

CLERK OF THE COURT

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Tracie K. Lindeman
Clerk of Supreme Court

1 NOAS

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9 *Attorney for Petitioner,*

10 *K-Kel, Inc.*

11 BRADLEY J. SHAFER

12 Michigan Bar No. P36604

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18 Email: Brad@bradshaferlaw.com

19 *Co-Counsel Pro Hac Vice for all*

20 *Petitioners except SHAC, LLC*

21 [Additional counsel on following page]

22 DISTRICT COURT
23 CLARK COUNTY, NEVADA

24 K-KEL, INC., d/b/a Spearmint Rhino
25 Gentlemen's Club, et al.,

26 Petitioners,
27 vs.

28 NEVADA DEPARTMENT OF
TAXATION, and NEVADA TAX
COMMISSION,

Respondents.

Case No.: A-11-648894-J
Consolidated with A-14-697515-J
Dept. 30

Notice of Appeal

Notice of Appeal

Page 1 of 3

Docket 69886 Document 2016-06918

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8 *Local Counsel for Petitioners*

9 MARK E. FERRARIO (1625)
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11 3773 Howard Hughes Parkway
12 Suite 400 North
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14 Tel: (702) 792-3773
15 Fax: (702) 792-9002
16 Email: ferrariom@gtlaw.com
17 *Counsel for Petitioner*
18 *SHAC, LLC*

19 Notice of Appeal

20 Notice is hereby given that petitioners hereby appeal to the Supreme
21 Court of Nevada from the order denying judicial review of administrative
22 decision filed on January 15, 2016, notice of entry filed on February 4, 2016.

23 Date: February 26, 2016

24 Respectfully submitted,

25 LAMBROSE | BROWN

26 By: /s/ William H. Brown
27 William H. Brown, Esq. (7623)
28 300 S. Fourth St., Ste. 700
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Attorney for Petitioner, K-Kel, Inc.

Notice of Appeal

Certificate of Service

I hereby certify that I am an employee of LAMBROSE | BROWN and that on this date I served the foregoing **Notice of Appeal** to the parties listed below by causing a full, true, and correct copy to be e-filed and e-served.

E-service

With a courtesy copy to:

Adam Paul Laxalt
Attorney General

District Court Dept. 30
Email:
dept30lc@clarkcountycourts.us

David J. Pope
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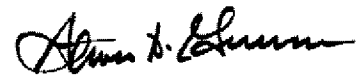
LVGTDocketing
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Shayna Noyce
Email: noyces@gtlaw.com

Tami Cowden
Email: cowdent@gtlaw.com

Date: **February 26, 2016**

By: /s/ Deidra Hufnagle
An employee of
LAMBROSE | BROWN



CLERK OF THE COURT

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10 *K-Kel, Inc.*

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18 Email: Brad@bradshaferlaw.com
19 *Co-Counsel Pro Hac Vice for all*
20 *Petitioners except SHAC, LLC*

21 [Additional counsel on following page]

22 DISTRICT COURT
23 CLARK COUNTY, NEVADA

24 K-KEL, INC., d/b/a Spearmint Rhino
25 Gentlemen's Club, et al.,

26 Petitioners,
27 vs.

28 NEVADA DEPARTMENT OF
TAXATION, and NEVADA TAX
COMMISSION,

Respondents.

Case No.: A-11-648894-J
Consolidated with A-14-697515-J

Dept. 30

Case Appeal Statement

1 NEIL BELLER (2360)
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16 Email: ferrariom@gtlaw.com
17 *Counsel for Petitioner*
18 *SHAC, LLC*

Case Appeal Statement

1. Appellant filing this case appeal statement:

17 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,
19 D. WESTWOOD, INC., d/b/a Treasures, DEJA VU SHOWGIRLS OF
20 LAS VEGAS, LLC, d/b/a/ Déjà vu, and LITTLE DARLINGS OF LAS
21 VEGAS, LLC, d/b/a Little Darlings.

