
5. NRS 368A.200, as initially enacted in 2003 and as amended in 2005 and 2007, contains exemptions from the live entertainment tax.
6. A tax that targets a small group of speakers may violate the United States and Nevada constitutional protections against infringement of speech.
7. The live entertainment tax under NRS chapter 368A is an extension of the former casino entertainment tax (NRS chapter 463). It is imposed on an array of types of entertainment, both at licensed gaming establishments and other locations. It therefore does not target a small group of speakers.
8. A tax that constitutes a "regulation of speech because of disagreement with the message which it conveys" may violate the United States and Nevada constitutional protections against infringement of speech. *Ward v. Rock against Racism*, 491 U.S. 781, 791 (1989).
9. The definition in NRS 368A.090, the exemptions in NRS 368A.200, and other provisions of NRS chapter 368A delineating the scope of the tax are reasonable classifications for tax purposes and do not appear to be aimed at any message that may be contained in the entertainment by Appellants or any other speakers. See *Madden v. Kentucky*, 309 U.S. 83, 87-88, 60 S.Ct. 406, 408 (1940) (providing, "[i]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification").
10. Mention by legislators of taxability of live adult entertainment under a proposed bill that was subsequently enacted does not prove that the bill was enacted because of disagreement with the message provided by live adult entertainment.
11. Statements by legislators with respect to a bill that would have taxed live adult entertainment as a separate class, where the bill did not pass, does not prove the intent of a separate bill that did not select live adult entertainment.
12. If any Conclusion of Law is more properly classified as a Finding of Fact, then it shall be deemed such.

DECISION

After due deliberation, and based on the foregoing, the Commission denied the appeal.

FOR THE COMMISSION:



DINO DICIANO
Executive Director
Nevada Department of Taxation

cc: David Pope, Sr. Deputy Attorney General
Dennis Belcourt, Deputy Attorney General
Taxpayers (via regular mail)

EXHIBIT “H”

title

Vivienne Rakowsky

From: Vivienne Rakowsky
Sent: Wednesday, June 29, 2011 2:41 PM
To: 'roosb@gtlaw.com'
Cc: Blake A. Doerr; David J. Pope
Subject: Shac LLC

Thanks for speaking with us earlier. Just to confirm, you will contact me within two days and let me know when we can expect appropriate responses to the Department's discovery requests. As we said to your paralegal on June 27th and to you on the telephone today, we understand that you have just received the case and we can give you an extension, but you would need to let us know when we can expect to receive the disclosures. Please keep in mind that this action commenced on December 19, 2006 and five year clock is running.

I look forward to hearing from you.

Sincerely,
Vivienne

Vivienne Rakowsky, Deputy Attorney General
State of Nevada
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
vrakowsky@ag.nv.gov
Phone: (702) 486-3103
Fax: (702) 486-3416

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at vrakowsky@ag.nv.gov and delete the message and attachments from your computer and network. Thank you.

EXHIBIT “I”

title

Vivienne Rakowsky

From: Vivienne Rakowsky
Sent: Friday, July 01, 2011 3:09 PM
To: 'roosb@gtlaw.com'
Subject: Shac LLC

Just following up on the discovery responses. When we last spoke you were going to check with your client because you had not discussed it with him at that time. Please give me a time frame as to when I can expect the revised responses.

Thanks, and I look forward to hearing from you.

Sincerely,
Vivienne

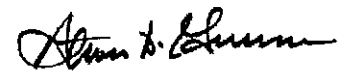
Vivienne Rakowsky, Deputy Attorney General
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on the timeliness of the original filing and will make no comment on the extent of the record any other Judge may decide in making that decision. Opposition to be filed 30 days later. Counsel agreed to one-half day of Argument. Mr. Shafer requested the Court grant alternative relief and remand the case. COURT ORDERED, it was not inclined to do that. Upon inquiry of counsel, COURT ORDERED, further discovery is inappropriate.

AS TO DEFTS' MOTION TO COMPEL: COURT ORDERED, it had previously DISMISSED the damages.

ORIGINAL



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LITTLE DARLINGS OF LAS VEGAS,
INC., et al.

Plaintiffs

CASE NO. A-533273

vs.

DEPT. NO. XI

NEVADA DEPARTMENT OF TAXATION,
et al.

Defendants

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

TUESDAY, AUGUST 23, 2011

APPEARANCES:

FOR THE PLAINTIFFS:

WILLIAM H. BROWN, ESQ.
BRADLEY J. SHAFER, ESQ.
MARK E. FERRARIO, ESQ.

FOR THE DEFENDANTS:

BLAKE A. DOERR, ESQ.
DAVID J. POPE, ESQ.
VIVIENNE RAKOWSKY, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

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sc

1 LAS VEGAS, NEVADA, TUESDAY, AUGUST 23, 2011, 9:07 A.M.

2 (Court was called to order)

3 THE COURT: I'm going to start with Little Darlings,
4 I guess, because you're on page 1. Good morning.

5 MR. DOER: Blake Doer on behalf of the Department of
6 Taxation.

7 MS. RAKOWSKY: Good morning, Your Honor. Vivienne
8 Rakowsky on behalf of Department of Taxation.

9 MR. POPE: Good morning, Your Honor. David Pope
10 with the Attorney General's Office on behalf of the
11 defendants.

12 MR. SHAFER: Your Honor, Brad Shafer appearing for
13 [inaudible] on behalf of the plaintiffs.

14 MR. BROWN: Good morning, Your Honor. William
15 Brown, local counsel for plaintiffs.

16 MR. FERRARIO: Good morning, Your Honor. Mark
17 Ferrario for Shac.

18 THE COURT: It's your motion.

19 MR. POPE: Thank you, Your Honor.

20 THE COURT: You can start in whatever order you'd
21 like.

22 MR. POPE: Okay. We're going to take the motion for
23 partial summary judgment/motion to dismiss first.

24 THE COURT: You're going to take the big one first?

25 MR. POPE: Yes. Thank you, Your Honor.

1 Your Honor, in the Southern California Edison case
2 the Supreme Court clarified that NRS 327.680 provides for a
3 petition for judicial review. The specific language in that
4 statute is, quote, "An action against the Department on the
5 grounds set forth in the claim," end quote. The legislature
6 made some changes to the statute, as well as to .233(b). The
7 last changes were made in 1999. Subsequent thereto, in 2003
8 the legislature enacted NRS 368A.290, which contains the same
9 language. Statutes are to be read harmoniously with the
10 larger statutory scheme. It's also presumed that the
11 legislature is aware of existing statutes and of their meaning
12 at the time that they enact statutes. So with regard to NRS
13 368A.290 the legislature was aware of 372.680 and its meaning.
14 Therefore, by application of principles of statutory
15 construction, NRS 368A.290 provides for a petition for
16 judicial review, just as 372.680 does.

17 In addition, Your Honor, for all the reasons argued
18 in the defendants' brief, application of Southern California
19 Edison decision is not inappropriate in this matter. It's not
20 being retroactively applied. In fact, the Supreme Court has
21 applied it to two pending cases.

22 Transitioning, Your Honor, to the issue of judicial
23 estoppel, there's no basis for the defendants to be judicially
24 estopped from arguing that Case 2 should proceed, if at all,
25 as a petition for judicial review. The defendants have never

1 argued that NRS 368A.290 provides exclusively for a trial de
2 novo. In the federal proceedings it was argued that all
3 issues, including the constitutional issues, could be raised
4 in administrative proceedings and would be reviewed pursuant
5 to NRS 233B.135.

6 If it can be determined that defendants have taken
7 two positions and the change in position is not intended to
8 sabotage the judicial process, really the only difference
9 between the arguments was mention of the Malacon case. The
10 Malacon case was decided after the Scotsman case. The Malacon
11 case clarified the different treatment between facial
12 challenges, as-applied challenges, and as-applied challenges
13 that do not require factual determinations. And plaintiffs
14 cited to the Malacon case in their federal proceedings, so
15 they were aware of that.

16 The next question, Your Honor, since we know what
17 368A.290 means because of the Southern California Edison case
18 and because the defendants are not judicially estopped from
19 arguing that Case 2 should proceed, if at all, as a petition
20 for judicial review, the next question is whether this issue
21 can be raised pursuant to NRC 12(h)(3), subject matter -- the
22 issue of subject matter jurisdiction can be raised whenever by
23 suggestion of the parties or otherwise. Therefore, this issue
24 is not untimely. Pursuant to NRS 233B.130, a petition for
25 judicial review was due within 30 days of the issuance of the

1 Nevada Tax Commission's decision, and one wasn't filed. So
2 based on that Case 2 can be dismissed.

3 If Case 2 is dismissed, administrative res judicata
4 bars Case 1 for the original six plaintiffs that obtained a
5 final decision from the NTC, because Case 2 contains both a
6 facial challenge and an as-applied challenge. The remaining
7 plaintiffs -- I believe would be Deja Vu and Little Darlings
8 -- can pursue a facial challenge in Case 1. If Case 2 is not
9 dismissed -- and this, Your Honor, is going to get into an
10 issue that deals with 42 USC 1983, which did come up again in
11 the briefing. Case 2 cannot contain claims pursuant to
12 Section 1983 if it proceeds as a judicial review, because
13 those claims were not raised in the administrative record.
14 They also were not raised in the complaint or the amended
15 complaint. And the statute of limitations had passed. It's a
16 two-year statute of limitations with regard to Section 1983
17 claims in Nevada. The LET payments are due at the end of the
18 month following the month during which they were imposed.
19 Case 2 requests refunds for January, February, March, and
20 April of 2004, April of 2004 being the last month or the most
21 recent. The tax was due by the end of May, May 31st, 2004,
22 which means the statute of limitations expired two years
23 later, because the date that the tax was due would have been
24 the date of injury. In Case 2 the complaint wasn't actually
25 filed until January 9th, 2008, so the statute had run.

1 As a result of the statute of limitations, Case 1
2 cannot have any Section 1983 claims prior to November of 2006,
3 because the statute had run. In addition, based on National
4 Private Truck, which is 515 US 582, Fair Assessment, which is
5 454 US 116, and Patel, a Ninth Circuit case, which is
6 310 F.3d 1138, plaintiffs cannot maintain 1983 claims in state
7 tax cases in either State or Federal Court. They have no
8 basis to be seeking 1983 relief. Therefore their argument
9 that they can maintain an as-applied challenge pursuant to
10 1983 in Case 1 without exhausting administrative remedies is
11 just irrelevant to this tax case.

12 In addition, when you read through Fair Assessment,
13 the Supreme Court was explaining that these tax cases are to
14 proceed through the administrative procedures, and that's
15 basically the result of the Tax Injunction Act, federalism,
16 and comity. The federal tax -- or state tax issues are to be
17 respected and left to the states to deal with pursuant to
18 their remedies, provided the remedies are -- meet the test for
19 the Tax Injunction Act. And in this case they do, because the
20 -- all the issues, including the constitutional issues, could
21 be raised in a refund request which is subject to review by
22 the Nevada Tax Commission, which is then subject to review
23 pursuant to 233B.136 by the District Court, further review by
24 the Supreme Court.

25 With that, Your Honor, because Case 1 cannot have an

1 as-applied challenge, consolidation of the declaratory relief
2 claims has to be limited to a facial challenge, because Case 1
3 cannot contain an as-applied challenge.

4 And with that I'd just reserve some time to respond
5 to plaintiffs' arguments.

6 THE COURT: Thank you.

7 MR. SHAFER: Thank you, Your Honor.

8 Interestingly he says if the State has taken
9 different positions -- it really shouldn't be held against
10 them if they've taken two positions. In prior briefing to
11 Your Honor we've already shown that they've basically taken
12 four positions with regard to the NAC 170, which is whether we
13 can ever get the tax back. And before I really get to the
14 guts of this I wanted to remind the Court that at your
15 instructions I refiled the motion for preliminary injunction
16 after the case was sent over to you from Judge Togliatti, and
17 you asked me -- in a very crowded courtroom you asked, you
18 know, what's different in regard to the irreparable harm. And
19 I said, well, Your Honor, they have now invoked -- and here's
20 the transcript in front of Judge Togliatti last month, they've
21 now invoked the NAC once again that if we can't get the tax --
22 or, I'm sorry, if we didn't get the tax from the customer and
23 we can't prove that we are giving the tax back to the
24 customer, that we're not entitled to any relief.

25 Now, what happened, Your Honor, and we've cited this

1 -- and these two motions really go hand in hand. We've cited
2 the record in their reply brief in regard to that motion for
3 preliminary injunction, we've cited it in the discovery motion
4 that the Court's going to take up in a few minutes where they
5 said, okay, because they knew if they were invoking 170 there
6 was the prospect of irreparable harm, because we could never
7 then get the tax back and we would be entitled to an
8 injunction. So they've conceded, Your Honor, that they're not
9 going to invoke 170. Now, Your Honor, they have taken -- they
10 have propounded discovery, and they're literally saying the
11 discovery rule isn't related necessarily to this case but the
12 discovery's related to the fact that we want to take an audit
13 because if you guys win on the refund action we need to decide
14 whether you're in conformity with 170 and whether you can get
15 the tax back because maybe there's other reasons out there,
16 there's other offsets or whatever.

17 Now, that becomes really critical, Your Honor,
18 because they've acknowledged now that they have propounded
19 discovery in Case 2. So when they talk about the waiver
20 issues and the judicial estoppel issues, we're not just
21 talking about the representations in the Federal District
22 Court, we're not just talking about the representations in the
23 Ninth Circuit, we're not just talking about the fact that
24 they've litigated this case without ever raising, ever raising
25 this prospect that the case should be dismissed because it was

1 not -- there was not a PJR for three years --
2 THE COURT: Didn't they raise that at the beginning
3 of this case --
4 MR. SHAFER: No.
5 THE COURT: -- and the motion was denied?
6 MR. SHAFER: Well, yes, I believe --
7 THE COURT: Okay.
8 MR. SHAFER: I believe so. But --
9 THE COURT: Yes.
10 MR. SHAFER: Your Honor, honest to God, I don't know
11 exactly what we're arguing, because I thought your order on
12 reconsideration was really limited to Edison.
13 THE COURT: It is.
14 MR. SHAFER: Okay.
15 THE COURT: It's like do you belong here --
16 MR. SHAFER: Okay.
17 THE COURT: -- or has the Nevada Supreme Court --
18 MR. SHAFER: Okay.
19 THE COURT: -- clarified prior law as to what you
20 should be doing.
21 MR. SHAFER: So I'm going to then limit --
22 THE COURT: And that's really what I'm concerned
23 about today.
24 MR. SHAFER: Okay.
25 THE COURT: And as soon as you finish your argument

1 I'm going to tell you what we're going to do, and then we're
2 going to figure out how that makes this case have a little bit
3 left.

4 Mr. Ferrario, you have said yo, Judge, in a while.
5 Come on.

6 MR. FERRARIO: I was about to right there, because
7 I'd like to hear what you're going to tell us we're going to
8 do, and I might focus our attention.

9 THE COURT: Do you want to know what I think?

10 MR. SHAFER: Yes.

11 THE COURT: The reason that I raised this issue for
12 you is because when I read the Tax Commission case which is
13 Southern California Edison I thought that perhaps we needed to
14 change what had happened previously in this case on the prior
15 motion practice, because it appeared maybe we'd made a
16 mistake, "we" being the bigger court, and that perhaps you
17 needed to go back and have a petition for judicial review.
18 Because I'm not converting this to a petition for judicial
19 review, but it appears to me that this -- the sole remedy for
20 whether there is an as-applied problem and whether you're
21 entitled to a refund is a petition for judicial review vehicle
22 based upon the Supreme Court's clarification for us of the
23 laws in the state of Nevada.

24 Now, since I'm a fair person, I was going to give
25 you a tolling of 30 days for you to get that on file, but I

1 was also going to tell you that if there was a timing problem
2 with this initial filing I wasn't going to comment upon that
3 and therefore hopefully whoever your new judge is would then
4 have enough time to brief that when you filed the petition for
5 judicial review and they filed a motion to dismiss as
6 untimely.

7 So is there anything else you want to tell me?

8 MR. SHAFER: Yes.

9 THE COURT: Okay.

10 MR. SHAFER: I do. I think the Court recognizes
11 that because of Exhibits H and I of their brief that the
12 dismissal really should be off the table and that it should
13 either be converted to a petition for judicial review or, like
14 the court did in the -- I forget what the name of that second
15 case was -- they -- they gave the litigant 30 days to file a
16 petition for judicial review.

17 Your Honor, I think that, however, though, in light
18 of Edison we do have waiver issues here and we do have
19 judicial estoppel issues here, particularly given the fact,
20 Your Honor, now we know dismissal's off the table, you're not
21 dismissing. So --

22 THE COURT: No, no. Wait. Don't say I'm not
23 dismissing. I'm dismissing everything except the facial
24 challenge.

25 MR. SHAFER: Okay.

1 THE COURT: Which means you and I and they are going
2 to have a discussion about the legal implications of the words
3 in the statute.

4 MR. SHAFER: Okay.

5 THE COURT: And then I'm going to make a ruling, and
6 we're going to be done. And then you're going to file a
7 petition for judicial review within the 30-year time period I
8 gave you, and some person who is randomly assigned that case
9 is then going to make some decisions. Because I think they
10 properly raised the petition for judicial review at an early
11 stage of this proceeding. And while they have certainly done
12 things during this litigation that in other situations might
13 create a judicial estoppel argument, I can't hold it against
14 them when they raised it and we decided it differently than
15 the Supreme Court has currently clarified.

16 MR. SHAFER: Well, Your Honor, if I could just ask a
17 question. When did they -- when do you believe that they
18 appropriately raised it? It certainly was not in their
19 affirmative defenses.

20 THE COURT: In the very beginning of the case there
21 was an issue about the petition for judicial review that was
22 discussed --

23 MR. SHAFER: No.

24 THE COURT: -- in one of the hearings.

25 MR. SHAFER: No.

1 MR. FERRARIO: No.

2 THE COURT: Didn't you guys raise it?

3 MR. DOERR: We had a pending motion to dismiss --

4 THE COURT: See?

5 MR. DOERR: -- in that hearing about two years later

6 we said, we're waiting for you to rule so that we can then

7 file our petition for judicial review. And the Judge scrolled

8 back to her notes and said, I wrote that in my notes when you

9 were here two years ago.