2. Judge issuing the decision, judgment, or order appealed from:

22 The Honorable Jerry A. Wiese II.

3. Each appellant, and the name and address of counsel for each appellant:

- 26 a. K-KEL, INC., d/b/a Spearmint Rhino Gentlemen's Club
27 *Counsel:*
28 WILLIAM H. BROWN (7623)
LAMBROSE | BROWN

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Co-counsel:

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b. SHAC, L.L.C. d/b/a Sapphire

Counsel:

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c. D. WESTWOOD, INC., d/b/a Treasures, DEJA VU SHOWGIRLS
OF LAS VEGAS, LLC, d/b/a/ Déjà vu and LITTLE DARLINGS
OF LAS VEGAS, LLC, d/b/a Little Darlings

Counsel:

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Fax: (517) 886-6565
Email: Brad@bradshaferlaw.com

4. Each respondent, and the name and address of counsel for each respondent:

a. NEVADA DEPARTMENT OF TAXATION, and NEVADA COMMISSION

Counsel:

ADAM PAUL LAXALT

Attorney General

DAVID J. POPE (8617)

Senior Deputy Attorney General

VIVIENNE RAKOWSKY (9160)

Deputy Attorney General

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VRakowsky@ag.nv.gov

5. Attorney(s) appearing pro hac vice under SCR 42:

a. BRADLEY J. SHAFER

Michigan Bar No. P36604

SHAFER & ASSOCIATES, P.C.

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Lansing, Michigan 48906-2110

The district court granted Mr. Shafer permission to appear pro hac vice under SCR 42 on April 23, 2008.¹ See order admitting to practice (**Ex. 1**).

¹ This case is actually the continuation of an earlier case, but in a different form. The case began as *Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.* (A554970). There, the plaintiffs (the petitioners here) challenged facially, and as applied, the constitutionality of Nevada's Live Entertainment Tax (NRS Chapter 368A, the "LET"). After an unsuccessful administrative challenge, they filed a de novo action (as opposed to a petition for judicial review). The district court found that was error under *S. California Edison v. First Judicial Dist. Court of State of Nevada*, 127 Nev. Adv. Op. 22, 255 P.3d 231, 233 (2011), so the court dismissed the de novo action and ordered that it "shall proceed a petition for judicial review"—

1 **6. Whether appellants were represented by retained or appointed**
2 **counsel:**

3 Retained.

4 **7. Whether appellants are represented by retained or appointed**
5 **counsel on appeal:**

6 Retained.

7 **8. Whether leave to proceed in forma pauperis was sought, or**
8 **granted:**

9 No, leave was not sought.

10 **9. Date proceedings commenced in district court:**

11 September 23, 2011.²

12 **10. The nature of the action, the result in district court (including**
13 **type of judgment or order being appealed and relief granted by**
14 **district court):**

15 This matter began as a facial and as applied challenge to the
16 constitutionality of Nevada's Live Entertainment Tax (NRS Chapter 368A,
17 the "LET"). Initially, the petitioners challenged the LET administratively, a
18 process that culminated with a final decision from the Nevada Tax
19 Commission dated October 12, 2007 rejecting the challenge (the "NTC
20 decision").

21
22
23
24
25 which is this case. See order entered 11-1-2011 (**Ex. 2**). The order granting
26 Mr. Shafer pro hac vice admission was entered at the outset of this challenge,
27 in the de novo action. See order granting pro hac vice permission (**Ex. 1**).

28 ² As discussed (note 1, above), this case began as a lawsuit filed on January 9,
2008, but on November 1, 2011, the district court ordered it to "proceed as a
petition for judicial review[]" which was filed on September 23, 2011. See
order entered 11-1-2011 (**Ex. 2**).

1 Following the NTC decision, the petitioners sued (as plaintiffs) in *Déjà*
2 *Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.* (A554970). But
3 the district court dismissed the suit and ordered that it “shall proceed as a
4 petition for judicial review.” See order entered 11-1-2011 (**Ex. 2**). Accordingly,
5 the petitioners appealed the NTC decision via a petition for judicial review
6 under NRS Chapter 233B.

7 On January 15, 2016, the district court entered its order denying
8 judicial review of the NTC decision. The court found there was substantial
9 evidence supporting Nevada Tax Commission’s decisions and they did not
10 violate NRS 233B.135. Consequently, the court affirmed the NTC decision,
11 and denied the petitioner’s petition for judicial review (the “district court’s
12 order”).

13 Now, the petitioners appeal the district court’s order.

14 Date: February 26, 2016

15 Respectfully submitted,

16 LAMBROSE | BROWN

17 By: /s/ William H. Brown

18 William H. Brown, Esq. (7623)

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24 *Attorney for Petitioner,*

25 *K-Kel, Inc.*

Certificate of Service

I hereby certify that I am an employee of LAMBROSE | BROWN and that on this date I served the foregoing **Case Appeal Statement** to the parties listed below by causing a full, true, and correct copy to be e-filed and e-served.

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With a courtesy copy to:

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Attorney General

District Court Dept. 30
Email: dept30lc@clarkcountycourts.us

David J. Pope
Senior Deputy Attorney
General
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Vivienne Rakowsky
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Shayna Noyce
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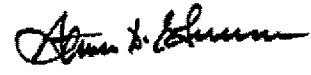
Tami Cowden
Email: cowdent@gtlaw.com

Date: **February 26, 2016**

By: /s/ Deidra Hufnagle
An employee of
LAMBROSE | BROWN

EXHIBIT 1

EXHIBIT 2


CLERK OF THE COURT

1 **ORDR**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
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8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
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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

ORDER

Attorney General's Office
555 E. Washington, 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 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.

Case No. 08A554970
Dept. No. XI

15 ORDER

16 DEFENDANTS' RE-NOTICED MOTION FOR PARTIAL SUMMARY JUDGMENT ON
17 THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED
18 CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES
19 PURSUANT TO 42 U.S.C. §1983 and DEFENDANTS' MOTION TO COMPEL came on for
20 hearing on August 23, 2011;

21 David J. Pope, Senior Deputy Attorney General, Blake A. Doerr, Senior Deputy
22 Attorney General, and Vivienne Rakowsky, Deputy Attorney General appeared on behalf of
23 the Defendants; William J. Brown, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the
24 Plaintiffs; Mark E. Ferrario appeared on behalf of Plaintiff SHAC, LLC.

25 The Court having first requested that Defendants' motion for partial summary judgment
26 and motion to dismiss be re-noticed and having considered the papers and pleadings
27 regarding the re-noticed motion and the motion to compel, as well as the oral argument
28 presented by all parties, hereby orders:

...

...

...

1 DEFENDANTS' RE-NOTICED MOTION FOR PARTIAL SUMMARY JUDGMENT ON
2 THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED
3 CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES
4 PURSUANT TO 42 U.S.C. §1983 is granted in part and denied in part.

5 With regard to Defendants' motion to dismiss and/or motion for partial summary
6 judgment in Case #08A554970 ("Case 2"), this Court finds that the Defendants timely raised
7 the question regarding the procedural posture of the case and based on the Nevada Supreme
8 Court's decision in *Southern California Edison*, 127 Nev.Adv.Op. 22 (2011) all claims are
9 dismissed and Case 2 shall proceed as a petition for judicial review pursuant to Chapter 233B
10 of the NRS. The Court having tolled the statute of limitations for thirty (30) days to allow
11 Plaintiffs thirty (30) days to file a petition for judicial review, Plaintiffs shall have thirty (30)
12 days from August 23, 2011 to file a petition for judicial review pursuant to NRS 233B.130, et
13 seq.

14 With regard to Defendants' motion to dismiss and/or for partial summary judgment in
15 Case #06A533273 ("Case 1"), the motion is granted and all other claims including the "as
16 applied" challenge, the refund claims and the official capacity claim against Michelle Jacobs
17 are dismissed and Case 1 shall proceed as a facial challenge for declaratory relief only.
18 Briefs are to be filed within thirty (30) days.

19 With regard to Defendants' motion to dismiss and/or for partial summary judgment
20 regarding all 42 U.S.C. §1983 damages claims, the motion is granted and all such damages
21 claims are dismissed from Case 1 and Case 2.

22 With regard to Plaintiffs motion to remand Case 2 to the Nevada Tax Commission, the
23 motion is denied.

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With regard to DEFENDANTS' MOTION TO COMPEL, this Court finds that any further discovery would be inappropriate and is hereby ordered cancelled.


IT IS SO ORDERED.

DATED this 27th day of October, 2011.


DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: 
David J. Pope
Senior Deputy Attorney General

ORIGINAL

16

ORDR

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Attorneys for Plaintiffs

FILED

Apr 23 11 08 AM '08

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CLERK OF THE COURT

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* Pending Admission Pro Hac Vice

DISTRICT COURT

CLARK COUNTY, NEVADA

K-KEL, INC., d/b/a *Spearmint Rhino*
Gentlemen's Club, OLYMPUS GARDEN,
INC., d/b/a *Olympic Garden*, SHAC, LLC, 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*,

Case No.: A554970
Dept. No.: IX

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION,
NEVADA TAX COMMISSION, NEVADA
STATE BOARD OF EXAMINERS,

Defendants.

ORDER ADMITTING TO PRACTICE

BRADLEY J. SHAFER, ESQ. having filed his Motion to Associate Counsel under
Nevada Supreme Court Rule 42, together with a Verified Application for Association of

RECEIVED

MAR 14 2008

DEPT IX

CLERK OF IN...