10 THE COURT: See?

11 MR. SHAFER: That's -- which was last year? I mean,

12 you know --

13 THE COURT: Look, I've been on this case since

14 November --

15 MR. SHAFER: Okay.

16 THE COURT: -- other than the one time I helped you

17 at a prior occasion.

18 MR. SHAFER: Yes.

19 THE COURT: So it appears to me that this issue has

20 been raised. I didn't say it was raised well. So I'm not

21 holding it against them, which would be your judicial estoppel

22 issue.

23 MR. SHAFER: Well, Your Honor, there's also --

24 there's also the waiver issue.

25 THE COURT: I understand.

1 MR. SHAFER: In addition to the judicial estoppel,
2 the fact that they never raised this as affirmative defense in
3 their first affirmative defenses, the only thing they raised
4 in their second affirmative defenses, which was just filed a
5 couple months ago, which was dismissal and not conversion to a
6 petition for judicial review, they've been litigating this for
7 three years, and in fact, like I said, the second motion we're
8 going to have here -- or maybe we're not going to have the
9 motion --

10 THE COURT: Yeah, probably not going to have it.

11 MR. SHAFER: But they've been propounding discovery
12 based upon Case 2. And if Case 2 is a petition for judicial
13 review, then they've litigated it not as a petition for
14 judicial review, but as an original action.

15 And, Your Honor, we'd also -- I'd also point out to
16 you the additional request that we asked for because of the
17 fact of all of the representations in the federal judicial --
18 I'm sorry, in the Federal District Court and in the Ninth
19 Circuit, where they point out the Scotsman matter, where --
20 and remember, Your Honor, and I've quoted this verbatim, they
21 point out Scotsman gives us an as-applied challenge, an
22 alternative for an as-applied challenge. Now, they made those
23 representations, they made the representations that we should
24 go under .290. Remember, Your Honor, that in one of their
25 briefs in the Federal District Court they put a "see also

1 .233," which they then take out in the Ninth Circuit. The
2 Federal District Court relies on their Scotsman argument and
3 says that there's an alternative avenue of relief. They
4 represented to the Federal Courts that we filed these two
5 actions which demonstrate that there was a plain, efficient,
6 and speedy remedy in State Court, and at no -- and they won
7 all that in the Federal District Court so that we would not
8 litigate it. They said that we had the right for an as-
9 applied challenge. We filed those actions, and now, Your
10 Honor, you're saying that they were able to make those
11 representations to the Federal -- oh. And they also said to
12 the Federal District Court and the Ninth Circuit that the
13 Nevada Supreme Court would have original appellate
14 jurisdiction in this matter, not that you would.

15 THE COURT: Do you think the Nevada Supreme Court's
16 going to listen to the U.S. District Court?

17 MR. SHAFER: Your Honor, I'm not saying what the
18 Federal District Court said.

19 THE COURT: I'm sorry. Yeah.

20 MR. SHAFER: That's what they said.

21 THE COURT: Yeah.

22 MR. SHAFER: Those are their quotes, Your Honor, not
23 once, not twice, three times. And we've cited them all, Your
24 Honor, in the briefing. That's what they said to the Federal
25 District Court. That's what they said to the Ninth Circuit.

1 And they've litigated this case as an as-applied. And, Your
2 Honor, again, I would point out to you their representation of
3 Scotsman specifically says that gives us the right for an as-
4 applied challenge. And now they won on Scotsman, they raised
5 it to the Federal District Court, the Federal District Court
6 relied on that, the Federal District Court says Scotsman gives
7 them an alternative avenue for relief, and now you're taking
8 that away from me. You're saying we can't have that now the
9 way we filed this and the way we've been litigating this for
10 the last three years.

11 THE COURT: Anything else?

12 MR. POPE: Your Honor, may I respond, please?

13 THE COURT: Yes.

14 MR. POPE: Okay. First of all, with regard to
15 Scotsman, Your Honor, the language in the case was cited to,
16 and it was referenced that that case was called an as-applied
17 challenge or that the language said "as applied to them." But
18 Scotsman also appeared to be determined on a legal issue, as a
19 matter -- it was decided as a matter of law. If there were no
20 factual issues to be determined, then Malacon, a case that
21 plaintiffs cited in their federal proceedings, would indicate
22 that there could be declaratory relief. In the federal
23 proceedings, Your Honor -- I quote this in defendants' motion
24 -- or I believe the replies states -- and it's kind of
25 lengthy. "As discussed at length in the moving papers, the

1 provisions of NRS 368A.250, .320 affords taxpayers the
2 opportunity to raise the constitutionality of the live
3 entertainment tax in the context of a request for a refund in
4 an administrative proceeding. That procedure is subject to
5 judicial review," which is now what the Supreme Court has
6 said. On judicial review a District Court may set aside the
7 agency decision if it violates constitutional or statutory
8 provisions." That's NRS 233B.135(3)(a). It goes on to say,
9 "In the event of an appeal to the Nevada Supreme Court, Nevada
10 Constitution Article 6, Section 4, and NRS 233B.150, the
11 taxpayer has a right to appeal to the Nevada Supreme Court,"
12 and it cites those two authorities. "At that level a taxpayer
13 will get a declaration by an appellate court with regard to
14 the constitutionality of the tax one way or the other."

15 So it's a judicial review. You raise all your
16 issues before the Department, before the Commission, it's part
17 of the administrative record, it gets reviewed pursuant to
18 233B.135. In addition, there's a possibility of declaratory
19 relief pursuant to Scotsman. Scotsman, you know, really was
20 decided because the Supreme Court had first in Scotsman 1
21 decided that the tax was unconstitutional, then in Scotsman 2
22 they're saying, hey, it's -- it would be futile to proceed
23 with this because we've already said it's unconstitutional.
24 So Scotsman is valuable for the fact that it stated that there
25 are two exceptions to the administrative exhaustion

1 requirement. Those were further explained in Malacon. That
2 should take care of any argument that we, you know, argued in
3 a proceeding that 368A.290 is a trial de novo and that we --
4 and that we prevailed on that argument in a proceeding. So
5 there is no judicial estoppel.

6 233B.250 is a section of that chapter that says that
7 final decisions of an agency that are then decided by the
8 District Court are subject to review by the Supreme Court.
9 Just says "review." So whether that cite is included or left
10 out of a brief, I don't see the impact of it.

11 With regard to discovery, Your Honor, as I've stated
12 in --

13 THE COURT: There's a yo, Judge.

14 MR. POPE: -- in the defendants' brief, all the
15 motion practice has occurred in Case 1. We had -- pursuant to
16 NRCPC 12(h)(3) we can raise the subject matter jurisdiction at
17 any time. And, you know, we had to respond in Case 2, because
18 if it's not going to be dismissed, if it's going to proceed as
19 a trial de novo, time's running out, time's been ticking.

20 THE COURT: Well, because I set a trial for you.

21 MR. POPE: Pardon?

22 THE COURT: I set a trial.

23 MR. POPE: Right.

24 THE COURT: Yeah.

25 MR. POPE: And those are my comments, Your Honor.

1 Thank you.

2 THE COURT: Mr. Ferrario --

3 MR. FERRARIO: Your Honor --

4 THE COURT: -- since you haven't had a chance to
5 address me, I'd be happy to listen to something you say before
6 I tell you what we're going to do. But you may be able to
7 change my mind. You have before in other cases.

8 MR. FERRARIO: I think we've kind of gotten lost
9 here, because we are in a unique situation. I mean, I've
10 practiced here about as long as you --

11 THE COURT: A little longer.

12 MR. FERRARIO: -- a little longer, and I can't
13 recall a case like the Southern Cal Edison case. And it
14 really has thrown us into a big of a quagmire here.

15 THE COURT: Which is why I asked for supplemental
16 briefing when it came down.

17 MR. FERRARIO: Right. And it appears that Your
18 Honor's now hinging her ruling on what they may have done at
19 the beginning of the case. And I'll be the first to admit
20 we're new to this and --

21 THE COURT: You're even newer than me.

22 MR. FERRARIO: That's right. And I'm not as
23 conversant with that. But when I step back from this I think
24 you have to look at the Southern Cal Edison case and what the
25 court did there. The court had a chance to visit an unfair

1 result on the taxpayer there, and the court chose not to do
2 that. And the court looked at what the Department had done, I
3 think not only in that case, but had done in the past in other
4 cases. And I have the same -- in effect the State -- the
5 Department is sitting over here. I don't think they're
6 standing up saying that they were rock solid in an opinion
7 that we had to proceed with the petition for judicial review.
8 They haven't litigated the case that way. They can't point to
9 anything -- and they didn't do that. I just went back through
10 their reply again. They didn't say, hey, wait, here's our
11 marquee statement where we from the beginning thought we
12 should proceed by way of a petition for judicial review. So
13 when you step back and you look at how this case was
14 litigated, the statements that were made in Federal Court, the
15 things that we pointed out in our opposition and that Mr.
16 Shafer pointed out in his opposition, I don't think anybody
17 could reasonably conclude that the State did not litigate this
18 case as if we were in the proper forum. They just didn't.

19 And the thing that really struck me at one point was
20 when we pointed out all of the things that they did, okay, in
21 our brief and in their reply they come back and they say,
22 well, we didn't specifically say what the State said in Cal
23 Edison case in a brief. Well, that's nonsense. When you're
24 looking at equitable doctrines, which our court did in Cal
25 Edison --

1 THE COURT: And you're talking about the judicial
2 estoppel issue.

3 MR. FERRARIO: Absolutely. You're looking at trying
4 to effectuate a fair result. I don't think on this record,
5 after four years of -- close to five years of litigation, for
6 God sakes, two different cases being filed, Federal Court,
7 back to State Court, the discovery that we're fighting over,
8 that anyone could reasonably conclude that the State wasn't
9 doing exactly what the State did in Southern California
10 Edison, and that is proceedings as if we were in the proper
11 forum. That is the -- that is the hallmark of Southern
12 California Edison. Strip away all the nonsense. I mean, the
13 court sat there, the court could have done -- could have very
14 simply said, we're clarifying. Once you use the word
15 "clarify," that means, knucklehead, you read it the wrong way
16 the first time, I'm going to clarify it for you and I'm
17 throwing you out. Did our court do that? No.

18 THE COURT: Well, it did, but then they --

19 MR. FERRARIO: And this Court shouldn't do that.

20 THE COURT: -- found there was a judicial estoppel
21 issue.

22 MR. FERRARIO: That -- so once you get into equity
23 it's about doing fairness. And Your Honor --

24 THE COURT: Which is why you have a tolling period,
25 Mr. Ferrario.

1 MR. FERRARIO: I understand that. But the problem
2 is now we're -- I guess Your Honor's going to say we're
3 saddled with an administrative record that was made at a point
4 in time when everybody thought we were going to get a trial de
5 novo. So do we now go back to the --

6 THE COURT: I am not saying that. I am saying that
7 whoever is randomly assigned to hear the petition for judicial
8 review that I assume will be filed within the tolling period
9 that I grant you, will make that determination. I'm not going
10 to make that determination for that judge.

11 MR. FERRARIO: But the problem is trial de novo by
12 definition means you're stuck with the record that you created
13 at the administrative agency.

14 THE COURT: I understand what you're saying, Mr.
15 Ferrario. I am saying that I am not making that decision.
16 The judge who is randomly assigned the petition for judicial
17 review may make a decision that is different on how you handle
18 that. That's not going to be my call, okay.

19 MR. FERRARIO: I understand what you're saying. I
20 think -- I guess at the end of the day I think the court sent
21 a strong message in Southern California Edison, and that was
22 to the District Courts to, whatever you do, be fair. And here
23 -- I don't think if you look at the totality of the record in
24 this case and the actions of the Department, I don't see how
25 they're really materially different than what the Department

1 did in the Southern California Edison case.

2 THE COURT: Thank you.

3 MR. FERRARIO: I think the same ruling should apply
4 here and we should not have to now have a 30-day tolling
5 period on filing a petition for judicial review. They're not
6 even seriously arguing in their pleadings -- when you go
7 through it, they're not -- they don't even seriously argue any
8 points that take them out of Southern California Edison.
9 That's all I can say, Judge.

10 THE COURT: Thank you.

11 The motion is granted as to the issue of the sole
12 remedy. The petition for judicial review is the appropriate
13 remedy under the California -- Southern California Edison
14 case. Because this case has gone on for so long and a
15 petition for judicial review was raised and not acted on in
16 conformance with the Southern California Edison decision by
17 the Eighth Judicial District Court, I am granting a tolling
18 period for the plaintiffs to be able to file a petition for
19 judicial review.

20 I am not commenting on the timeliness of the
21 original filing in this case when it's treated as a petition
22 for judicial review in the new filing, and I am also not
23 making a comment as to the extent of the record that any other
24 judge may decide is appropriate in making that decision.

25 It seems to me that the sole remaining issue in

1 these cases is the dec relief claim on the actual
2 constitutional challenge. Right? Actual, instead of as
3 applied?

4 MR. POPE: Yes, Your Honor.

5 THE COURT: How long do you guys need to be ready
6 for an argument on that issue?

7 MR. POPE: Well, with regard to that issue, Your
8 Honor, is it going to be limited to a facial challenge? Are
9 you dismissing the '83 claims?

10 THE COURT: I already dismissed the 1983 claims,
11 didn't I, about six months ago?

12 MR. POPE: Well, yes --

13 MR. SHAFER: As to damages.

14 MR. POPE: -- you dismissed the damages. And if you
15 don't -- you can't get damages, you're probably not going to
16 argue for declaratory relief. But they still -- they named
17 Michelle Jacobs as an -- in her official capacity only, right,
18 to get prospective relief, and we would have to file a motion
19 to dismiss here, get her out of the case, because they can't
20 seek that.

21 THE COURT: I already dismissed all the damages
22 claims. But anything you want to say? I think we're just
23 limited to a facial challenge at this point.

24 MR. SHAFER: Your Honor, I do not -- I do not
25 believe that's true, because Deja Vu and Little Darlings never

1 litigated anything in front of the Nevada Tax Commission.
2 They were entitled -- you have -- you have allowed -- pursuant
3 to their motion for reconsideration you've allowed the
4 declaratory relief and injunctive relief to proceed in Case 1.
5 Case 1 is Federal 1983 and also state law. There is no basis
6 to say that there's no right for Deja Vu and Little Darlings
7 to litigate an as-applied challenge.

8 But, Your Honor, you know, I just want to point out
9 something additionally that is now going to happen. You know,
10 I've got a December 14th deadline. You want a motion for
11 summary judgment, we'll give you a motion for summary
12 judgment. But they're going to come in and now they're going
13 to say, well, there's no PJR and the PJR wasn't timely and,
14 you know, res judicata, administrative res judicata and
15 collateral --

16 THE COURT: You've got 30 days to file your petition
17 for judicial review, and then it will be randomly assigned,
18 which means it's not coming here. Because I don't get civil
19 cases.

20 MR. SHAFER: I understand.

21 THE COURT: So you're going to have a new judge.

22 MR. SHAFER: I understand. I understand. What I'm
23 saying is --

24 THE COURT: I have the let's look at the words of
25 the statute.

1 MR. SHAFER: Yes, Your Honor. But they're going to
2 tell you the case is over, that there's no right to bring a
3 facial challenge because of administrative res judicata and
4 collateral estoppel because you've already dismissed out
5 Case 2. That's what they're going to say. They've already
6 said it. They've said it three times in the very summary
7 judgment briefs.

8 THE COURT: Okay. So are you saying it's basically
9 over now?

10 MR. SHAFER: No, I'm not saying it's over. What I'm
11 saying is this Court should do exactly what the Federal --
12 what the State District Court did in Edison, treat it as a
13 petition for judicial review if --

14 THE COURT: I've already said no to that.

15 MR. SHAFER: Okay.

16 THE COURT: So I'm on the -- we have words in the
17 statute, and you have a dec relief claim that says, gosh,
18 Judge, this isn't constitutional by the words in the statute.

19 MR. SHAFER: Yes.

20 THE COURT: How long do you need for me to --

21 MR. SHAFER: I can get you a brief within 30 days,
22 Your Honor.

23 THE COURT: So okay. And then you guys think a half
24 day of argument is enough for you?

25 MR. SHAFER: Sure.

1 THE COURT: Okay.

2 MR. SHAFER: Your Honor, could I just make one
3 further request? We asked for alternative relief, that you
4 remand this. Now, you have to remember in regard to Safeway,
5 which was the law before Consolidated Edison -- Safeway,
6 remember, Your Honor, dismissed out a PJR because the law at
7 that time was that was not the appropriate avenue of redress.
8 Malacon Tobacco, which they cite, is a 2008 case. That case
9 was there when we litigated everything in front of the Federal
10 District Court, Safeway was there, we relied on Safeway, we
11 knew that we could come here and have an original action based
12 upon Safeway, and I would ask Your Honor that you don't
13 convert it necessarily to a PJR, you just remand it back to
14 the Nevada Tax Commission for further proceedings, as you are
15 permitted to do under the statute.

16 THE COURT: Okay. I'm declining to do that.

17 MR. SHAFER: Okay.

18 THE COURT: Anything else?

19 MR. BROWN: I do have just one question. I don't
20 recall the PJ -- I recall the PJR issue being raised when I
21 guess it must have been Judge Togliatti said just sort off the
22 cuff, it occurs to me this might -- maybe this should have
23 been a PJR. I think Diana Sullivan was local counsel for
24 maybe a year or something. I am pretty sure that the State
25 did not raise this issue until a year and a half, two years

1 into the litigation. So I guess my question is to what extent
2 is the Court's ruling based on the State raising this issue --

3 THE COURT: Here's what my ruling is based on. The
4 issue of the petition for judicial review was raised in this
5 proceeding, and it was not appropriately acted upon, as the
6 Supreme Court has now told us in Southern California Edison.
7 And it doesn't matter to me if the person who raised it the
8 first time in argument was the judge, if it was your side, or
9 their side. The issue exists in this record from a long time
10 ago. And because the issue was raised and discussed and ruled
11 upon by this Court, which is not consistent with the Southern
12 California Edison, I'm not holding that against the State.
13 Because it's not fair to you, I'm giving you a 30-day tolling
14 period, which I don't have to do.

15 MR. BROWN: I understand.

16 THE COURT: But I'm trying to exercise my equitable
17 jurisdiction in evaluating what has happened historically in
18 this case.

19 So anything else?

20 MR. SHAFER: Your Honor, are you saying that you
21 think the Court previously ruled on the PJR issue?

22 THE COURT: I said the issue of the PJR, the
23 petition for judicial review was raised. And I don't
24 remember, because I read it in a transcript, and it's been a
25 long time ago.

1 MR. SHAFER: Uh-huh.

2 THE COURT: And it may not even have been a
3 transcript. It may have been a video that I looked at. It's
4 been a long time ago, because I reviewed some of the stuff in
5 this case as part of my work. And because that was raised and
6 that meant we all knew about it, "we" being the greater group,
7 and it was not acted upon in conformance with what the Supreme
8 Court has clarified in Southern California Edison, I am not
9 going to impose the estoppel-type arguments or defenses that
10 you would have against the State upon them. Do you understand
11 what I'm saying?

12 MR. SHAFER: Yep.

13 THE COURT: Okay.

14 MR. POPE: Your Honor, may I just clarify a few
15 things? First of all, with regard to affirmative defenses, we
16 did raise seven of those in the amended complaint. With
17 regard to Safeway, in our brief we explained that wasn't the
18 law because of the subsequent statutory change which the
19 Supreme Court now looked to to clarify the current law. And
20 the judicial review issue was definitely raised and --

21 THE COURT: I just know it's part of the record. I
22 can't remember how.

23 MR. POPE: Well, it was definitely raised and not
24 granted in our first motion. And the issue of exhaustion of
25 administrative remedies was raised in the first issue and not

1 decided on.

2 THE COURT: Okay. Just so we're all clear, the
3 reason of the fact that it was raised is important to me -- is
4 only important to me in evaluating the estoppel issues.
5 That's the only reason it's important to me. And so I have
6 decided to grant the tolling period because it's not as clear
7 as it could have been. And so hopefully the plaintiffs will
8 file their petition for judicial review within the tolling
9 period, and then you will be able to have those issues
10 resolved.

11 MR. SHAFER: I will do so.

12 THE COURT: Anything else?

13 MR. DOERR: Yeah. With regard to timing did we say
14 30 days to file cross-motions for summary judgment and then a
15 hearing, or --

16 THE COURT: You're filing whatever in 30 days or so.
17 Then you'll probably get a hearing about 30 days or so after
18 that, and we'll have a discussion. And since you've told me
19 it's about a half day, I'll probably put you on a Monday
20 afternoon somewhere when I'm not in trial.

21 MR. BROWN: Do you want to give us a due date, a
22 date certain for the motions, cross-motions?

23 THE COURT: No.

24 MR. BROWN: It's 30 days from today?

25 THE COURT: It's sometime -- I've estimated 30 days.

1 If it's 35, I won't complain, if it's 50, I will.
2 MR. BROWN: All right. Somewhere between --
3 THE COURT: Because you have a date to file motions
4 under the trial-setting order.
5 MS. RAKOWSKY: Your Honor, at this time we'll be
6 cancelling all discovery, including depositions?
7 THE COURT: What?
8 MS. RAKOWSKY: At this time we'll be cancelling all
9 discovery, including depositions?
10 THE COURT: Since you are limited to a facial
11 challenge, at this point it does not appear that any further
12 discovery is appropriate. The discovery in my opinion was
13 based upon the as-applied challenge which I was incorrectly
14 under the assumption we were going to do in this case. But
15 you'll do something else now.
16 Anything else?
17 MR. SHAFER: Thank you, Your Honor.
18 THE COURT: Have a lovely day.
19 THE PROCEEDINGS CONCLUDED AT 9:45 A.M.

20 * * * * *
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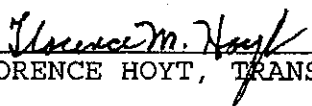
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



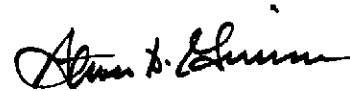
FLORENCE HOYT, TRANSCRIBER

10/24/11

DATE

MOT

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Co-Counsel for Plaintiffs
11 **Admitted Pro Hac Vice*

DISTRICT COURT

CLARK COUNTY, NEVADA

15 DEJA VU SHOWGIRLS OF LAS VEGAS,
L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE
16 DARLINGS OF LAS VEGAS, L.L.C., d/b/a
17 *Little Darlings*, K-KEL, INC., d/b/a *Spearmint*
Rhino Gentlemen's Club, OLYMPUS
18 GARDEN, INC., d/b/a *Olympic Garden*,
SHAC, L.L.C. d/b/a *Sapphire*, THE POWER
19 COMPANY, INC., d/b/a *Crazy Horse Too*
20 *Gentlemen's Club*, D. WESTWOOD, INC.,
d/b/a *Treasures*, and D.I. FOOD &
21 BEVERAGE OF LAS VEGAS, LLC, d/b/a
22 *Scores*,

Case No.: A533273
Dept. No.: XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT ON FACIAL
CHALLENGE, FOR PERMANENT
INJUNCTION, AND FOR RETURN OF
TAXES**

23 Plaintiffs,

24 vs.

25 NEVADA DEPARTMENT OF TAXATION,
NEVADA TAX COMMISSION, NEVADA
26 STATE BOARD OF EXAMINERS, and
MICHELLE JACOBS, in her Official Capacity
27 Only,

28 Defendants.

Date of Hearing: _____

Time of Hearing: _____

1 COME NOW Plaintiffs, by and through their attorneys of record, William H. Brown of
2 the law firm of LAW OFFICES OF WILLIAM H. BROWN, ESQ., LTD., and Bradley J.
3 Shafer, of the law firm of SHAFER & ASSOCIATES, P.C., and hereby respectfully move this
4 Honorable Court for partial summary judgment and a permanent injunction enjoining the
5 Defendants, and their officers, employees, agents, representatives, and all persons acting by,
6 through, and for them, from enforcing, applying, and implementing Title 32, Chapter 368A of
7 the Nevada Revised Statutes, for the reasons that it is unconstitutional on its face under Article
8 I, §§ 9 and 10 of the Nevada Constitution, as well as the First and Fourteenth Amendments to
9 the United States Constitution, and ordering the return of all taxes paid by Plaintiffs
10 thereunder, along with interest.
11
12

13 ///

14 ///

15 ///

1 This Motion is made and based upon the Verified Complaint for Declaratory and
2 Injunctive Relief, Damages, and Attorney Fees and Costs, the exhibits thereof, the following
3 Points and Authorities, the exhibits and affidavit attached thereto, the submissions on file in
4 this action, prior arguments of counsel, and the arguments of counsel to be made at the time of
5 the hearing.
6

7 DATED this 22nd day of September, 2011

8 BY: /s/ William H. Brown
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23 *Co-Counsel for Plaintiffs*
24 **Admitted Pro Hac Vice*
25
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NOTICE OF MOTION

1
2 TO: Nevada Department of Taxation, Nevada Tax Commission, Nevada State Board of
3 Examiners, and Michelle Jacobs, Defendants; and

4 TO: Defendants' Attorney, David Pope and Blake Doerr

5 PLEASE TAKE NOTICE that Plaintiffs will bring their Motion for Partial Summary
6 Judgment on Facial Challenge, for Permanent Injunction, and for Return of Taxes for hearing
7 before the District Court, Department XI, on the 25 of Oct, 2011, 9:00a or as
8 soon thereafter as counsel can be heard.
9

10 Dated this 22nd day of September, 2011.

11
12 BY: /s/ William H. Brown
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND AND FACTS

Plaintiffs operate commercial entertainment establishments in the City of Las Vegas, which present on their business premises live performance dance entertainment to the consenting adult public. Verified Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs (“Comp.”), at ¶¶ 27-34. The entertainment presented by the Plaintiffs constitutes speech and expression, as well as a form of assembly, protected by the First and Fourteenth Amendments to the United States Constitution,¹ as well as by Art. I, §§ 9 and 10 of the Nevada Constitution.² Comp., ¶ 36.

On or about July 22, 2003, the State of Nevada enacted Title 37, Chapter 368A of the Nevada Revised Statutes (hereinafter “Chapter 368A, or sometimes the “statute”), which modified the previous “Casino Entertainment Tax” and imposed, for the first time and subject to numerous and various exceptions, an excise tax on admission to any facility that provides defined “live entertainment.” Comp., ¶ 22. This tax is sometimes referred to hereinafter as

¹ Because the Federal Constitution represents the “floor” level of protections that can be afforded under the State Constitution (see **S.O.C., Inc. v. Mirage Casino-Hotel**, 117 Nev. 403, 414, 23 P.3d 243 (2001)), the federal case law cited herein is applicable to Plaintiffs’ Nevada constitutional challenges as well.

² Exotic dancing, in the form of clothed, “topless,” and even fully nude entertainment, falls within the scope of the liberties, including the right to free expressive association, afforded by the First Amendment. See, e.g., **Barnes v. Glen Theatre, Inc.**, 501 U.S. 560, 565(1991) (nude dancing receives protections under the Constitution); **City of Erie v. Pap’s A.M.**, 529 U.S. 277, 289 (2000) (same); **Schad v. Borough of Mt. Ephraim**, 452 U.S. 61, 65-66 (1981) (“Nor may an entertainment program be prohibited solely because it displays the nude human figure. ‘[N]udity alone’ does not place otherwise protected material outside the mantle of the First Amendment. . . . Furthermore, . . . nude dancing is not without its First Amendment protections form official regulation”); and **Deja Vu of Nashville, Inc. v. Metropolitan Government of Nashville and Davidson County**, 274 F.3d 377, 396 (6th Cir. 2001), citing **Roberts v. United States Jaycees**, 468 U.S. 609, 622 (1984) (Court held that “the First Amendment protects the entertainers and audience members’ right to free expressive association. They are certainly engaged in a ‘collective effort on behalf of shared goals’”).

1 the "Live Entertainment Tax," or simply the "LET." A copy of the version of Chapter 368A
2 adopted in 2003 is attached hereto as Ex. 1. As originally enacted, the tax imposed by
3 Chapter 368A was not applicable, under the terms of N.R.S. § 368A.200(5)(d), to live
4 entertainment that was not provided at a licensed gaming establishment if the facility had a
5 maximum occupancy of less than 300 persons. Ex. 1, § 368A.200(5)(d); and Comp., ¶ 25.
6
7 However, on June 17, 2005, Chapter 368A was amended by Assembly Bill No. 554; a copy of
8 which is attached hereto as Ex. 2. Among other things, Assembly Bill No. 554 reduced the
9 scope of the exception as contained in N.R.S. § 368A.200(5)(d) from a maximum seating
10 capacity limitation of 300 to 200. The stated purpose of this amendment was to specifically
11 extend the tax obligation as contained in Chapter 368A to a number of the Plaintiffs'
12 establishments that were not then subject to the LET. Comp., ¶ 26; and Ex. 2,
13 § 368A.200(5)(d). For the same stated reasons, the LET was again modified in 2005, via
14 Senate Bill 3 (Ex. 3, p. 13), to change the references in NRS 368A.200 from "seating capacity"
15 to "occupancy." Then in 2007, via Assembly Bill 487 (Ex. 4) , the LET was modified to
16 exempt "certain minor league baseball events . . ." (Id. at p. 1).
17
18

19 The current codified version of Chapter 368A, incorporating the amendments as contained
20 in Assembly Bills No. 554 and 487, as well as Senate Bills, are attached hereto as Ex. 5, and
21 unless designated to the contrary, any further references to the specific provisions of the Statute
22 refer to the version as found as Ex. 5, while the previous version of the LET will be referred to
23 as the "2003 LET."
24

25 The Defendants are the departments, boards, and individuals charged with enforcing
26 Chapter 368A. They take the position that the Plaintiffs are all subject to the Statute, and the
27 Defendants have required the Plaintiffs to pay the LET as mandated therein. Comp., ¶¶ 17-20,
28

1 27-34, 37. Contrarily, the Plaintiffs contend the tax imposed by Chapter 368A is both illegal
2 and unconstitutional,³ and that even if that is not the case, they are specifically exempted from
3 paying the LET pursuant to the statutory exemptions as contained therein. Comp., ¶¶ 38-39,
4 53. Nevertheless, under threat of criminal prosecution and the imposition of fines and other
5 penalties against them, Plaintiffs have all, beginning at various times, paid the LET mandated
6 by Chapter 368A. Comp., ¶¶ 38.

8 Because the tax in question is specifically directed at activities protected by the First
9 Amendment, Plaintiffs have brought their action, in part, pursuant to a federal civil rights
10 statute, 42 U.S.C. § 1983, which permits actions at law and suits in equity to redress
11 deprivations of constitutional rights. Comp., ¶¶ 1, 3, and 66.

13 **II. PROCEDURAL HISTORY**

14 In order to safeguard their constitutional rights, Plaintiffs, on April 18, 2006, filed suit
15 in the United States District Court for the District of Nevada, Case Number CV-S-06-00480-
16 RLH-RJJ, seeking similar remedies sought in the instant lawsuits⁴: A declaration that the LET
17 is unconstitutional, an injunction against the enforcement of Chapter 368A, and return of the
18 live entertainment taxes that had been paid. These same Defendants filed a motion to dismiss
19 the federal action, claiming that the Tax Injunction Act (“TIA”), 28 U.S.C. § 1341, precluded
20 the federal court from having jurisdiction over the claims because there existed a “plain,
21 speedy, and efficient remedy” in state court. The district court dismissed Plaintiffs’ complaint
22 on that basis (Ex. 7), and Plaintiffs appealed that dismissal to the United States Court of
23
24

25
26
27 ³ Indeed, the Attorney General of Tennessee previously issued an opinion declaring that
a similar tax proposed in that state would be unconstitutional. See Exhibit 6.

28 ⁴ As discussed herein, a subsequent action for refund, as permitted by Chapter 368A, was
filed, and a Petition for Judicial Review is now pending.

1 Appeals for the Ninth Circuit, which affirmed the District Court's decision on May 20, 2008,
2 in a three-paragraph order. Ex. 8.

3 In order to prevent their constitutional rights from further violation, Plaintiffs filed this
4 instant action (Case No. A533273, referred to in this Motion as "Case 1") in December 2006.
5 The Parties agreed, however, to extend the date for the Defendants to answer that complaint
6 because, in an abundance of caution, a number these Plaintiffs filed, at approximately the same
7 time, administrative claims for refunds.
8

9 Specifically, on February 27, 2007, within the three year statutory period under N.R.S.
10 § 368A.260(1) for the filing of administrative refund claims, Plaintiffs K-Kel, Inc., Olympus
11 Garden, Inc., SHAC, LLC, The Power Company, Inc., D.Westwood, Inc. and D.I. Food &
12 Beverage of Las Vegas, LLC (identified herein as the "K-Kel Plaintiffs") filed individual
13 requests for refunds of the LET that they had paid during certain months.⁵ A redacted copy of
14 one of those refund requests is attached as Ex. 9, which illustrates that the *sole* basis for the
15 request for refund was the asserted unconstitutionality, and therefore inapplicability to the
16 Plaintiffs, of the LET.
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20

21 ⁵ Plaintiffs Deja Vu Showgirls of Las Vegas, LLC, and Little Darlings of Las Vegas,
22 LLC (the "Deja Vu Plaintiffs"), did not become subject to the LET until Chapter 368A was
23 amended in June of 2005, to reduce the seating capacity required for a facility to be subject to
24 the LET from 300 to 200 persons. See N.R.S. § 368A.200(5)(d). Pursuant to N.R.S. §
25 368A.260(1), the statutory three year period for those two Plaintiffs to file their administrative
26 requests for refunds did not then expire until mid 2008, and those Plaintiffs were not required
27 to have, and had not yet, filed administrative claims for refund when Case 2 was filed.
28 However, starting in August, 2008 (for the July 2005 tax period), the Deja Vu Plaintiffs began
filing administrative claims for refund, and responded to the inevitable denials from the
Department with monthly notices of appeal to the Commission. Subsequent to the filing of
Case 2, the Department has responded to the monthly notices of appeal with identical
acknowledgment letters stating that *each appeal was being held in abeyance during the
pendency of Case 2*. A sample of the Department's acknowledgment letter is attached hereto
as Ex. 11.

1 The K-Kel Plaintiffs' requests for refunds were all summarily denied by the Nevada
2 Department of Taxation on April 3, 2007 (example copy attached as Ex. 10). Those Plaintiffs
3 all filed timely notices of administrative appeals, and the Nevada Tax Commission
4 ("Commission") held hearings regarding the first set of denials in July and August of 2007.
5 After the submission of materials and oral argument, the Commission denied Plaintiffs'
6 appeals in October of 2007 (Ex. 12). On January 9, 2008, in accordance with N.R.S. §§
7 368A.290(1)(b) and 368A.300(3)(b), which govern adverse decisions by the Commission, the
8 K-Kel Plaintiffs timely filed a judicial complaint for refund, declaratory relief, injunctive relief,
9 and damages. That action was assigned Case No. A554970 (referred to herein as "Case 2").
10 The status of that case is up in the air at present in light of recent rulings by this Honorable
11 Court.
12
13

14 Plaintiffs filed an amended complaint in Case 1 on or about January 28, 2009, to add an
15 "as applied" cause of action to the challenge against the LET. Although, at the time of filing of
16 this instant motion formal orders had not been entered, at a hearing that occurred on August 23,
17 2011, this Court orally ruled on various motions brought by the Defendants. The Court issued
18 a minute entry noting the "the Motion is GRANTED as to the issue of sole remedy," and
19 instructing Plaintiffs to file a Petition for Judicial Review on Case 2 within 30 days. The Court
20 also orally instructed Plaintiffs to bring the present motion within 30 days. This motion
21 follows.
22
23

24 **III. RELEVANT PROVISIONS OF CHAPTER 368A**

25 Chapter 368A states, at N.R.S. § 368A.200(1), that "[e]xcept as otherwise provided in
26 this section, there is hereby imposed an excise tax on admission to any facility in this State
27 where live entertainment is provided." If the live entertainment is provided at a facility with a
28

1 maximum occupancy of less than 7,500,⁶ the rate of tax is 10% of the admission charge to the
2 facility plus 10% of any amounts paid for food, refreshments and merchandise purchased at the
3 facility. If the live entertainment is provided at a facility with a maximum occupancy of at
4 least 7,500, the rate of the tax is 5% of the admission charged to the facility. **Id.**

5 Chapter 368A defines an “[a]dmission charge” in N.R.S. § 368A.020 as:

6 [T]he total amount, expressed in terms of money, of consideration
7 paid for the right or privilege to have access to a facility where live
8 entertainment is provided. The term includes, without limitation,
9 an entertainment fee, a cover charge, a table reservation fee, or a
10 required minimum purchase of food, refreshments or merchandise.