APR 23 2008

1 Counsel, a Certificate of Good Standing for the states of Michigan and Arizona, and the State
2 Bar of Nevada Statement; said application having been noticed, no objections having being
3 made, and the Court being fully apprised in the premises, and good cause appearing, it is
4 hereby


5 **ORDERED**, that said application is hereby granted, and Bradley J. Shafer, Esq. is
6 hereby admitted to practice in the above-entitled Court for the purposes of the above entitled
7 matter only.

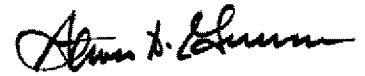
8
9 DATED this 21st day of March, 2008.

10
11 
12 DISTRICT COURT JUDGE

13 Submitted by:

14 GHANEM & SULLIVAN, LLP

15 
16 DIANA L. SULLIVAN, ESQ.
17 Nevada Bar #4701
18 930 South Fourth Street, Suite 210
19 Las Vegas, NV 89101
20 Attorneys for Plaintiffs
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CLERK OF THE COURT

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**Notice of Depositing Security for
Costs on Appeal**

1 NEIL BELLER (2360)
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15 Fax: (702) 792-9002
16 Email: ferrariom@gtlaw.com
17 *Counsel for Petitioner*
18 *SHAC, LLC*

19 Notice of Depositing Security for Costs on Appeal

20 Notice is hereby given that in accordance with NRAP 7, Petitioner, K-
21 Kel Inc. has deposited \$500.00, payable to the Clark County Court Clerk, as
22 security for the payment of costs on appeal.

23 Date: February 29, 2016

24 Respectfully submitted,

25 LAMBROSE | BROWN

26 By: /s/ William H. Brown
27 WILLIAM H. BROWN (7623)
28 LAMBROSE | BROWN
300 S. Fourth St., Ste. 700
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Attorney for Petitioner, K-Kel, Inc.

Certificate of Service

I hereby certify that I am an employee of LAMBROSE | BROWN and that on this date I served the foregoing **Notice of Depositing Security for Costs on Appeal** to the parties listed below by causing a full, true, and correct copy to e-filed and e-served.

E-service

With a courtesy copy to:

Adam Paul Laxalt
Attorney General

District Court Dept. 30
Email: dept30lc@clarkcountycourts.us

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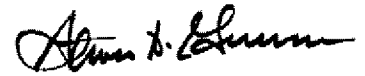
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Shayna Noyce
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Tami Cowden
Email: cowdent@gtlaw.com

Date: **February 29, 2016**

By: /s/ Deidra Hufnagle
An employee of
LAMBROSE | BROWN



CLERK OF THE COURT

1 **REQT**

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20 *Petitioners except SHAC, LLC*

21 [Additional counsel on following page]

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

24 K-KEL, INC., d/b/a Spearmint Rhino
25 Gentlemen's Club, et al.,

26 Petitioners,
27 vs.

28 NEVADA DEPARTMENT OF
TAXATION, and NEVADA TAX
COMMISSION,

Respondents.

Case No.: A-11-648894-J
Consolidated with A-14-697515-J
Dept. 30

**Request for Transcript of
Proceedings on Appeal**

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17 *Counsel for Petitioner*
18 *SHAC, LLC*

Request for Transcript of Proceedings on Appeal

To: Kristy Clark, Court Reporter/Recorder District Court, Dept. 30

Petitioners K-Kel, Inc., et al., hereby request preparation of a
transcript on appeal of certain portions of the proceedings before the District
Court Judge, Jerry A. Wiese, II as follows:

Date of Proceedings:

1. October 27, 2015 (hearing on petition for judicial review).

Portions of the transcript requested:

The full hearing transcript for the above listed date.

Number of transcripts requested:

That the above-named court reporter shall have thirty (30) days from the date of service of this document to prepare an original plus two copies and file with the Supreme Court Clerk the original transcript requested herein.

Further, pursuant to NRAP 9, **the court reporter shall also deliver copies of the transcript to appellant's counsel and respondent's counsel** no more than thirty (30) days after the date of the appellant's request.

[Blank]

1 I hereby certify that on this date I ordered these transcripts from the
2 court reporter named above, and paid the required deposit.
3

4 Date: February 29, 2016

5 Respectfully submitted,

6 LAMBROSE | BROWN
7

8 By: /s/ William H. Brown
9 WILLIAM H. BROWN (7623)
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17 *K-Kel, Inc.*
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28

Certificate of Service

I hereby certify that I am an employee of LAMBROSE | BROWN and that on this date I served the foregoing **Request for Transcript of Proceedings on Appeal** to the parties listed below by causing a full, true, and correct copy to e-filed and e-served.