11 The term “facility” is defined in N.R.S. § 368A.060 as follows:

- 12 (a) Any area or premises where live entertainment is provided and for
13 which consideration is collected for the right or privilege of
14 entering that area or those premises if the live entertainment is
15 provided at:
- 16 (1) An establishment that is not a licensed gaming
17 establishment; or
- 18 (2) A licensed gaming establishment that is licensed for less
19 than 51 slot machines, less than six games, or any
20 combination of slot machines and games within those
21 respective limits.
- 22 (b) Any area or premises where live entertainment is provided if the
23 live entertainment is provided at any other licensed gaming
24 establishment.

25 “[L]ive entertainment” is defined in N.R.S § 368A.090 as:

26 [A]ny activity provided for pleasure, enjoyment, recreation,
27 relaxation, diversion or other similar purpose by a person or
28 persons who are physically present when providing that activity to
a patron or group of patrons who are physically present.

⁶ All the facilities operated by the Plaintiffs have maximum occupancies of less than 7,500 persons. Comp., ¶ 35.

1 This definition includes, *inter alia*, “[d]ancing performed by one or more professional or
2 amateur dancers or performers.” N.R.S. § 368A.090(2)(a)(2).

3 Pursuant to N.R.S. § 368A.200(5), however, the tax imposed by Chapter 368A is not
4 applicable to certain specifically listed situations. One of those exemptions includes “live
5 entertainment that the State is prohibited from taxing under the Constitution, laws or treaties of
6 the United States or Nevada Constitution.” N.R.S. § 368A.200(5)(a).

7
8 Other provisions of Chapter 368A, and the numerous exceptions/exemptions thereto,
9 will be discussed below.

10 **IV. POINTS AND AUTHORITIES**

11 **A. STANDARDS FOR GRANTING INJUNCTIVE RELIEF.**

12
13 The power of this Court to issue the injunctive relief requested here derives from Art. 6,
14 § 6, of the Nevada Constitution, N.R.S. § 33.101, and N.R.C.P. § 65. Injunctive relief should
15 certainly be granted here. All courts should hasten to grant injunctive relief where fundamental
16 constitutional rights are involved, and where there is a chance that those rights will be curtailed
17 or even only just “chilled.” *See, e.g., Sammartano v. First Judicial Dist.*, 303 F.3d 959, 973-
18 74 (9th Cir. 2002). This is the solemn responsibility of the courts to guard and enforce each
19 and every constitutionally protected right. *Zwickler v. Koota*, 389 U.S. 241, 248 (1967).

20
21
22 “Permanent injunctive relief is available where there is no adequate remedy at law . . . ,
23 where the balance of equities favors the moving party, and where success on the merits has
24 been demonstrated.” *State Farm Mut. Auto. Ins. Co. v. JafBros. Inc.*, 109 Nev. 926, 928,
25 680 P.2d 176, 178 (1993) (quoting 43 C.J.S. Injunctions § 16, 848 (1974)). As will be
26 discussed below, Plaintiffs satisfy each of these standards.
27
28

1 **B. THIS FACIAL CHALLENGE MUST EXAMINE THE LET BASED ON**
2 **ITS TEXT, LEGISLATIVE HISTORY, AND EFFECT.**

3 As it stands, the Court has limited Plaintiffs' challenge in this Case 1 to a facial
4 challenge. A facial challenge to a law examines the constitutionality of the law without regard
5 to its application to a particular plaintiff in a particular situation. *See, e.g., Field Day, LLC v.*
6 *County of Suffolk*, 463 F.3d 167, 174 (2d Cir. 2006). "Nevertheless, on a facial challenge, [a
7 court] may still scrutinize a statute based on its text, context, and legislative history"
8 *Brown v. Gilmore*, 258 F.3d 265, 275 (4th Cir. 2001) (pre-application challenge under the
9 establishment clause) (clarification added). Courts frequently scrutinize the legislative history
10 of laws to assess facial challenges. *See also Educational Media Co. at Virginia Tech, Inc.,*
11 *v. Swecker*, 602 F.3d 583, 588 (4th Cir. 2010) (governmental interest for commercial speech
12 restriction may be gleaned from legislative history); *Community Television of Utah, Inc., v.*
13 *Wilkinson*, 611 F.Supp. 1099 1107 (D.C.Utah 1985) (text, legislative history, and attorney
14 general opinion analyzed to determine whether the Decency Act facially complied with the
15 First Amendment).

16 In *Children's Healthcare Is a Legal Duty, Inc., v. Min De Parle*, 212 F.3d 1084,
17 1088 (8th Cir. 2000), certain taxpayers challenged Section 4454 of the Balanced Budget Act of
18 1997, contending it violated the First Amendment; specifically, the establishment clause. Like
19 a tax on a defined group of speakers (*Leathers v. Medlock*, 499 U.S. 439, 445-446 (1991)
20 (citing *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575
21 (1983))), "a law that on its face grants a denominational preference may be upheld only if it is
22 supported by a compelling state interest." *Children's Healthcare*, 212 F.2d at 1090. The
23 court duly noted that to facially discriminate, the law need not explicitly set forth the
24 discrimination in its text. *Id.* Rather, "[s]uch discrimination can be evidenced by objective
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1 factors such as the law’s legislative history and its practical effect.” *Id.* (quoted text under the
2 heading “Facial Challenge to Section 4454”) (citing Church of Lukumi Bablu Aye, Inc., v.
3 Haileah, 508 U.S. 520, 535 (1993)). *Accord* Kong v. Min de Parle, 2001 WL 1464549, at *4
4 (N.D. Cal Nov. 13, 2001) (“the text, legislative history, and effect of section 4454 persuades
5 the Court that the exemption does not facially discriminate”).
6

7 Plaintiffs’ challenge here is based, in part, on the Lukumi decision cited by the
8 Children’s Healthcare court. Plaintiffs contend that the structure and numerous exemptions
9 to the LET (specifically the 10% LET), like the exemptions to the laws analyzed in Lukumi,
10 demonstrate that the laws were gerrymandered to apply to gentlemen’s clubs and “few if any”
11 others. 508 U.S. 535-536. Over the course of its analysis, the High Court recognized that “[i]t
12 becomes evident that these ordinances target Santeria sacrifice *when the ordinances’*
13 *operation is considered*. Apart from the test, the effect of a law in its real operation is *strong*
14 *evidence of its object*.” *Id.* at 535 (emphasis added). *See also id.* at 547 (declaring the
15 challenged laws “void” rather than unconstitutional “as applied” to the plaintiff).
16
17

18 Therefore, in order to analyze the facial validity of the LET, the Court need not
19 examine the application of the LET particularly to any of the named Plaintiffs in this action.
20 Rather, the LET must be examined according to its text, context, legislative history, and
21 practical effect. Each of these areas of inquiry, individually and collectively, demonstrate that
22 the LET is facially unconstitutional under the First Amendment.
23

24 **C. IT IS THE DEFENDANTS’ BURDEN TO PROVE THE**
25 **CONSTITUTIONALITY OF THE LET.**

26 Taxes that raise First Amendment concerns are subject to strict constitutional scrutiny,
27 and the *State of Nevada* has the burden to demonstrate the constitutionality of its taxing
28 scheme of live entertainment. *See, e.g.,* Arkansas Writers’ Project, Inc. v. Ragland, 481

1 U.S. 221, 231 (1987) (“*Arkansas faces a heavy burden* in attempting to defend its content-
2 based approach to taxation of magazines. *In order to justify such differential taxation, the*
3 *State must show that its regulation is necessary to serve a compelling state interest and is*
4 *narrowly drawn to achieve that end*”), citing Minneapolis Star Tribune Co. v. Minnesota
5 Comm’r of Revenue, 460 U.S. 575, 591-92 (1983); Clark v. City of Lakewood, 259 F.3d
6 996, 1004 (9th Cir. 2001) (“*In all situations . . . the government has the burden of proof to*
7 *justify burdening freedom of expression*”) (all emphasis added). In addition, like all
8 regulations that are subject to strict constitutional scrutiny, a tax upon protected expression is,
9 as referenced above, “*presumptively unconstitutional.*” Minneapolis Star, 460 U.S. at 585
10 (emphasis added). See also Seres v. Lerner, 120 Nev. 928, 936, 102 P.3d 91, 96 (2004) (“[a]
11 statute is presumptively inconsistent with the First Amendment if it imposes a financial burden
12 on speakers because of the content of their speech”) (citing Simon & Schuster v. Members of
13 New York State Crime Victims Bd., 502 U.S. 105, 115 (1991)).

14
15
16 In order to pass muster under strict scrutiny⁷, the Defendants must demonstrate that the
17 law is narrowly tailored to serve a compelling governmental interest. The burden on the State
18
19

20 ⁷ In the alternative to applying strict scrutiny, Plaintiffs *also* ask the Court to hold the
21 LET unconstitutional simply for being a content-based restriction on speech. In Seres, the
22 Nevada Supreme Court *en banc* (save Hon. Micheal L. Douglas, 120 Nev. at 292, 102 P.3d at
23 92) questioned the necessity of applying the strict scrutiny analysis to content-based
24 restrictions on speech (120 Nev. at 942, 102 P.3d at 100). The court favorably discussed
25 Justice Kennedy’s concurrence in Simon & Schuster, 502 U.S. at 124-126, wherein he states
26 that when a content-based restriction on speech is present, there is no need to borrow the strict
27 scrutiny analysis from equal protection jurisprudence. Seres, 120 Nev. at 292, 102 P.3d at 92.
28 Rather, the fact that the law imposes a content based burden on speech “is itself a full and
sufficient reason for holding the statute unconstitutional Borrowing the compelling
interest and narrow tailoring analysis is ill advised when all that is at issue is a content based
restriction.” Seres, 120 Nev. at 292, 102 P.3d at 92 (quoting Simon & Schuster, 502 U.S.
124-126 (Kennedy, J. concurring). The Nevada Supreme court found this approach “inviting”
but noted the parties at bar had not raised claims under the Nevada Constitution. Id. Plaintiffs
here have raised claims under the Nevada Constitution, and ask the Court to apply the analysis

1 of Nevada is thus to establish that a compelling governmental interest is furthered “that it
2 cannot achieve without differential taxation.” Minneapolis Star, 460 U.S. at 585. More
3 importantly, that governmental interest *cannot* be the simple “raising of revenue.” As the
4 Supreme Court as noted, that governmental interest “[s]tanding alone, cannot justify the
5 discriminatory tax on First Amendment protected activities.” Id. at 585-86. The Court has
6 noted that the “state could raise the revenue by *taxing businesses generally*, avoiding the
7 censorial threat implicit in a tax that singles out” protected expression. Id. Here, the State of
8 Nevada simply cannot carry the burden of demonstrating that there exists a compelling
9 governmental interest to differentially tax certain First Amendment protected live
10 entertainment.
11

12
13 **D. THE LET IS FACIALLY UNCONSTITUTIONAL UNDER THE FIRST
14 AMENDMENT OF THE UNITED STATES CONSTITUTION AND
15 UNDER ARTICLE I, SECTIONS 9 AND 10, OF THE NEVADA
16 CONSTITUTION.**

17 There are primarily three ways by which a tax may violate the First Amendment. First,
18 a direct tax specifically on First Amendment freedoms is unconstitutional.

19 *Freedom of speech*, freedom of the press, freedom of religion are
20 available to all, not merely to those who can pay their own way . . .
21 . [I]t could hardly be denied that a tax laid specifically on the
22 exercise of those freedoms would be unconstitutional.

23 Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 108, 111 (1943) (emphasis
24 added).

25 Second, a tax that targets a narrowly defined group of speakers is unconstitutional. As
26 set forth by the Supreme Court:

27 A tax is also suspect if it targets a small group of speakers.

28 proposed by our Supreme Court. The LET is content-based, and should be struck on that
ground alone.

1 * * *

2 The danger from a scheme that targets a small number of speakers
3 is the danger of censorship; a tax on a small number of speakers
4 runs the risk of affecting only a limited range of views. The risk is
5 similar to that from a content-based regulation: It will distort the
6 market for ideas.

7 **Leathers**, 499 U.S. at 447-448.

8 Third, a *content-based tax* is unconstitutional. **Leathers**, 499 U.S. at 447 (“Finally, for
9 reasons that are obvious, a tax will trigger heightened scrutiny under the First Amendment if it
10 discriminates on the basis of the content of taxpayer speech”); **Seres**, 120 Nev. at 936, 102
11 P.3d at 96.

12 The Live Entertainment Tax violates the First Amendment for *all three* of these
13 reasons. It is unconstitutional under the first test in that it is, *irrefutably*, a tax “laid specifically
14 on the exercise of [First Amendment] freedoms;” that being *live entertainment*. **Murdock**,
15 319 U.S. at 108 (clarification added). In regard to the second test, the large number of
16 exemptions from the LET demonstrates that the tax targets a “narrowly defined group of
17 speakers,” and that its focus is, indeed, on one specific form, or content, of live entertainment;
18 that being exotic dancing. In fact, the legislative history discussed below aptly demonstrates
19 the narrow focus of the 10% portion of the LET. Third, when the text, context, legislative
20 history, and practical effect of the LET are viewed as a whole, it is clear that the LET is a
21 content-based tax.
22

23
24 1. **The LET is an Unconstitutional Direct Tax on First Amendment
25 Activities.**

26 It is unconstitutional to *directly* tax the engagement in First Amendment protected
27 activities. The Supreme Court dealt with the issue of taxing First Amendment rights in
28 **Murdock**, where the Court analyzed the constitutionality of a city ordinance that required

1 those who wished to canvas or solicit to pay a license fee of \$1.50 per day, or \$7.00 for one
2 week. 319 U.S. at 106. The Supreme Court explained:

3 It is one thing to impose a tax on the income or property of a
4 preacher, it is quite another thing to exact a tax from him for the
5 privilege of delivering a sermon. The tax imposed [here] is a flat
6 license tax, the payment of which is a condition of the exercise of
7 these constitutional privileges. *The power to tax the exercise of a
8 privilege is the power to control or suppress its enjoyment.*

9 Id. at 105 (emphasis and clarification added).

10 The Court further made clear that “it could hardly be denied that a tax laid specifically
11 on the exercise of those freedoms would be unconstitutional. Yet the license tax proposed by
12 this ordinance is in substance just that.” Id. at 108. In the case of the LET, there is not even
13 the pretext of a license involved, as it is merely a *direct imposition of a tax on First
14 Amendment freedoms*. There is no justification of a requisite license or any form of regulation
15 that requires funding to administer and enforce.

16 The Supreme Court noted that freedom of speech is “available to all, not merely to
17 those who can pay their own way,” and that “the power to tax the exercise of a privilege is the
18 power to control or suppress its enjoyment...[] those who can tax the exercise of this [First
19 Amendment freedom] can make its exercise so costly as to deprive it of the resources
20 necessary for its maintenance.” Id. at 111-112. The Supreme Court flatly states that “a state
21 *may not impose a charge for the enjoyment of a right granted by the federal constitution.*”
22 Id. at 112 (emphasis added). This is because “the power to impose a license tax on the
23 exercise of these freedoms is indeed as potent as the power of censorship which this Court has
24 repeatedly struck down.” Id. at 113.

25 In addition, the fact that entities subject to the LET present live entertainment for profit
26 does not change the analysis in the least. “Those who make their living through exercise of
27
28

1 First Amendment rights are no less entitled to its protection than those who advocacy or
2 promotion is not hitched to a profit motive.” Cammarano v. U.S., 358 U.S. 498, 514 (1959).
3 See also Pacific Gas and Elec. Co. v. Public Utilities Com’n of California, 475 U.S. 1, 32
4 (1986) (“... protection of an author’s profit incentive furthers rather than inhibits expression. .
5 .”) (citing Harper & Row Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 555-559
6 (1985)).
7

8 There is absolutely no doubt that “live entertainment” is a category of activity
9 presumptively protected by the First Amendment.

10 It is a fundamental precept of the First Amendment to the United States
11 Constitution that all expression, whether it is written, pictorial or by way
12 of performance, is presumptively protected against governmental
interference and restraint.

13 Ellwest Stereo Theatre, Inc. v. Boner, 718 F. Supp. 1553, 1560 (M.D. Tenn. 1989) (citing
14 Doran v. Salem Inn, Inc., 422 U.S. 922 (1975); Roaden v. Kentucky, 413 U.S. 496 (1973);
15 and Schad v. Borough of Mount Ephraim, 452 U.S. 61, 66 (1981)). Schad, in particular,
16 involved a general municipal ban on “‘live entertainment,’ including nude dancing.” 452 U.S.
17 at 65. The Court made clear:
18

19 By excluding live entertainment throughout the Borough, the Mount
20 Ephraim ordinance prohibits a wide range of expression that has long
21 been held to be within the protections of the First and Fourteenth
22 Amendments. Entertainment, as well as political and ideological
23 speech, is protected; motion pictures, programs broadcast by radio and
television, and live entertainment, such as musical and dramatic works
fall within the First Amendment guarantee.

24 Id. at 65-66 (citing Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Schacht v. U.S.,
25 398 U.S. 58 (1970); Jenkins v. Georgia, 418 U.S. 153 (1974); Southeastern Promotions,
26
27
28

1 Ltd. v. Conrad, 420 U.S. 546 (1975); Erznoznik v. City of Jacksonville, 422 U.S. 205
2 (1975); and Doran, supra).⁸

3 Nevada cannot specifically tax live entertainment any more than it could ban the very
4 same activity. There can be no doubt that the LET requires persons wishing to engage in
5 defined “live entertainment” to pay the State of Nevada for this ability to exercise their First
6 Amendment rights. This is “a tax laid specifically on the exercise of those freedoms” within
7 the meaning of Murdock, 319 U.S. at 108. Nevada is “charg[ing] for the enjoyment of a right
8 granted by the federal constitution.” Id. at 112 (clarification added). The LET is plainly and
9 facially unconstitutional under Supreme Court precedent.

11
12 2. **The Live Entertainment Tax is Unconstitutional as it Applies to a**
13 **“Narrowly Defined Group of Speakers” and it Discriminates Based**
14 **on Content.**

15 The LET is a direct tax upon protected expression, and only upon one form of protected
16 expression, that which is “entertainment,” and then only to that which is “live”. Even within
17 this subset of First Amendment activity, it does not even tax that particular mode of expression
18 in a unified and even fashion. This is because a wide variety of “live entertainment,” based
19 upon the *content* of that entertainment, is specifically and statutorily *exempted* from the scope
20 of the tax. In this regard, Plaintiffs’ challenge to the LET involves two related but
21 distinguishable lines of inquiry: Whether the LET taxes a narrow group of speakers and
22 whether the LET discriminates based on content? If the LET does either (and, here, it does
23 *both*), it is unconstitutional.

24 A power to tax differentially, as opposed to a power to tax
25 generally, gives a government a powerful weapon against the

26
27 ⁸ See also Winters v. New York, 333 U.S. 507, 510 (1947) (mere entertainment, in-and-of
28 itself, is considered protected expression under the First Amendment); and Zacchini v.
Scripts-Howard Broadcasting Co., 433 U.S. 562, 578 (1977) (*human cannonball
performance) (“...entertainment itself can be important news”).

1 taxpayer selected. *When the State imposes a generally applicable*
2 *tax, there is little cause for concern. We need not fear that a*
3 *government will destroy a selected group of taxpayers by*
4 *burdensome taxation if it must impose the same burden on the*
5 *rest of its constituency.*

6 * * *

7 Further, *differential treatment*, unless justified by some special
8 characteristic of the press, suggests that the goal of the regulation
9 is not unrelated to suppression of expression, and such a goal is
10 *presumptively unconstitutional.*

11 Minneapolis Star, 460 U.S. at 585 (emphasis added).

12 The reason for this is simple:

13 *We note that the general applicability of any burdensome tax law*
14 *helps to ensure that it will be met with widespread opposition.*
15 *When such a law applies only to a single constituency, however,*
16 *it is insulated from this political constraint.*

17 Leathers, 499 U.S. at 445 (emphasis added).

18 An impermissible intent to discriminatorily tax based on content need not be
19 established in order for the law to be found unconstitutional.⁹ It is no surprise that when
20 crafting a tax of dubious constitutionality, legislators will attempt to cloak their improper
21 intentions by using seemingly benign gerrymandering, such as here, by way of “exemptions”
22 and “exceptions.” Such structuring *still* results in an unconstitutional tax. As the Supreme
23 Court has explained:

24 In Minneapolis Star & Tribune Co. v. Minnesota Comm’r of
25 Revenue, 460 U.S. 575 [] (1983), we noted that it was unclear whether
26 the result in Grosjean [v. American Press Co.], 297 U.S. 233 (1936)
27 depended on our perception in that case that the State had imposed the
28 tax with the intent to penalize a selected group of newspapers or whether
the structure of the tax was sufficient to invalidate it. See 460 U.S., at
580 [] (citing cases and commentary). Minneapolis Star resolved any

⁹ However, as discussed below, the legislative history does, indeed, clearly reflect that the *intent* of the LET was to tax gentlemen’s clubs specifically.

1 doubts about whether direct evidence of improper censorial motive is
2 required in order to invalidate a differential tax on First Amendment
3 grounds: "Illicit legislative intent is not the *sine qua non* of a violation of
4 the First Amendment." Id. at 592 [].

5 Leathers, 499 U.S. at 445 (parallel citations omitted).

6 In addition to its *explicit* content-based discrimination (discussed below), the LET
7 attempts to use the classic and well-worn mask of impermissible gerrymandering, and that is to
8 discriminate based upon the "size" of the speaker and/or the volume of its activity. Grosjean
9 is the first example of this. In that case, the Supreme Court *invalidated* a "Louisiana law that
10 singled out publications with weekly circulations above 20,000 for a 2% tax on gross receipts
11 from advertising. The tax fell exclusively on 13 newspapers. Four other daily newspapers and
12 120 weekly newspapers with weekly circulations of less than 20,000 were not taxed."

13 Leathers, 499 U.S. at 444 (citing Grosjean, 297 U.S. at 246-251).

14 Then:

15
16 At issue in Minneapolis Star, was a Minnesota special use tax on the
17 cost of paper and ink consumed in the production of publications. The
18 tax exempted the first \$100,000 worth of paper and ink consumed
19 annually. Eleven publishers, producing only 14 of the State's 388 paid
20 circulation newspapers, incurred liability under the tax in its first year of
21 operation. The Minneapolis Star & Tribune Co. (Star Tribune) was
22 responsible for roughly two-thirds of the total revenue raised by the tax.
23 The following year, 13 publishers, producing only 16 of the State's 374
24 paid circulation papers, paid the tax. Again, the Star Tribune bore
25 roughly two-thirds of the tax's burden. We found no evidence of
26 impermissible legislative motive in the case apart from the structure of
27 the tax itself.

28 Leathers, 499 U.S. at 445.

These same tools are put to task in the LET. It discriminates on the basis of the size of
the facility. It excludes small facilities with a maximum occupancy of less than two hundred
(200) persons, as well as entertainment provided at certain "licensed gaming establishment[s]."

1 N.R.S. §§ 368A.200(5)(d),(e). Those not excluded on the basis of size are then taxed at
2 *different rates according to their size*, with the smaller venues paying the higher rate.
3 N.R.S. § 368A.200(1). As explained in subsection IV(D)(2)(c) below, the seating capacity was
4 actually lowered from 300 to 200 *specifically to increase the number of gentlemen's clubs*
5 *that would be swept into the tax*. At the same time, “family-oriented” and other preferred
6 forms of live entertainment that the legislature did not mean to “get” via the LET were then
7 exempted from taxation.
8

9 **a. The Different Rates and Subjects of Taxation Demonstrate Impermissible**
10 **Gerrymandering.**

11 The rate of taxation under the “Adult LET” is 10%. NRS § 368A.200(1)(a). The rate
12 of taxation under the “Casino LET” is only 5%. NRS § 368A.200(1)(b). Moreover, under the
13 Adult LET, the tax applies to an “admission charge to the facility plus 10 percent of any
14 amounts paid for food, refreshments and merchandise. . . .” NRS § 368A.200(1)(a). However,
15 under the Casino LET, the tax *only applies to admissions*. NRS § 368A.200(1)(b). This
16 allows the casinos, but not Plaintiffs, to lower their tax liability simply by reducing admission
17 charges and raising the prices for refreshments and merchandise. The functional result is
18 obvious. The Adult LET tax rate is effectively more than twice that of the Casino LET.
19

20 The Casino LET requires payment and the filing of the applicable tax returns to the
21 State Gaming Control Board. NRS § 368A.220(1)(a). The Adult LET requires payment and
22 filing with the Nevada Department of Taxation. Likewise, the Casino LET imposes the duty to
23 collect on the Gaming Control Board, while the Adult LET places the duty to collect on the
24 Department of Taxation. NRS §§ 368A.140(1)(a) and (2)(a).
25

26 In fact, both the Gaming Control Board and the Nevada Department of Taxation each
27 have the separate authority to promulgate rules and regulations for their respective taxes. The
28

1 Gaming Control Board has authority to promulgate rules for the imposition and collection of
2 the Casino LET, NRS § 368A.140(1)(b), while the Department of Taxation has the authority to
3 promulgate separate rules and regulations for the imposition and collection of the Adult LET,
4 NRS § 368A.140(2)(b).

5 Similarly, claims for refunds under the Casino LET must be taken to the Gaming
6 Control Board, while appeals under the Adult LET must be taken to the Department of
7 Taxation. NRS §§ 368A.260(1)(a)(1) and (1)(a)(2). Appeals from denied refund claims also
8 proceed to different entities. NRS §§ 368A.300(3)(a) and (3)(b).

9 Both the Gaming Control Board and the Department of Taxation have the power to
10 inspect the books of the entities taxed under their respective taxes. However, neither has the
11 authority to inspect the books of entities which are responsible for paying taxes to the other
12 authority. NRS §§ 368A.170(1)(a) and (1)(b).

13 This bifurcation between the Casino LET and the Adult LET prevails throughout the
14 LET. These deep and fundamental differences expose the LET for what it really is; two
15 distinct taxes shoe-horned under the same moniker. The LET paid by Plaintiffs is entirely
16 different than the LET paid by the Casinos, which receive far more beneficial treatment under
17 this taxation scheme.

18 Thus, the structure of the LET, like the structure of the tax struck in Minneapolis Star,
19 is sufficient to render the tax suspect and thereby subject to strict scrutiny. It is important to
20 emphasize that, for the LET to be held unconstitutional, it is not necessary for the Court to be
21 firmly convinced that the tax targets gentlemen's clubs or seeks to suppress their expression.
22 The relevant question is whether the tax targets a certain type of expression for more
23 burdensome taxation. In reflecting upon its Minneapolis Star decision, the Court explained:
24
25
26
27
28

1 Once again, the scheme appeared to have such a *potential for abuse* that
2 we concluded that it violated the First Amendment: “[W]hen the
3 exemption selects such a narrowly defined group to bear the full burden
4 of the tax, the tax begins to resemble more of a penalty for a few of the
5 largest newspapers than an attempt to favor struggling enterprises.”

6 **Leathers**, 449 at 446 (citing **Minneapolis Star**, 460 U.S. at 592) (emphasis added).

7 And, addressing the case before it, the **Leathers** Court found that the general Arkansas
8 sales tax did not target the cable television plaintiffs, “nor is the tax on that structured *so as to*
9 *raise suspicion* that it was intended to do so. Unlike the taxes involved in **Grosjean** and
10 **Minneapolis Star**, the Arkansas tax has not selected a narrow group to bear fully the burden of
11 the tax.” 499 U.S. at 448 (emphasis added).

12 As explained more fully below, the LET is structured in a manner that creates an acute
13 potential for abuse, and certainly raises the suspicion that gentlemen’s clubs are being targeted
14 for special taxation. This alone requires the tax to be subject to strict scrutiny level of review.

15 Moreover, under no circumstances can the LET (or the Adult LET in particular) be
16 confused with the generally applicable taxes ultimately upheld in **Leathers**, **Regan v.**
17 **Taxation with Representation of Washington**, 461 U.S. 540 (1983), or **Cammarano v.**
18 **United States**, 358 U.S. 498 (1959). Those taxes were truly taxes of general applicability. For
19 example, the tax in **Leathers** was the general Arkansas sales tax.¹⁰ 499 U.S. at 447. **Regan**
20 involved exemptions under the United States corporate tax code. 461 U.S. at 540 (1983)
21 (regarding 26 U.S.C. § 501). **Cammarano** involved exemptions from the United States
22
23

24
25 ¹⁰ “Among the services on which the tax is imposed are natural gas, electricity, water, ice,
26 and steam utility services; telephone, telecommunications, and telegraph services; the
27 furnishing of rooms by hotels, apartment hotels, lodging houses, and tourist camps; alteration,
28 additional, cleaning, refinishing, replacement, and repair services; printing of all kinds; tickets
for admission to places of amusement or athletic, entertainment, or recreational events, and
fees for the privilege of having access to, or use of, amusement, entertainment, athletic, or
recreational facilities.” **Leathers**, 499 U.S. at 447.

1 income tax code. 358 U.S. at 499-500. The LET is not a general property, income, or
2 corporate tax. Instead, the tax is initially triggered by only First Amendment activity, and then
3 further discriminates among expression based on the size of the taxpayer, the activity of the
4 taxpayer, and the content of the live entertainment.

5
6 Such a limited tax on “live entertainment” was struck in U.S. Satellite Broadcasting
7 Co. v. Lynch, 41 F.Supp.2d 1113 (E.D.Cal. 1999). In that case, the state had singled out
8 telecasts of boxing contests for special taxation, rather than “adult” entertainment or
9 gentlemen’s clubs. Id. at 116. The court relied heavily on Arkansas Writers’ Project and
10 Leathers to conclude that the tax was an impermissible content-based tax on First Amendment
11 activity. Id. at 1120-1123. The court reasoned:

12
13 As a threshold matter, defendants have not convinced the court that First
14 Amendment protection does not attach to live boxing match organized,
15 held, and televised for the purpose of entertaining live and remote
16 viewers. The First amendment protects entertainment. Schad, 452 U.S.
17 at 65 []. *It protects live entertainment, including even the expressive*
18 *content of nude dancing, Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 [] (1991).

19 * * *

20 Thus, it simply does not matter if the First Amendment protects or even
21 applies to boxing. *A tax on the dissemination of entertainment based*
22 *on the content must pass strict scrutiny, regardless of its subject*
23 *matter. Simon & Schuster*, 502 U.S. at 115 []; Arkansas Writers’
24 Project, 481 U.S. at 230 []. The First Amendment does not protect
25 murder, yet the court feels confident that news broadcasts of the court
26 feels confident that news broadcasts of murder, killing, or war may not
27 be censored to suppress their content. Nor it a hurricane protected by
28 the First Amendment; yet a broadcast with an audience has a right under
the First Amendment to broadcast images of a hurricane. Defendants’
argument, that telecasts of boxing do not enjoy First Amendment
protection because boxing is somehow “less valuable” than other
subjects, runs contrary to every principle of the Free Speech Clause
itself.

* * *

Because the undisputed facts establish the Boxing Act tax must survive
strict scrutiny, defendants would at trial bear the burden of proving the
tax to be “necessary to serve a compelling state interest and . . . narrowly

1 drawn to achieve that end.” Simon & Schuster, 502 U.S.] at 118 []. . .

2
3 Defendants argue that the state has a general interest in raising revenue.
4 While this interest has been described as “critical” and “important,” as a
5 matter of law it does not justify a content-based tax on speech.
6 Arkansas Writers’ Project, 481 U.S. at 231-232 [] (“an alternative
7 means of achieving the same interest [raising revenue] without raising
8 concerns under the First Amendment is clearly available: the State could
9 raise the revenue by taxing businesses generally”), quoting Minneapolis
10 Star [] 460 U.S. [at] 586 [].

11 Id. at 1120-21 (parallel citations omitted; clarification in original and added).

12 The reasoning in U.S. Satellite Broadcasting is directly applicable to this action.
13 There, the court identified that “the Boxing Act taxes some telecasts, and not others, based on
14 the content of those telecasts. . . . The Boxing Act thus taxes some speech based on its content.
15 Under Leathers, Arkansas Writers’ Project, and the weight of First Amendment
16 jurisprudence, the tax should be subject to strict scrutiny.” 41 F.Supp.2d 111.

17 The LET is no different. It applies only to First Amendment activity, and then only
18 according to the size of the taxpayer and the content of its speech. And, here, ironically,
19 admissions to view boxing is *exempted* from the LET. See N.R.S. §368A.200(5)(c). This is
20 obviously a content-based tax, which fails under strict scrutiny.

21 **b. The Numerous Exemptions to the LET Demonstrate That the Tax is**
22 **Narrowly-Directed and Discriminates Based on Content.**

23 Initially, the definition of “live entertainment” itself contains numerous *exceptions*,
24 which *exclude*, without limitation, the following activities:

- 25 (1) *Instrumental or vocal music*, which may or may not be supplemented
26 with commentary by the musicians, in a restaurant, lounge or similar
27 area if such music does not routinely rise to the volume that interferes
28 with casual conversation and if such music would not generally cause
patrons to watch as well as listen;

- 1 (2) *Occasional performances* by employees whose primary job function is
2 that of preparing, selling or serving food, refreshments or beverages to
3 patrons, if such performances are not advertised as entertainment to the
4 public;
- 5 (3) Performances by performers of any type if the performance occurs in a
6 licensed gaming establishment other than a licensed gaming
7 establishment that is licensed for less than 51 slot machines, less than 6
8 games, or any combination of slot machines and games within those
9 respective limits, as long as the *performers stroll continuously*
10 *throughout the facility*;
- 11 (4) Performances in areas other than in nightclubs, lounges, restaurants or
12 showrooms, if the performances occur in a licensed gaming
13 establishment other than a licensed gaming establishment that is licensed
14 for less than 51 slot machines, less than 6 games, or any combination of
15 slot machines and games within those respective limits, which *enhance*
16 *the theme of the establishment or attract patrons to the areas of the*
17 *performances*, as long as any seating provided in the immediate area of
18 the performers is limited to seating at slot machines or gaming tables;
- 19 (5) Television, radio, closed circuit or Internet broadcasts of live
20 entertainment;
- 21 (6) *Entertainment provided by a patron* or patrons, including, without
22 limitation, singing by patrons or dancing by or between patrons;
- 23 (7) *Animal behaviors* induced by animal trainers or caretakers primarily for
24 the purpose of education and scientific research; and
- 25 (8) An occasional activity, including, without limitation, dancing, that:
- 26 (I) Does not constitute a performance;
- 27 (II) Is not advertised as entertainment to the public;
- 28 (III) *Primarily serves to provide ambience to the facility*; and
- (IV) Is conducted by an employee whose primary job function is not
that of an entertainer.

N.R.S. § 368A.090(b) (emphasis added).

Then, the *exemptions* to the tax contained in N.R.S. § 368A.200(5) apply to:

- 1 (a) **Live entertainment that this State is prohibited from taxing under the**
2 **Constitution, laws or treaties of the United States or the Nevada**
3 **Constitution.¹¹**
- 4 (b) Live entertainment that is provided by or entirely for the benefit of a
5 **nonprofit religious, charitable, fraternal or other organization** that
6 qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or
7 a nonprofit corporation organized or existing under the provisions of
8 chapter 82 of NRS.
- 9 (c) Any **boxing contest** or exhibition governed by the provisions of chapter
10 467 of NRS.
- 11 (d) Live entertainment that is not provided at a licensed gaming
12 establishment if the facility in which the live entertainment is provided
13 has a maximum occupancy of less than 200 persons.
- 14 (e) Live entertainment that is provided at a licensed gaming establishment
15 that is licensed for less than 51 slot machines, less than [six] 6 games, or
16 any combination of slot machines and games within those respective
17 limits, if the facility in which the live entertainment is provided has a
18 maximum occupancy of less than 200 persons.
- 19 (f) Merchandise sold outside the facility in which the live entertainment is
20 provided, unless the purchase of the merchandise entitles the purchaser
21 to admission to the entertainment.
- 22 (g) Live entertainment that is provided at a **trade show**.
- 23 (h) Music performed by **musicians who move constantly through the**
24 **audience** if no other form of live entertainment is afforded to the patron
- 25 (i) Live entertainment that is provided at a licensed gaming establishment at
26 private meetings or dinners attended by members of a particular
27 organization or by a casual assemblage if the purpose of the event is not
28 primarily for entertainment.
- 29 (j) Live entertainment that is provided in the common area of a shopping
30 mall, unless the entertainment is provided in a facility located within the
31 mall.