E-service

With a courtesy copy to:

Adam Paul Laxalt
Attorney General

District Court Dept. 30
Email: dept30lc@clarkcountycourts.us

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Kristy Clark, Court
Reporter/Recorder District
Court, Dept. 30
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Mark Ferrario
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Tami Cowden
Email: cowdent@gtlaw.com

Date: **February 29, 2016**

By: /s/ Deidra Hufnagle
An employee of
LAMBROSE | BROWN

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-11-648894-J

K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

§
§
§
§
§

Location: **Department 30**
Judicial Officer: **Wiese, Jerry A.**
Filed on: **09/23/2011**
Cross-Reference Case Number: **A648894**

CASE INFORMATION

Related Cases

A-14-697515-J (Consolidated)

Case Type: **Civil Petition for Judicial Review**

Statistical Closures

12/02/2015 Summary Judgment

Case Flags: **Consolidated - Lead Case
Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment












Case Number	A-11-648894-J
Court	Department 30
Date Assigned	09/23/2011
Judicial Officer	Wiese, Jerry A.

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	D I Food and Beverage of Las Vegas LLC	Brown, William H. <i>Retained</i> 702-816-2200(W)
	D Westwood Inc	Brown, William H. <i>Retained</i> 702-816-2200(W)
	Deja Vu Showgirls of Las Vegas	Brown, William H. <i>Retained</i> 702-816-2200(W)
	K-Kel, Inc.	Brown, William H. <i>Retained</i> 702-816-2200(W)
	Little Darlings of Las Vegas LLC	Brown, William H. <i>Retained</i> 702-816-2200(W)
	Olympus Garden Inc	Brown, William H. <i>Retained</i> 702-816-2200(W)
	Power Company Inc	Brown, William H. <i>Retained</i> 702-816-2200(W)
	Shac LLC	Brown, William H. <i>Retained</i> 702-816-2200(W)
Defendant	Nevada Department of Taxation	Pope, David J. <i>Retained</i> 7026568084(W)
	Nevada Tax Commission	Pope, David J. <i>Retained</i>











DEPARTMENT 30
CASE SUMMARY
CASE NO. A-11-648894-J

7026568084(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
09/23/2011	 Petition for Judicial Review Filed by: Plaintiff K-Kel, Inc. <i>Petition for Judicial Review</i>	
09/23/2011	Case Opened	
09/28/2011	 Application Filed By: Plaintiff K-Kel, Inc. <i>Application for Leave to Present Additional Evidence to the Nevada Tax Commission</i>	
10/07/2011	 Statement Filed by: Defendant Nevada Department of Taxation <i>Statement of Intent to Participate</i>	
10/12/2011	 Notice of Hearing Filed By: Plaintiff K-Kel, Inc. <i>Notice of Hearing for Plaintiff's Application for Leave to Present Additional Evidence to the Nevada Tax Commission</i>	
10/21/2011	 Administrative Record Party: Defendant Nevada Department of Taxation <i>Administrative Record</i>	
10/21/2011	 Opposition Filed By: Defendant Nevada Department of Taxation <i>Opposition to Petitioners Application for Leave to Present Additional Evidence to the Nevada Tax Commission</i>	
10/25/2011	 Stipulation and Order Filed by: Defendant Nevada Department of Taxation <i>Stipulation and Order for Extension of Time</i>	
10/26/2011	 Notice of Entry of Order Filed By: Defendant Nevada Department of Taxation <i>Notice of Entry of Order</i>	
11/07/2011	 Reply in Support Filed By: Plaintiff K-Kel, Inc. <i>Reply in Support of Application for Leave to Present Additional Evidence to the Nevada Tax Commission</i>	
11/09/2011	 Motion to Dismiss Filed By: Defendant Nevada Department of Taxation <i>Nevada Department of Taxation's and Nevada Tax Commission's Motion to Dismiss Petitioner's Deja Vu and Little Darlings</i>	
11/10/2011	 Certificate of Service Filed by: Defendant Nevada Department of Taxation <i>Certificate of Service</i>	
11/21/2011	 Notice of Entry of Order Filed By: Defendant Nevada Department of Taxation	















DEPARTMENT 30
CASE SUMMARY
CASE NO. A-11-648894-J

Notice of Entry of Order












11/21/2011	 Stipulation and Order Filed by: Defendant Nevada Department of Taxation <i>Stipulation and Order for Continuance</i>
12/09/2011	 Motion for Leave (9:00 AM) (Judicial Officer: Wiese, Jerry A.) Events: 09/28/2011 Application <i>Plaintiff's K-Kel, Olympus Garden Inc, The Power Company Inc, Westwood Inc, D.I. Food & Beverage of Las Vegas LLC, Deja Vu Showgirls of Las Vegas LLC and Little Darlings of Las Vegas LLC's Application for Leave to Present Additional Evidence to the Nevada Tax Commission</i>
12/16/2011	 Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Nevada Department of Taxation's and Nevada Tax Commission's Motion to Dismiss Petitioner's Deja Vu and Little Darlings</i>
01/26/2012	 Objection Filed By: Plaintiff K-Kel, Inc. <i>Petitioners' Objections to Proposed Order Submitted by Respondents Nevada Department of Taxation and Nevada Tax Commission</i>
02/01/2012	 Order Filed By: Defendant Nevada Department of Taxation <i>Order Granting Plaintiffs Application for Leave to Present Additional Evidence to the Nevada Tax Commission</i>
02/02/2012	 Notice of Entry of Order Filed By: Defendant Nevada Department of Taxation <i>Notice of Entry of Order</i>
02/02/2012	 Notice of Entry of Order Filed By: Defendant Nevada Department of Taxation <i>Notice of Entry of Order</i>
05/02/2012	 Opposition to Motion Filed By: Defendant Nevada Department of Taxation <i>Opposition to Motion for Stay on OST</i>
05/07/2012	 Motion to Stay Filed By: Plaintiff D I Food and Beverage of Las Vegas LLC <i>Motion to Stay Administrative Hearing Pending Superseding Appeals Currently Before Nevada Supreme Court on OST</i>
05/23/2012	 Supplement to Opposition Filed By: Defendant Nevada Department of Taxation <i>Supplement to Opposition to Motion for Stay</i>
06/01/2012	 Reply to Opposition Filed by: Plaintiff K-Kel, Inc. <i>Reply Supporting Motion to Stay Administrative Hearing Pending Superseding Appeals Currently Before Nevada Supreme Court on OST</i>
06/08/2012	 Motion For Stay (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Petitioners' Motion to Stay Administrative Hearing Pending Superseding Appeals Currently</i>

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-11-648894-J

Before Nevada Supreme Court on OST

06/21/2012	 Order Denying Motion Filed By: Defendant Nevada Tax Commission <i>Order Denying Stay</i>
06/22/2012	 Notice of Entry of Order Filed By: Plaintiff K-Kel, Inc. <i>Notice of Entry of Order</i>
10/30/2012	 Reporters Transcript Filed By: Plaintiff K-Kel, Inc. <i>Reporter's Transcript Of Proceedings June 8, 2012</i>
10/30/2012	 Reporters Transcript Filed By: Plaintiff K-Kel, Inc. <i>Reporter's Transcript Of Proceedings December 8, 201q</i>
09/09/2013	 Order Scheduling Status Check <i>Order Scheduling Status Check</i>
10/15/2013	 Status Check (9:00 AM) (Judicial Officer: Wiese, Jerry A.) 10/15/2013, 03/25/2014, 09/23/2014, 10/21/2014
03/19/2014	 Notice of Change of Address Filed By: Plaintiff K-Kel, Inc. <i>Notice of Change of Address</i>
03/24/2014	 Motion Filed By: Defendant Nevada Department of Taxation <i>Stipulation and Order Consolidating Cases</i>
03/24/2014	 Notice of Department Reassignment
03/26/2014	 Notice of Entry of Order Filed By: Plaintiff K-Kel, Inc. <i>Notice of Entry of Order</i>
03/28/2014	 Notice of Entry of Order <i>Notice of Entry of Order</i>
01/21/2015	 Stipulation and Order Filed by: Defendant Nevada Department of Taxation <i>Stipulation and Order for Extension of Time</i>
01/22/2015	 Notice of Entry of Order Filed By: Defendant Nevada Department of Taxation <i>Notice of Entry of Stipulation and Order for Extension of Time</i>
01/26/2015	 Supplement Filed by: Defendant Nevada Department of Taxation <i>Supplement to the Record on Appeal in Accordance with the Nevada Administrative Procedure Act</i>