¹¹ If it is determined that Defendants cannot specifically tax Plaintiffs' protected activities, this exemption will be triggered.

- 1 (k) **Food and product demonstrations** provided at a shopping mall, a craft
2 show or an establishment that sells grocery products, housewares,
3 hardware or other supplies for the home.
- 4 (l) **Live entertainment that is incidental to an amusement ride, a motion
5 simulator or a similar digital, electronic, mechanical or
6 electromechanical attraction.** For the purposes of this paragraph, live
7 entertainment shall be deemed to be incidental to an amusement ride, a
8 motion simulator or a similar digital, electronic, mechanical or
9 electromechanical attraction if the live entertainment is:
- 10 (1) Not the predominant element of the attraction; and
11 (2) Not the primary purpose for which the public rides, attends or
12 otherwise participates in the attraction.
- 13 (m) Live entertainment that is provided to the public in an outdoor area,
14 without any requirements for the payment of an admission charge or the
15 purchase of any food, refreshments or merchandise.
- 16 (n) An **outdoor concert**, unless the concert is provided on the premises of a
17 licensed gaming establishment.
- 18 (o) Beginning July 1, 2007, race events scheduled at a race track in this
19 State as a part of the **National Association for Stock Car Auto Racing
20 Nextel Cup Series**, or its successor racing series, and all races associated
21 therewith.
- 22 (p) Beginning July 1, 2007, a **baseball contest**, event or exhibition
23 conducted by professional minor league baseball players at a stadium in
24 this State.
- 25 (q) Live entertainment provided in a **restaurant** which is incidental to any
26 other activities conducted in the restaurant or which only serves as
27 **ambience** so long as there is no charge to the patrons for that
28 entertainment.

N.R.S. § 368A.200(5) (emphasis added).

Because many of these exceptions/exemptions determine whether an entity or individual is subject to the tax based upon the **content** of the live entertainment (e.g., boxing, baseball, NASCAR, and outdoor concerns), it is clear that the LET is a content-based tax and is subject to strict constitutional scrutiny. More specifically, these exceptions/exemptions have

1 been gerrymandered in such a fashion to basically ensure that with the exception of casino
2 entertainment (which was already subject to tax (at a lower 5% rate, with the subject of the tax
3 also being more narrow) pursuant to the prior casino entertainment tax), almost the only
4 remaining live entertainment that is subject to the 10% tax is adult entertainment. If there is
5 any doubt from a facial reading of the Statute that it was meant to specifically tax live adult
6 entertainment, any such doubt is quickly eradicated by reviewing the legislative history,
7 discussed *infra*, which clearly demonstrates such facial targeting.

9 It is constitutionally impermissible to apply a tax on protected expression in such a
10 discriminatory, content-based manner. As the Supreme Court held in a case where a tax was
11 “not evenly applied to all magazines” and treated “some magazines less favorably than others”:
12

13 Indeed, this case involves a more disturbing use of selective
14 taxation than Minneapolis Star, because the basis on which
15 Arkansas differentiates between magazines is particularly
16 repugnant to First Amendment principles: *a magazine’s tax status
17 depends entirely on its content.* Above all else, the First
18 Amendment means the government has no power to restrict
19 *expression* because of its message, its ideas, its subject matter, or
20 its content. . . . Regulations which permit the Government to
21 discriminate on the basis of the content of the message cannot be
22 tolerated under the First Amendment.

19 Arkansas Writers Project, 481 U.S. at 229 (citations omitted, emphasis in original and
20 added).
21

22 The United States Supreme Court has further stated that “[e]xemptions from an
23 otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite
24 apart from the risk of view point and content discrimination: They may diminish the credibility
25 of the government’s rationale for restricting speech in the first place.” City of Ladue v.
26 Gilleo, 512 U.S. 43, 52 (1994). There, the Court declared as unconstitutional an ordinance
27 banning outdoor signs (as being impermissibly content-based) because the law included a
28

1 variety of exceptions of signs that were nevertheless permitted.¹² That is exactly the situation
2 we have here – a law that is triggered by First Amendment activity, which then picks winners
3 and losers within the medium of expression regulated (i.e., those to be taxed and those to be
4 exempted from such taxation).

5 In this case, the numerous exemptions reveal that beyond casino entertainment, the
6 LET is in fact targeted principally at adult entertainment facilities that are protected by the First
7 Amendment. The LET is therefore targeted to a “narrowly defined group of speakers” and is
8 undeniably content specific; it is subject to strict scrutiny; and it is invalid.

9
10 **c. The Legislative History Demonstrates the Impermissible Targeting**
11 **and Content-Based Nature of the Live Entertainment Tax.**

12 The legislative history unequivocally bears out the discriminatory intent of the
13 legislature when it enacted and amended the LET. As explained in subsection IV(B), *supra*,
14 courts regularly examine the legislative history of a law when confronted with a facial
15 challenge.
16

17 Indeed, legislative history and other circumstances surrounding legislative enactments
18 have contributed to the Supreme Court finding even facially-neutral laws, including taxes, to
19 be content-based and, therefore, unconstitutional. For example, in Lukumi, the Court
20 recognized that the First Amendment prohibits “subtle departures from neutrality.” 508 U.S. at
21

22
23 ¹² See also Church of Lukumi v. Hialeah, 508 U.S. 520, 535-540 (1993) (Court found
24 that exemptions to three city ordinances banning the killing of animals rendered the laws to be
25 content-based, and therefore unconstitutional, as being directed at those practicing the Santeria
26 religion, and that the “pattern of exemptions parallels the pattern of narrow prohibitions. *Each*
27 *contributes to the gerrymander*”); and U.S. v. Eichman, 495 U.S. 310, 317-19 (1990) (Court
28 found the facially neutral Flag Protection Act content-based and therefore unconstitutional
because although it prohibited burning of the flag, it exempted the burning of a “worn or
soiled” flag as a means of disposal. The exception was an act “traditionally associated with
patriotic respect for the flag,” and demonstrated content targeting by preferring patriotic rather
than disrespectful acts upon a flag) (emphasis added).

1 534. To determine whether “the object of the law is a neutral one,” the Court instructed that
2 “we may determine the City Council’s object from both direct and circumstantial evidence.”¹³

3 Relevant evidence includes, *among other things*, the historical
4 background of the decision under challenge, the specific series of events
5 leading to the enactment or official policy in question, *and the*
6 *legislative or administrative history, including contemporaneous*
7 *statements made by members* of the decisionmaking body.

8 Id. at 540 (emphasis added) (citing Arlington Heights v. Metropolitan Housing
9 Development Corp., 429 U.S. 252, 266-268 (1977)).

10 In addition, Plaintiffs propounded interrogatories upon the Department of Taxation
11 directed at discovering the purposes and governmental interest to be served by the LET and,
12 specifically the numerous exceptions and later changes to the exceptions therein. *See* Nevada
13 Department of Taxation’s Responses to Plaintiffs First Set of Interrogatories to Defendants,
14 Ex. 13, Interrogatories 8, 9, 10, 11, 16, 17, 18, 21, and 22. In response, the Department
15 repeatedly directed Plaintiffs to the Nevada Legislature’s legislative history of Senate Bill 4 of
16 the 19th Special Session (2003), Senate Bill 5 of the 19th Special Session (2003), Senate Bill
17 247 of the 73rd Session (2005), and Assembly Bill 554 of the 73rd Session (2005). Id.¹⁴ An
18 analysis of the relevant legislative history identified by the Department readily discloses that
19 the LET was crafted to apply to a narrowly-defined group of speakers and discriminates based
20 on content.
21
22
23

24 ¹³ The analysis in Lukumi was undertaken specifically under the Free Exercise Clause.
25 508 U.S. 540. Still, the Court made clear that “[t]he principle underlying the generally
26 applicability requirement has parallels in our First Amendment Jurisprudence.” Id. at 543
(citing *inter alia*, Minneapolis Star, 460 U.S. at 585; other citations omitted).

27 ¹⁴ As this Court will also recall, it recently precluded the Plaintiffs from inquiring, in
28 depositions, as to the governmental interests meant to be furthered by the enactment of the
LET.

1 A salient example of this is the “Minutes of the Meeting of the Assembly Committee on
2 Commerce and Labor” recorded during the 73rd Congressional Session on May 16, 2005,
3 attached hereto as Ex. 14.¹⁵ This was the committee meeting where it was debated whether to
4 use the language “adult live entertainment” to better capture adult clubs in the amended version
5 or whether that would make the target of the LET *too obvious to the courts*:

6
7 **Chairwoman Buckley:**

8 *My biggest concern with the bill is its constitutionality. . . . I'm*
9 *concerned that if we just put [“]live adult entertainment,[]” that*
10 *might be held unconstitutional.* I wonder if a better approach
11 might be to pick out a few more things like the racetrack and
12 sporting events, but to delineate all those separate ones and leave it
13 like that. We could fix and refine the language to make sure we're
14 more careful and more able to describe things that might be caught
15 up *rather than put into our statute the phrase “adult*
16 *entertainment.” which puts a big red flag on it for the courts.*
17 What are your thoughts on that?

18
19 **Senator Titus:**

20 *At one time* the brothels were included, so that would be broader.
21 *You can make the argument that this is a special kind of business*
22 *that poses special kinds of social problems and therefore you can*
23 *attach them.*¹⁶ It's worth doing, and if an elected court in the state
24 wants to challenge it, that's fine. None of the parts of the
25 Constitution are absolute and they're all subject to interpretation.
26 They interpreted the property tax we recently passed as maybe
27 constitutional, and we can see how flexible the Constitution is in
28 Nevada. I think it's worth the chance to put it in there.

22
23 ¹⁵ The Plaintiffs duly recognize that much of this legislative history reflects debate on
24 how the 2003 legislation should be modified, rather than on the original enactment of the 2003
25 legislation. First, the Plaintiffs challenge the 2005 version of the LET in this action. Second,
26 this does not detract from the fact that the legislative history unequivocally demonstrates that
27 the 2003 legislation's tax burden befell live adult entertainment in a greatly disproportionate
28 manner, and was *meant to do so*. Indeed, the discussion in 2005 indicates that the tax failed to
bring in the intended revenue because the 300-seat requirement, in action, excluded many of
the adult clubs that were *intended as a revenue source*. This is certainly within “relevant
evidence” identified in Lukumi, 508 U.S. at 540.

¹⁶ This Court should note, of course, that brothels are *not*, however, included in the tax at
issue.

1 ASSEMBLY COMMITTEE ON COMMERCE AND LABOR OF NEVADA, 73d Sess., p. 19 (May 16,
2 2005) (emphasis and clarification added), Ex. 14.

3
4 The Minutes also elucidate that the *intent* behind the tax was to further ratchet up the
5 tax burden on adult entertainment, even though adult entertainment was already paying the *vast*
6 *majority* of the existing non-casino tax:

7 **Senator Dina Titus, Clark County Senatorial District No. 7:**

8 The tax package from the 2003 Legislative Session included the
9 entertainment tax, which quickly proved a bookkeeping nightmare.
10 It also failed to generate the revenue we had anticipated *and it*
11 *didn't adequately bring in a group some of us intended to be*
12 *covered, which are the striptease clubs that have proliferated,*
13 *primarily in southern Nevada.*

14 * * *

15 *It will do a better job of capturing adult live entertainment*
16 *because it eliminates that 300 seating requirement.*

17 * * *

18 *Certainly the intent of the live entertainment tax was not to get*
19 *nudist colonies, but to get striptease clubs.*

20 * * *

21 **Chairwoman Buckley:**

22 I wonder if we could do it in a way that's a little broader but gets at
23 the problems so we could avoid losing the revenue. *We're getting*
24 *the most revenue from adult entertainment clubs, which is \$6*
25 *million dollars, the highest amount paid under the live*
26 *entertainment tax.*¹⁷ The next one is race tracks at \$1.5 million¹⁸,
27 *but everything else pales in comparison to how much they're*
28 *bringing in now, and I would hate to give them back their \$6*
million.

17 This Court should note that these comments demonstrate that even the *legislators* did not consider the "casino" portion of the statutory scheme to really be part of this Live Entertainment Tax.

18 In a time of needed tax revenues, it is, therefore, noteworthy that the *second highest source of revenue*, the racetrack, was then eviscerated by the "NASCAR Exemption" adopted in 2005 as part of the statutory revisions, discussed immediately below.

1 **Id.** at 17-19 (names bolded in original, emphasis added), Ex. 14.

2 This legislative history also explains that NASCAR racing and other sporting events
3 were exempted from the bill because they were believed to be “family oriented”:
4

5 **Senator Dina Titus, Clark County Senatorial District No. 7:**

6 This eliminates seating requirements, which were problematic in
7 the original bill. *It eliminates sporting events, which are family*
8 *oriented.* We believe those are attended by local families, and
9 eliminating this would help to get a second NASCAR race, an all-
star basketball game, and a baseball team. . . .

10 * * *

11 **Senator Titus:**

12 I agree with that. *The 300-seat requirement has kept a lot of*
13 *those clubs from paying.* If you decide to amend this and do
14 something with it, be sure to keep that in mind because that’s
15 where a lot of the revenue is. The fiscal Division in the Senate
16 argued that *if you eliminate some of the family-oriented*
businesses like NASCAR and you take out the 300-seat at the
same time, that will more than make up for any lost revenue.

17 **Id.** (emphasis added).

18 The 300-person seating requirement was, in fact, lowered to a 200-person seating
19 requirement (N.R.S. § 368A.200(5)(d),(e)), even though adult entertainment was already
20 paying four-times more in taxes than the next contributor under the LET. The next largest
21 contributor under the previous scheme was racetracks. But racetrack revenues are now
22 eliminated via the NASCAR exception and via the exception for all “[l]ive entertainment that
23 is provided to the public in the outdoor area. . . .” N.R.S. § 368A.200(5)(o), and (m).
24 Consequently, in the Committee’s own words, the taxes paid by any remaining providers of
25 live entertainment that the legislature initially forgot to exempt “*pale in comparison*” to the
26
27
28

1 amounts paid by adult entertainment establishments. ASSEMBLY COMMITTEE ON COMMERCE
2 AND LABOR OF NEVADA, 73d Sess., p. 19 (May 16, 2005), Ex. 14 (emphasis added).

3 Other historical documents from the time period leading up to the 2005 changes
4 likewise demonstrate that when changes to the LET were proposed, the chief concern was how
5 they would affect revenues from gentlemen's clubs. For example, on March 14, 2005, a
6 Memorandum from Department was issued "to analyze the fiscal impact of making changes to
7 the Live Entertainment Tax (LET)." Department of Taxation Memorandum, March 14, 2005,
8 Ex. 15. This analysis recognized that eliminating the 300 person seating requirement would
9 raise an additional \$4,197,900 from gentlemen's clubs, and \$1,614,600 from other bars and
10 nightclubs. *See also* Untitled Revenue Analysis, Ex. 16, p. 3 (analyzing the impact of the 300-
11 seat requirement separately for "men's clubs" from other businesses and specifically analyzing
12 revenue to be generated from 200-seat men's clubs; no other specific category of businesses
13 being mentioned or identified).

14
15
16 Another Memorandum on November 4, 2004, to Chuck Chinnock, Executive Director
17 of the Nevada Department of Taxation, specifically identifies those gentlemen's clubs
18 statewide that have seating capacities of less than 300. Memorandum of November 9, 2004,
19 Ex. 17. And, in an April 24, 2005 email, Dino Dicianno, then-Executive Director of the
20 Department of Taxation, explained:
21

22
23 Chris Janzen asked me [sic] take a look at the fiscal impact of Senator
24 Titus's new version of SB 247. ***There is no question that the focus of
25 the bill is to tax for LET all adult entertainment, except for brothels.
26 Currently the vast majority of the revenue that we collect comes from
27 the gentlemen's clubs that have a seating capacity greater than 300.***
28 For example, 1.2 million from nightclubs, 1.4 million from raceways,
1.0 million from performing arts, 5.2 million from gentlemen's clubs;
for a total collected of about 9.0 million. The remaining venues are
minor (i.e. sporting events, etc.). ***By removing the seating capacity and
eliminating the other venues you would ten capture all of the***

1 **remaining gentlemen [sic] clubs that are currently not paying.** There
2 is no question that they are a cash cow for LET. My best guess is that
3 the fiscal impact of the revised SB 247 would be either a wash with a
4 distinct possibility of a potential LET revenue gain.

5 Dicianno Email of April 24, 2004, Ex. 18 (emphasis added) (submitted as Exhibit E to the
6 Assembly Committee/Ways & Means, May 26, 2005).

7 The documents preceding the 2003 tax are no different. In a 2003 email from Barbara
8 Smith Campbell to Bill Bible, it was explained that:

9 The DAG has concerns about your recommended language in Ambient
10 Entertainment #3. In summary, he feels the language may lead to the
11 exemption of "entertainers" at the Gentlemen [sic] clubs. **Therefore, we**
12 **did not incorporate it in our draft.**

13 Memorandum, November 18, 2003, Ex. 19 (emphasis added).

14 Even the speakers before the Senate Committee implicitly understood the purpose of
15 the 2003 LET.

16 **Senator Lee:**

17 I know this bill is very important, but **it seems like we are selectively**
18 **going after a group of businesses.** No matter what business it is, I have
19 a challenge with understanding that type of activity.

20 **Taylor Dew: (National Hula Girls)**

21 **As you recall, the live-entertainment tax last Session was meant only to**
22 **tax adult entertainment,** but unintentionally affected us Hula Girls,
23 Elvis impersonators, jugglers, singers, bands and virtually every type of
24 entertainer. Obviously, the wording will need to be changed.