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-11-648894-J

01/26/2015	 Transmittal of Record on Appeal Party: Plaintiff K-Kel, Inc. <i>Transmittal of Supplement to the Record on Appeal</i>
02/10/2015	 Memorandum of Points and Authorities Filed By: Plaintiff Shac LLC <i>Petitioners' Memorandum of Points and Authorities In Support of Petition for Judicial Review</i>
03/30/2015	 Stipulation and Order Filed by: Defendant Nevada Department of Taxation <i>Stipulation and Order for Extension of Time</i>
03/31/2015	 Notice of Entry of Stipulation and Order Filed By: Plaintiff K-Kel, Inc. <i>Notice of Entry of Order Granting Stipulation and Order to Extend Time</i>
04/30/2015	 Answering Brief Filed By: Defendant Nevada Department of Taxation <i>Answering Brief in Opposition to Petition for Judicial Review</i>
06/04/2015	CANCELED Hearing (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - per Stipulation and Order</i>
06/04/2015	 Reply in Support Filed By: Plaintiff K-Kel, Inc. <i>Petitioners' Reply In Support of Petition for Judicial Review</i>
06/05/2015	 Errata Filed By: Plaintiff Shac LLC <i>Errata Re Petitioners' Reply In Support of Petition for Judicial Review</i>
06/10/2015	 Request Filed by: Plaintiff K-Kel, Inc. <i>Petitioners' Request for Hearing</i>
07/07/2015	 Motion for Leave to File Party: Plaintiff K-Kel, Inc. <i>Motion for Leave to File Supplemental Brief Regarding New U.S. Supreme Court Precedent</i>
07/15/2015	 Supplement Filed by: Plaintiff K-Kel, Inc. <i>Supplement to Motion for Leave to File Supplemental Brief Regarding New U.S. Supreme Court Precedent</i>
07/17/2015	 Opposition to Motion Filed By: Defendant Nevada Department of Taxation <i>Nevada Department of Taxation's Opposition to Petitioners' Motion for Leave to File Supplemental Brief</i>
07/24/2015	CANCELED Decision (3:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i>
07/30/2015	CANCELED Motion (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i>

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-11-648894-J

Petitioners' Request for Hearing

08/06/2015



Errata

Filed By: Plaintiff K-Kel, Inc.

Errata to Motion for Leave to File Supplemental Brief Regarding New U.S. Supreme Court Precedent

09/09/2015



Reply in Support

Filed By: Plaintiff Shac LLC

Reply In Support of Petitioners' Motion for Leave to File Supplemental Brief

09/22/2015



Motion for Leave (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Motion for Leave to File Supplemental Brief Regarding New U.S. Supreme Court Precedent

10/05/2015



Opposition

Filed By: Defendant Nevada Department of Taxation

Nevada Department of Taxation's Opposition to Petitioners' Supplemental Brief

10/09/2015



Order Granting Motion

Filed By: Plaintiff Shac LLC

Order Granting Petitioners' Motion to File Supplemental Brief and Setting Hearing on Petition for Judicial Review

10/13/2015



Notice of Entry of Order

Filed By: Plaintiff K-Kel, Inc.

Notice of Entry of Order Granting Petitioners' Motion to File Supplemental Brief and Setting Hearing on Petition for Judicial Review

10/13/2015



Reply to Opposition

Filed by: Plaintiff Shac LLC

Petitioners' Reply to Nevada Department of Taxation's Opposition to Petitioners' Supplemental Brief

10/27/2015



Supplemental Brief

Filed By: Plaintiff Shac LLC

Supplemental Memorandum of Points and Authorities

10/27/2015



Hearing (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

PETITION FOR JUDICIAL REVIEW

11/24/2015



Minute Order (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

PETITION FOR JUDICIAL REVIEW

12/02/2015



Order to Statistically Close Case

Civil Order to Statistically Close Case

01/15/2016



Order Denying Judicial Review of Administrative Decision

Filed by: Defendant Nevada Tax Commission

Order Denying Judicial Review of Administrative Decision

01/15/2016






Order Denying Judicial Review (Judicial Officer: Wiese, Jerry A.)

Debtors: K-Kel, Inc. (Plaintiff), Olympus Garden Inc (Plaintiff), Deja Vu Showgirls of Las Vegas (Plaintiff), Little Darlings of Las Vegas LLC (Plaintiff), Shac LLC (Plaintiff)

Creditors: Nevada Department of Taxation (Defendant), Nevada Tax Commission (Defendant)

Judgment: 01/15/2016, Docketed: 01/22/2016

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-11-648894-J

02/04/2016	 Notice of Entry of Order Filed By: Defendant Nevada Department of Taxation <i>Notice of Entry of Order Denying Judicial Review of Administrative Decision</i>
02/26/2016	 Notice of Appeal Filed By: Consolidated Case Party SHAC LLC <i>Notice of Appeal</i>
02/26/2016	 Case Appeal Statement Filed By: Consolidated Case Party SHAC LLC <i>Case Appeal Statement</i>
02/29/2016	 Notice of Deposit Filed By: Consolidated Case Party SHAC LLC <i>Notice of Depositing Security for Costs on Appeal</i>
02/29/2016	 Request Filed by: Plaintiff Shac LLC <i>Request for Transcript of Proceedings on Appeal</i>