25 Senate Committee on Taxation, April 12, 2005, p. 24, Ex. 20 (emphasis added).

26 Later legislative history further confirms the same:

27 **Senator Coffin:**

28 **Where are the topless clubs in this bill?**

George W. Treat Flint (Nevada Brother Owners Association):

1 I have an intimate relationship with this bill and its verbiage since the
2 last Session. On page 6 of A.B. 554, the topless clubs would be covered
3 under lines 1 through 3, unless they have an occupancy capacity of less
4 than 300. The major men's cabarets are covered under that section. I
5 have been told by the Department of Taxation that the major places
6 create approximately \$7 million a year. *Most of the smaller clubs could*
7 *probably be brought into A.B. 554 if you amend the section to read a*
8 *total occupancy of 200 rather than 300.* To protect my client, I do not
9 want you to bring the occupancy number down too much lower than 200
10 *or you will have my clients back in this tax law.*

11 **Senator Coffin:**

12 It is my understanding that some of the topless clubs get out of being
13 taxed by removing a few seats. We should consider the possibility of
14 reducing the seating capacity so these highly profitable, legitimate
15 businesses could help pay their share of the budget. Has there been any
16 discussion about that?

17 * * *

18 **Senator Coffin:**

19 I would like to ask Charles Chinnock from the Tax Department a few
20 questions on this legislation. Mr. Chinnock, what happened after the last
21 Session *with regard to the men's cabarets?*

22 **Charles Chinnock (Executive Director, Department of Taxation):**

23 Many jurisdictions, whether fire marshals or the building code
24 departments that oversee *these facilities*, found increased safety
25 concerns with the 300-seating capacity. From the building and safety
26 officials' standpoint, they would much rather see less occupancy than
27 greater occupancy. If you had 300 or greater seating capacity, they were
28 willing to adjust that seating capacity from the standpoint it was a safer
venue to reduce that capacity. It became an easy issue for *them* to
reduce the seating capacity.

Senator Coffin:

Are you saying *they* reduced the seating number to avoid the tax in the
interest of safety?

Mr. Chinnock:

Yes, it was in the interest of safety.

1 **Senator Coffin:**

2 If we changed the language to lower the amount, *would we*
3 *unintentionally include entities we do not want to tax?*

4 **Mr. Chinnock:**

5 I do not know how to answer that. We did not do a study of a breaking
6 point below the 300-seating capacity. The other bills were all or nothing
7 *with respect to adult entertainment.*

8 **Senator Coffin:**

9 If we are going to take action on A.B. 554 on the Senate Floor, would it
10 be possible to amend it at that time to lower the 300-seat capacity to
11 200?

12 **William Bible (Nevada Resort Association):**

13 I really cannot assist you with this issue because the taxes would apply
14 to venues associated with gaming. The seating capacity in A.B. 554 is
15 for areas not on gaming premises.

16 **Senator Townsend:**

17 With regard to the 300 seating and the budget, the lower we make it, the
18 more revenue we would generate as opposed to having an effect on
19 *them*. There should be no fiscal note. My limited knowledge of this
20 corresponds with Senator Coffin. This puts our Department of Taxation
21 and the auditors in a tough situation. We have to remember, at the end
22 of the day. We have those individuals who will be responsible for
23 implementing this law. *Senator Coffin's proposal meets the original*
24 *intent of what this Committee and the Assembly debated.* Obviously,
25 we do not want to create a problem for Mr. Flint's clients. That was
26 never the issue.

27 **Mr. Flint:**

28 This is not official, but *I spoke with someone in the Department of*
 Taxation, and I do not have Mr. Chinnock's permission to say this on
 the record. *I was told if you brought this number down to 200, you*
 may pick up those who are avoiding or evading this at the moment. I
 have been in enough of *these places* to know there are very few with
 less than 200 seats. There is a wide area you would pick up at 200, and
 you will still keep me harmless at this number.

1 SENATE COMMITTEE ON TAXATION, June 5, 2005, pp. 4, 6-7, Ex. 21 (emphasis added).

2 The context and legislative history to the 2003 statute and the 2005 amendments to the
3 LET make clear that gentlemen's clubs were the focus of the bill. When other entities are
4 discussed, it is for the purpose of making sure Nevada is not "unintentionally" taxing too many
5 other entities. There can be no doubt that the purpose behind lowering the seating requirement
6 from 300 to 200 was to capture gentlemen's clubs, and no one else.
7

8 Hence, it is clear that this is a narrowly targeted *and* a content-based tax that applies to,
9 and indeed exempts, certain speech, and cannot pass constitutional muster.
10

11 **E. PLAINTIFFS ARE ENTITLED TO PERMANENT INJUNCTIVE**
12 **RELIEF.**

13 As discussed in subsection IV(A) above, permanent injunctive relief should be granted
14 when there is no adequate remedy at law, when the balance of equities favors the moving
15 party, and when success on the merits has been demonstrated. Plaintiffs will discuss these
16 three elements in reverse order.
17

18 Plaintiffs have demonstrated success on the merits for the reasons set forth above. In
19 addition, the balance of equities clearly favors these Plaintiffs and the granting of injunctive
20 relief. The potential harm to Plaintiffs is that as outlined above -- the deprivation of their
21 constitutional rights. More importantly, at issue here is not the infringement of just any right,
22 but the fundamental rights of freedom of speech and expression, which as the Supreme Court
23 has noted, are the protections upon which all other constitutional rights depend. Palko v.
24 Connecticut, 302 U.S. 319, 326-27 (1937). The public has a fundamental interest in the
25 protection of First Amendment freedoms. "[I]t is *always* in the public interest to prevent the
26 violation of a party's constitutional rights." G&V Lounge, Inc. v. Michigan Liquor Control
27
28

1 Com'n, 23 F.3d 1071, 1079 (6th Cir. 1994) (citing Gannett Co., Inc. v. DePasquale, 443 U.S.
2 368, 383 (1979); and Planned Parenthood Ass'n. v. City of Cincinnati, 822 F.2d 1390, 1400
3 (6th Cir. 1987)).

4 The potential harm to defendant is, however, merely the inability to enforce a statute
5 which Plaintiffs assert is constitutionally flawed. See, e.g., Books, Inc. v. Pottawattamie
6 County, Iowa, 978 F.Supp. 1247, 1256 (S.D. Iowa 1997) (balance of equities favors exercise
7 of constitutionally protected rights over undeclared interest of government in that the operation
8 of an ordinance that is "a very probable violation of Supreme Court precedent"). In addition,
9 Nevada would not be precluded from enforcing other existing statutes, ordinances, and
10 regulations against Plaintiffs, including all general sales and use taxes. It is undeniable, then,
11 that the potential harm to Plaintiffs outweighs any harm to the Defendants.
12

13 The inadequacy of the remedy at law is demonstrated in at least five different ways.

14 First, involves the suppression of the profits of the Plaintiffs. As noted above in
15 subsection IV(D)(1), Plaintiffs' activities are expression protected by the First Amendment. In
16 regard to these protections, it makes absolutely no difference, as discussed above, that N.R.A.
17 § 368A.200(5) limits the tax's application to for-profit entertainment. See also Simon &
18 Schuster, 502 U.S. at 105 (Court invalidated law that required convicted criminals to disgorge
19 profits made from books written about their criminal activities).
20

21 However, through Chapter 368A, the exercise of these constitutional rights is
22 *conditioned upon* and burdened by the payment of a substantial fee in the form of a tax. If the
23 Plaintiffs are unable to pay the tax imposed by Chapter 368A, they cannot then engage in the
24 First Amendment activities encompassed by the regulations. In addition, if the Plaintiffs do
25
26
27
28

1 not pass on the tax to their customers, there is no question then that this tax directly reduces the
2 profits of the Plaintiffs, and for this reason alone irreparably injures the Plaintiffs.

3 Second, if the Plaintiffs pass this tax burden onto their customers, there is still the
4 prospect of an inadequate remedy at law. Additional tax burdens would lead, if passed onto
5 the customers, to increases in the costs to people desiring to view such entertainment, which
6 from basic economic theory has the significant potential of reducing the customer base (the
7 customers themselves being imbued by First Amendment rights in order to be able to *view* such
8 entertainment) -- and therefore reducing the engagement in First Amendment protected
9 activities -- regarding those persons who have insufficient means to pay the increased fees in
10 order to be able to view such entertainment. This would reduce the engagement in these First
11 Amendment protected activities, and creates irreparable harm.

14 Moreover, if the tax is just paid out of the general operating budgets of the Plaintiffs'
15 establishments (without passing the costs directly onto customers), that money could otherwise
16 be used (if not to pay the invalid tax) to purchase, among other things, additional advertising
17 (an activity itself protected by the First Amendment), to remodel the facilities, and to expand
18 the physical size of such establishments; all matters that would have the tendency to *increase*
19 the engagement in protected expression upon the premises of each of the named Plaintiffs. The
20 Live Entertainment Tax therefore, and without question, negatively impacts upon the
21 engagement in expressive activities. "The loss of First Amendment freedoms, for even
22 minimal periods of time, unquestionably constitutes irreparable injury." **Brown v. California**
23 **Dept. Of Transp.**, 321 F.3d 1217, 1125-126 (9th Cir. 2003) (*quoting* **Elrod v. Burns**, 427
24 U.S. 347, 373 (1976) (plurality)).
25
26
27
28

1 Third, and related to these concerns, is the simple fact that in light of this Court's ruling
2 dismissing out Plaintiffs' 42 U.S.C. § 1983 damage claims, the Plaintiffs face the prospect of
3 being unable to recover any of the consequent damages that they have sustained as a result of
4 the imposition of this tax in the past. Irreparable harm occurs when a damage award would be
5 insufficient to remedy the Plaintiffs' injuries. Hansen v. Eighth Judicial Dist. Court ex rel.
6 County of Clark, 116 Nev. 650, 658, 6 P.3d 982 (2000). Here, Plaintiffs *cannot* (unless
7 disturbed on appeal) obtain a damage award for any injuries sustained to their businesses.
8

9 Fourth, and irrespective of the *damages* discussed above, is the *potential inability of*
10 *the Plaintiffs to even recover the millions of dollars paid by Plaintiffs since 2004 in Live*
11 *Entertainment Taxes if this Court ultimately rules the Statute unconstitutional or finds that*
12 *the Plaintiffs are entitled to one of the statutory exemptions/exceptions.* During the first
13 hearing that occurred before the Nevada Tax Commission ("Commission") on July 9, 2007, the
14 Department, through legal counsel (who is the *same attorney* representing the Defendants in
15 both Cases 1 and 2), stated that it was:
16

17 . . . important to mention N.A.C. 368A.170 which requires that if it is
18 determined that a refund is appropriate in this case, that the taxpayer
19 would first have to establish that any amounts of refund could be or have
20 been actually refunded to the patrons of the taxpayer, and there has been
21 no indication in this case that there is any ability of the taxpayer to
22 refund that money to the patrons.

23 Transcript (Ex. 22), page 30, lines 8-14.

24 N.A.C. § 368A.170 (Ex. 5) regulates the "over-collection" of the subject taxes, which is
25 defined in part as "any amount collected as a tax on live entertainment that is exempt from
26 taxation pursuant to subsection 5 of N.R.S. 368A.200.¹⁹" N.A.C. § 368A.170(1). The
27

28 ¹⁹ Subsection 5 of N.R.S. § 368A.200 states that the LET does not apply to, among other things, "[l]ive entertainment that this state is prohibited from taxing under the Constitution,

1 regulation states that any over-collection “must, if possible, be refunded by the taxpayer to the
2 patron from whom it was collected.” N.A.C. § 368A.170(2). The taxpayer is required to “use
3 all practical methods to determine any amount to be refunded pursuant to subsection 2 and the
4 *name and address* of the person to whom the refund is to be made.” N.A.C. § 368A.170(3)(a)
5 (emphasis added). Astonishingly, in an unbelievable bout of Orwellian logic, the regulations
6 further dictate that if the taxpayer cannot “refund an over-collection,” it must “*pay the over-*
7 *collection to the department [of Taxation].*” N.A.C. § 368A.170(4) (emphasis and
8 clarification added). Consequently, according to the very language of the regulation, *if the*
9 *State illegally collects a tax, the taxpayer is required upon the determination of illegality to*
10 *nevertheless pay the illegally collected tax over to the State of Nevada!*
11

12
13 The initial Commission hearing was the first occasion that any of the Defendants raised
14 the applicability of N.A.C. § 368A.170.²⁰ When the hearing continued on August 6, 2007,
15 Bradley Shafer, counsel for the taxpayers and one of the attorneys for the Plaintiffs here,
16

17 laws or treaties of the United States or the Nevada Constitution.” N.R.S. § 368A.200(5)(a).
18 Consequently, if Plaintiffs’ arguments are correct that the LET violates both the federal and
19 state Constitutions, the exemption under N.R.S. § 368A.200(5)(a) applies and there has then
20 been an “over-collection” of the tax.

21 ²⁰ It should be noted that the Defendants’ position before this Court is not the same that it
22 took in the federal courts. Defendants originally assured the federal courts that the Nevada
23 state court proceedings allowed for a full recovery of amounts paid under the LET. Then,
24 while the matter was pending before the Ninth Circuit, Plaintiffs’ appeal of the denial of their
25 administrative claims for refunds came before the Nevada Tax Commission. It was only then
26 that the Department took the position that the tax was not on Plaintiffs, but their customers.
27 Plaintiffs then moved the Ninth Circuit to supplement the record to reflect this development,
28 which was denied. Attached hereto as Ex. 24 (which was originally attached as Exhibit 8 to
Plaintiffs’ Opposition to Defendant’s first Motion to Dismiss in Case 1) is the Defendants’
“Answering Brief” filed before the Ninth Circuit. In this document, the Defendants contend
that so long as Plaintiffs have not passed the tax along to their customers (which Plaintiffs have
verified they have not), Plaintiffs would be entitled to a full refund of the LET tax paid. Ex. 24,
pp. 14-15, 20. Nevertheless, Plaintiffs have the significant prospect of suffering irreparable
harm given that the Defendants *now* contend (as discussed below) that Plaintiffs may not,
indeed, be entitled to a tax refund *even if they prevail in this action.*

1 addressed N.A.C. § 368A.170 and the Department's insistence that in order to obtain a refund,
2 a taxpayer has to identify each patron who paid an admission charge, or for food, drink or
3 merchandise, and demonstrate that the taxpayer knows where the patron lives or works in order
4 to "reimburse" the refund to that individual. He explained that:

5 [W]hat the Department would say is that if a customer buys Coca-Cola,
6 for us to get a refund of this tax, we have to get the name and address of
7 every person buying a Coca-Cola or a beer coming in the facility and I
8 don't think any of you in your real life experiences have ever had any
9 time where you went to buy food and drink and had to give your name
and address, and that doesn't happen here.

10 Transcript (Ex. 23), page 10, lines 14-21.

11 In addition to the arguments regarding the taxpayers' inability to locate each patron
12 who paid an admission or who purchased food, drink or merchandise, the K-Kel Plaintiffs
13 further informed the Commission that the tax was paid not by the patrons but, rather, by the
14 clubs themselves. The K-Kel Plaintiffs introduced affidavits from four of the Plaintiffs which
15 established that "none of the facilities have raised their admission fees in order to recoup the
16 tax, the tax merely is deducted out of the general receipts of the business and it's the
17 businesses' money that we're trying to get back." Transcript (Ex. 23), page 10-11, lines 22-25
18 and 1. The four affidavits submitted are attached hereto as Ex. 25.

19
20
21 Irrespective of these arguments of the K-Kel Plaintiffs, Senior Deputy Attorney
22 General David Pope, *one the defense attorneys who has filed motions for summary judgment*
23 *and to dismiss in both Cases 1 and 2*, replied as follows:

24 To the extent that the tax is applicable *it's to be collected from the*
25 *patrons of the gentlemen's clubs*, and in fact, there is to be an
26 accounting or should have been an accounting by the gentlemen's club
27 six days after they indicated that they were entitled to a refund.
28

1 I think that they may have some approach to that and it may lead to
2 further argument, so I think it's still an issue that is applicable and we'll
have to address.

3 Transcript (Ex. 23), page 9, lines 5-13 (emphasis added).

4 Although the argument of the applicability of N.A.C. § 368A.170 was thereafter
5 reserved by the Commission for argument at a later time (if the Plaintiffs were found to be
6 entitled to a refund in the first place), Mr. Pope subsequently stated in the hearing:
7

8 I know we've reserved time to argue this, but *the law does require that*
9 *that admission charge be collected from the patrons* and I believe it
10 also requires that if it's included in the ticket or included in the
admission charge, then there has to be some notification of that.

11 To the extent that it's not included as was stated here today, that
12 it's just being paid on behalf of the patrons, then I think *it's difficult to*
13 *say that the patrons aren't paying it even though they don't know that*
14 *they are not. The law requires that it's being collected from the*
patrons and the appellants are paying it *on behalf of the patrons.*

15 Transcript (Ex. 23), pages 74-75, lines 19-25, 1-6 (emphasis added).

16 Commissioner Turner then verified this position:

17 Counsel for the taxpayers, Mr. Shafer, argued that this is really a tax
18 that's being absorbed by the businesses he represents.

19 *It is a pass-through tax*, and the businesses if the tax did not exist could
20 reduce what they're charging to their customers by the amount of the tax
and have the same bottom line today.

21 Transcript (Ex. 23), pages 92-93, lines 21-25, 1-2 (emphasis added).²¹
22
23
24

25 ²¹ In later commenting upon the bases for the ruling denying the claims for refunds,
26 Commissioner Turner, in adhering to his "pass-through" conceptualization of the tax, stated
27 that he would "find in addition that a refund to the taxpayers being the clients of Mr. Shafer at
28 this point in time would constitute *an unjust enrichment* at the same time." Transcript (Ex.
23), page 93, lines 6-8 (emphasis added). That unjust enrichment claim was obviously
predicated upon his belief that these Plaintiffs did not *pay* the tax and could not, then, equitably
recoup it.

1 Counsel for the Defendants expressed this same position before this very Court.
2 During the hearing held just on December 9, 2010, all three of the attorneys for the Defendants
3 articulated three different positions regarding the applicability of N.A.C. § 368A.170 to
4 Plaintiffs' ability to even recover a refund of the LET unconstitutionally paid to the state.
5 Transcript of Hearing on December 9, 2010, Ex. 226, pp. 30-46.
6

7 First, Vivienne Rakowsky, who was not involved in either the federal cases or the state
8 administrative proceedings, explained her interpretation of the ability of Plaintiffs to recover
9 any refund based upon N.A.C. § 368A.170:

10 So in other words, they have to pay that tax on the admission. They can
11 collect it separately from their patrons, or they can include it in the ticket
12 price and then make out the check. It says any ticket for live
13 entertainment must stay with the tax imposed by this sections [sic],
14 including the price of the ticket. If the ticket does not include such a
statement, the taxpayer shall pay the tax based on the face amount of the
ticket.

15 [Mr. Shafer] says his - - his people have not been collecting the
16 tax they've been paying it. So if he can verify the fact that the LET tax
17 has come out of the pockets of his clients, he's entitled to - - he - - he
will be entitled to refund if he wins this case, with interest.

18 Transcript, Ex. 26, p. 34 (clarification added).

19 Next, Mr. Pope, who admitted that he was the only attorney of the trio present on behalf
20 of the State on December 9, 2010, who was also involved in both the federal court and state
21 administrative proceedings, made an argument disavowing his position in front of the
22 Commission, as set forth, *supra*:

23 MR. POPE: I think one of the things that plaintiffs are going to have to
24 show is how they did handle that - - that issue. Did they include the tax
25 and did they have a sign on the wall or did they not?

26 And - - and, you know, we haven't gotten to that point yet.

27 THE COURT: And because, if they did not, then the State's position
28 would be what?

1 MR. POPE: *Well, I'm not sure*, and I don't know that we're here to say
2 that today. But it depends on what they did and what evidence they have
3 to show what they did.

4 THE COURT: Well, let me ask you this. *If you took a position before*
5 *in an administrative proceeding*, is it your -- is it your --

6 MR. POPE: *I'm not sure if we took it in administrative proceeding or,*
7 *I mean, took a position, or if what Mr. Shafer just said, a*
8 *commissioner recited a regulation. I don't recall, Your Honor. I'm*
9 *not -- I'm not sure.*

10 Transcript, Ex. 26, pp. 35-36 (emphasis added).

11 Then, it was Mr. Doerr's turn to give this Court *his* interpretation of N.A.C §
12 368A.170:

13 THE COURT: . . . You haven't taken a position on that one way or
14 another you're saying to me?

15 MR. DOERR: I'm not saying that. I'm saying that, in fact, I believe in
16 our first argument, I argued that *I don't think it could ever be construed*
17 *to have been not paid by their customer*. It's the customer who bears
18 the burden of the tax, the retailer under sales and use tax, the club in this
19 case, is the collection agent. *They're not the payer, they're the*
20 *remitter*. They remit the tax. They don't pay the tax, they get it from
21 their client --

22 Transcript, Ex. 26, p. 38 (emphasis added).

23 Finally, all three of the State's attorneys again gave their varying constructions of the
24 ability of Plaintiffs to obtain a refund *at all* if Chapter 368A is found to be unconstitutional:

25 MR. DOERR: And I think the commission said, we don't think this is
26 unconstitutional, you don't get a refund. So that issue -- you know,
27 again, I think that that question should be here on Judicial review.

28 MR. POPE: What the -- what the statute says, Your Honor, is a
business entity that collects any amount that is taxable, pursuant to the
LET, is liable for the tax imposed, but is entitled to collect
reimbursement from any person paying that amount.

1 MS. RAKOWSKY: So they're paying - - it's a pay first. They're
2 paying it. They're entitled to collect it if they want, but if they don't
want it, they still have to pay it.

3 MR. SHAFER: Your Honor - -

4 MR. DOERR: *It comes from the customer.*

5 MR. SHAFER: Your Honor - -

6
7 MR. DOERR: *The receipts, it comes from the customer.*

8 Transcript, Ex. 26, p. 42 (emphasis added).

9 Despite their arguments to the contrary, Mr. Pope then tried to argue that Plaintiffs have
10 not established irreparable harm: "You have to pay first, and sue later. It's not an irreparable
11 harm. As long as you get your money back with interest you have not been harmed."

12 Transcript, Ex. 26, p. 44.

13
14 To this day, the Department has not settled on a final position on this issue. In the
15 Nevada Department of Taxation's Opposition to Plaintiffs' Renewed Motion for Preliminary
16 Injunction and Motion to Strike (dated March 2, 2011), the Department argued in light of its
17 ever-changing position on this issue discussed above, that Plaintiffs were the "taxpayers" who
18 were entitled to a refund:
19

20 Pursuant to NRS 368A.110 the "taxpayer is the owner or operator of the
21 facility where the live entertainment is provided. NRS 368A allows the
22 taxpayer (owner or operator of the facility) to collect the amount taxable
or pay the tax itself based on the face amount of the ticket. []"

23 In this case, the Plaintiff have provided sworn affidavits from some of
24 the Case 2 Plaintiffs that they did not "raise[] the admission charge" and
25 did not "assess" its customers with the tax. According the sworn
26 affidavits the Plaintiffs pay "the Live Entertainment Tax by simply
27 determining the amount of revenues for taxable admission charges, food,
28 refreshments and merchandise, and remitting the appropriate statutory
percentage of those charges/purchases to the Nevada Department." See
Plaintiffs Exhibit 19 to its Renewed Motion. *Accordingly, NAC.170
would not apply to the Plaintiffs, because they never collected the tax*

1 *from their patrons, and therefore could never have over-collected the*
2 *tax.* Thus, the Plaintiffs argument that they do not have a remedy
3 because they do not keep records of their clients is not relevant to the
4 refund issue in this case.

5 Contrary to an over-collected tax, an illegal tax is unlawful. In this case,
6 if the LET is determined by the Court to be illegal, the *Plaintiffs will be*
7 *entitled to seek a refund.* See State of Nev. v. Scotsman Mfg. Co., 109
8 Nev. 252, 256, 849 P.2d 317, 320 (1993) (the state must now undo the
9 unlawful deprivation by refunding the tax.” (internal quotations
10 omitted); see also McKesson Corp. v. Division of Alcoholic Beverages
11 and Tobacco, 496 U.S. 18, 19 (1990) (If a state takes the position that a
12 taxpayer should pay the tax and then challenge the tax statute, and the
13 taxpayer prevails because the tax is inherently unconstitutional, the Due
14 Process clause of the Fourteenth Amendment requires the state to refund
15 taxes already paid). [] *Therefore, if the LET tax is held to be*
16 *unconstitutional, the tax could be refunded.*

17 Id. at pp. 16-17 (footnotes omitted; emphasis supplied)

18 However, for purposes of Defendants’ Motion to Compel on an Order Shortening Time
19 (dated August 15, 2011), it better suited the Department to flip-flop its position, and that is
20 exactly what it did. It argued: “Pursuant to NAC 368A.170 it is necessary to determine
21 whether the club owner or the patron paid the tax” (id. at 14) and “[t]he Department must also
22 determine whether the club collected the LET tax from its customers or whether the club paid
23 the LET tax without collecting from its customers (id. at 17) (citing NAC 368A.170).

24 If history is any guide, it teaches that the Department will advance any position on this
25 issue that best suits its interest *at that specific point in time.* Thus, upon Plaintiffs’ having
26 demonstrated that the LET is unconstitutional, history predicts that the Department will assert
27 that the patron is the taxpayer and Plaintiffs are ineligible for a refund. Therefore, the LET
28 must be declared unconstitutional and permanently enjoined.

If, indeed, the Defendants’ position taken before the Tax Commission and this Court
(that Plaintiffs cannot obtain a refund without identifying and passing the refund along to the

1 specific patrons who Defendants contend paid the tax) carries the day, irreparable injury will
2 certainly exist apart from the injury to Plaintiffs' First Amendment freedoms since Plaintiffs
3 will never be able to recover the unconstitutionally collected tax.²²

4 Fifth, the regulation relied upon by the Defendants, itself, demonstrates irreparable
5 injury. Under their interpretation of the regulation, the Plaintiffs can only obtain a refund of an
6 unconstitutional tax if they were able to obtain and retain the *name and address* of every
7 patron who enters the facility and/or who purchases any form of food, beverage, or
8 merchandise. No entertainment venue could be expected to collect and maintain such records,
9 particularly in light of the fact that the Constitution recognizes the right to view, hear, and
10 engage in protected expression *anonymously*,²³ and these privacy interests are particularly
11 relevant here where the Plaintiffs are a group of exotic dance facilities and where patrons may
12 then have a specific interest in maintaining their anonymity. Under these circumstances, the
13 disclosure requirements of N.A.C. § 368A.170, which the Defendants *insist* apply here,
14 themselves beget a constitutional violation (compelled disclosure of private information). The
15 prospect for irreparable harm is therefore clearly established, and an injunction is warranted.
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19 **F. PLAINTIFFS HAVE A RIGHT TO THE REQUESTED INJUNCTIVE**
20 **RELIEF BECAUSE, AS A MATTER OF LAW, NO STATUTE CAN**
21 **DIVEST THE COURTS OF THIS STATE OF THEIR**
22 **CONSTITUTIONALLY-GRANTED AUTHORITY TO ISSUE WRITS**
23 **OF INJUNCTIONS.**

24 ²² In addition, there is also the question, reserved by this Court, of whether the to-be-filed
25 petition for judicial review, to take the place of Case 2, would be timely.

26 ²³ See, e.g., Talley v. California, 362 U.S. 60, 64-66 (1960); Hynes v. Mayor and
27 Council of Borough of Oradell, 425 U.S. 610, 628 (1976); McIntyre v. Ohio Elections
28 Comm., 514 U.S. 334, 341-344 (1995); Connection Distributing Co. v. Reno, 154 F.3d 281,
293 (6th Cir. 1998), *cert. denied*, 526 U.S. 1087 (1999); and Deja Vu of Nashville, Inc. v.
Metropolitan Government of Nashville and Davidson County, 274 F.3d 377, 394-395 (6th
Cir. 2001), *cert denied*, 535 U.S. 1073 (2002).

1 Chapter 368A contains an anti-injunction provision (N.R.S. §368A.280(1)), which the
2 Defendants will raise as a bar to this Court providing the relief requested by way of this
3 motion. However, the anti-injunction provision in N.R.S. § 368A.280(1) violates the
4 separation of powers provision of the Nevada Constitution, and is therefore unenforceable.

5
6 The Supreme Court of Ohio recently faced a similar situation in City of Norwood v.
7 Horney, 853 N.E.2d 1115, 110 Ohio St.3d 353 (Ohio 2006). In Norwood, the court evaluated
8 the constitutionality of a statute that “prohibit[ed] a court from enjoining the taking and using
9 of property appropriated by the government . . . prior to appellate review of the taking.” Id. at
10 1122. The court ruled the statute to be “an unconstitutional encroachment of the judiciary’s
11 constitutional and inherent authority in violation of the separation-of-powers doctrine.” Id. at
12 1150.

13
14 The Norwood court identified the power of injunction to be an inherent power of the
15 courts under the state constitution. Id. at 1148-1149. The court next recognized the authority
16 to grant injunctive relief as judicial power that “resides exclusively in the judicial branch.” Id.
17 at 1148. It therefore concluded that the legislature’s attempt to limit the court’s inherent power
18 of injunction violated the separation-of-powers doctrine. Id. at 1150.

19 In doing so, the Ohio Supreme Court found the following statement of the Kentucky
20 Supreme Court to be particularly astute:

21
22 The control over this inherent judicial power, in this particular
23 instance the injunction, is exclusively within the constitutional
24 realm of the courts. *As such, it is not within the purview of the*
25 *legislature to grant or deny the power nor is it within the purview*
26 *of the legislature to shape or fashion circumstances under which*
27 *this inherently judicial power may be or may not be granted or*
28 *denied.*

Id. at 1149 (emphasis in original), citing Smothers v. Lewis, 672 S.W.2d 62, 64 (Ky. 1984).

1 This Court should likewise find the legislature's attempt to limit or fashion the
2 circumstances under which a court may exercise its injunctive power to be in violation of the
3 separation of powers mandated by Article 3, § 1, of the Constitution of the State of Nevada. In
4 Nevada, the power of injunction is not only an inherent judicial power, but it is an *explicit*
5 power of the courts directly conferred upon them by the Nevada Constitution. Article 6, § 6, of
6 the State Constitution vests the power to issue writs of injunction in the State's District Courts.
7

8 . . . The District Courts and the Judges thereof have the power to
9 issue Writs of . . . Injunction. . . , and all other Writs proper and
10 necessary to the complete exercise of the jurisdiction.

11 Chapter 368A attempts to divest the judiciary of its constitutionally granted power of
12 injunction. This provision is a patently unconstitutional violation of the separation of powers
13 set forth in Article 3, § 1, of the State Constitution, which provides:

14 The powers of the government of the State of Nevada shall be
15 divided into three separate departments,—the legislative,—the
16 Executive and the Judicial; and no persons charged with the
17 exercise of powers properly belonging to one of these departments
18 shall exercise any functions, appertaining to either of the others,
19 except in the cases expressly directed or permitted in this
20 constitution.

21 “It is fundamental to our system of government that the separate powers granted the
22 executive, legislative and judicial departments be exercised *without intrusion*.” City of North
23 Las Vegas v. Daines, 92 Nev. 292, 294, 550 P.2d 399 (1976), *citing* Galloway v. Truesdell,
24 83 Nev. 13, 422 P.2d 237 (1967) (emphasis added). This is the single most important principle
25 “declaring and guaranteeing the liberties of the people.” Galloway, 83 Nev. at 18. Statutes
26 which attempt to limit or destroy the powers of the courts must *fail*. Goldberg v. The Eighth
27 Judicial District Court of the State of Nevada, 93 Nev. 614, 616-17, 572 P.2d 521 (1977),
28 *citing* Lindauer v. Allen, 85 Nev. 430, 434, 456 P.2d 851 (1969).

1 Further, Plaintiffs' situation is one that has already been recognized to merit injunctive
2 relief. The Nevada Supreme Court has previously addressed this issue of enjoining the
3 collection of an impermissible tax. In Penrose v. Whitacre, 62 Nev. 239, 147 P.2d 887 (1944)
4 (hereinafter "Penrose II"), the court stated that an injunction to prevent the collection of taxes
5 would lie where "enforcement of the tax would lead to a multiplicity of suits, or *produce*
6 *irreparable injury*; or, if the property is real estate, throw a cloud upon the title of the
7 complainant, or there must be some allegation of fraud. . . ." Id. at 245 (emphasis added)
8 (citing Wells, Fargo & Co. v. Dayton, 11 Nev. 161, 166 (1876) (other citations omitted)). See
9 also Comm'r of International Revenue v. Shapiro, 424 U.S. 614, 627 (1976). The Plaintiffs
10 must also lack an adequate remedy at law. Penrose v. Whitacre, 61 Nev. 440, 132 P.2d 609,
11 617 (1942) (hereinafter "Penrose I").

14 Here, Plaintiffs meet the requirements under Penrose II because: (1) enforcement of
15 Chapter 368A will cause, and indeed has caused, Plaintiffs to suffer irreparable injury; and (2)
16 Plaintiffs lack an adequate remedy at law. These matters have been discussed in great detail
17 above, and will not be reiterated here. Further, the actual imposition of an unconstitutional tax
18 or fee can cause irreparable injury. See Joelner v. Village of Washington Park, Illinois, 378
19 F.3d 613, 620, 628 (7th Cir. 2004) (Court found that if plaintiff "cannot afford such a hefty fee,
20 he would be forced to shut down his bookstore. Hence, there is a threat that these allegedly
21 unconstitutionally excessive fees could cause Joelner significant irreparable harm").
22

24 It is clear that Plaintiffs are entitled to injunctive relief in this action under the binding
25 precedents of Penrose I and II. Because Chapter 368A attempts to divest this Court of its
26 constitutionally-given power of injunction, it is an unconstitutional abridgment of the
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separation of powers doctrine contained in Article 3 § 1, of the Constitution of the State of Nevada, and is therefore invalid.

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1 **V. CONCLUSION**

2 Based upon the foregoing, Plaintiffs respectfully request that this Honorable Court
3 grant this motion; declare the LET to be facially unconstitutional; enjoin the Defendants, their
4 officers, employees, agents, and representatives, as well as all persons acting by, through, and
5 for them, from enforcing, applying, and implementing Title 32, Chapter 368A of the Nevada
6 Revised Statutes; and order the refunding of all taxes paid by Plaintiffs to date, together with
7 interest.
8

9 DATED this 22nd day of September, 2011

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28

**INDEX OF EXHIBITS TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON FACIAL CHALLENGE,
OR PERMANENT INJUNCTION, AND FOR RETURN OF TAXES**

- Ex. 1 Original 2003 Version of Chapter 368A
- Ex. 2 Assembly Bill No. 554 (2005)
- Ex. 3 Senate Bill No. 3 (2005) – “occupancy”
- Ex. 4 Assembly Bill 487 (2007) – baseball
- Ex. 5 Current Codified Version of Chapter 368A
- Ex. 6 Tennessee Attorney General Opinion
- Ex. 7 U.S. District Court Dismissal
- Ex. 8 9th Circuit Decision Affirming Dismissal
- Ex. 9 Redacted Sample Refund Request
- Ex. 10 Sample Denial Letter from Department of Taxation
- Ex. 11 Sample Appeal Acknowledgment Letter from Department
- Ex. 12 October 12, 2007, Tax Commission Ruling
- Ex. 13 Nevada Department of Taxation’s Responses to Plaintiffs’ First Set of Interrogatories to Defendants
- Ex. 14 Minutes of the Assembly Committee on Commerce & Labor – Congressional Session on May 16, 2005
- Ex. 15 Department of taxation memorandum dated March 14, 2005
- Ex. 16 Untitled Revenue Analysis
- Ex. 17 Memorandum of November 9, 2004 (Cathy Chambers)
- Ex. 18 Dino Dicianno email dated April 24, 2004 – Exhibit E to Assembly Committee/Ways & Means, May 26, 2005
- Ex. 19 Memorandum (or Email – to Bible) regarding proposed regulations
- Ex. 20 Senate Committee on Taxation, April 12, 2005

- Ex. 21 Senate Committee on Taxation, June 5, 2005
- Ex. 22 Nevada Tax Commission Hearing Transcript – July 19, 2007 - Excerpts
- Ex. 23 Nevada Tax Commission Hearing Transcript – August 6, 2007 - Excerpts
- Ex. 24 Defendants’ Answering Brief submitted to the Ninth Circuit - Excerpts
- Ex. 25 *Affidavits of Plaintiffs re Admissions*
- Ex. 26 Nevada Tax Commission Hearing Transcript – December 9, 2010 - Excerpts