DATE	FINANCIAL INFORMATION
	Consolidated Case Party SHAC LLC Total Charges 24.00 Total Payments and Credits 24.00 Balance Due as of 3/1/2016 0.00
	Plaintiff D I Food and Beverage of Las Vegas LLC Total Charges 30.00 Total Payments and Credits 30.00 Balance Due as of 3/1/2016 0.00
	Plaintiff D Westwood Inc Total Charges 30.00 Total Payments and Credits 30.00 Balance Due as of 3/1/2016 0.00
	Plaintiff Deja Vu Showgirls of Las Vegas Total Charges 30.00 Total Payments and Credits 30.00 Balance Due as of 3/1/2016 0.00
	Plaintiff K-Kel, Inc. Total Charges 270.00 Total Payments and Credits 270.00 Balance Due as of 3/1/2016 0.00
	Plaintiff Little Darlings of Las Vegas LLC Total Charges 30.00 Total Payments and Credits 30.00 Balance Due as of 3/1/2016 0.00
	Plaintiff Olympus Garden Inc Total Charges 30.00 Total Payments and Credits 30.00 Balance Due as of 3/1/2016 0.00
	Plaintiff Power Company Inc Total Charges 30.00

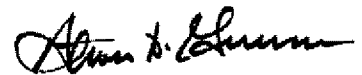
DEPARTMENT 30
CASE SUMMARY
CASE NO. A-11-648894-J

Total Payments and Credits	30.00
Balance Due as of 3/1/2016	0.00
Plaintiff Shac LLC	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 3/1/2016	0.00
Plaintiff K-Kel, Inc.	
Appeal Bond Balance as of 3/1/2016	500.00

A-11-648894-J

Case No. _____
(Assigned by Clerk's Office)

Form PA 201
Rev. 2.5E



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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; D. WESTWOOD, INC.,
d/b/a Treasures; DÉJÀ VU SHOWGIRLS
OF LAS VEGAS, LLC, d/b/a Déjà vu; and
LITTLE DARLINGS OF LAS VEGAS, LLC,
d/b/a Little Darlings,

Petitioners,

v.

STATE OF NEVADA, ex rel.
DEPARTMENT OF TAXATION and TAX
COMMISSION,

Respondents.

Case No.: A-11-648894-J
Dept. No.: XXX

Consolidated with:
Case No.: A-14-697515-J

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Disputed Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Judgment of Dismissal by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

The above-referenced matter came before the Honorable Judge Jerry Wiese with regard to the Consolidated Petitions for Judicial Review of the decisions by the Nevada Tax Commission (hereinafter "Commission") filed by Petitioners, K-KEL, INC., d/b/a Spearmint Rhino Gentlemen s Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, LLC

1 d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, DEJA VU SHOWGIRLS OF LAS
2 VEGAS, LLC, d/b/a Deja vu and LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little
3 Darlings ("Petitioners"). Both sides filed briefs, and the Court heard oral argument. The
4 Petitioners were represented by William Brown Esq., Mark Ferrario, Esq. and Bradley Shafer,
5 Esq. (admitted Pro Hac Vice). The Nevada Tax Commission was represented by Vivienne
6 Rakowsky, Deputy Attorney General and David Pope, Senior Deputy Attorney General.

7 After supplemental briefing regarding the Supreme Court decision in Reed v Town of
8 Gilbert, Arizona, 135 U.S. 2218 (2015), and after oral argument, the Court took the matter
9 under advisement and issued a Minute Order on November 24, 2015 which is attached hereto
10 as Exhibit "A".

11 The procedural history of this matter dates back to a decision by the Nevada Tax
12 Commission dated October 12, 2007 upholding the Live Entertainment Tax
13 (PJR-11-648894-J), a remand in January 2012 to allow the Commission to review additional
14 evidence and determine whether it would amend, affirm or reverse its 2007 decision and re-
15 open discovery to allow depositions (PJR 14-697515-J), and supplemental briefing to
16 determine whether the standard of review for the Live Entertainment Tax changed based on
17 the U.S. Supreme Court decision in Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (2015).

18 Based upon the pleadings and papers on file, after hearing oral argument, and good
19 cause appearing, the Court renders the following findings of fact:

- 20 1. The parties essentially agreed to the procedural history and underlying factual
21 background of this case.
- 22 2. The three issues before this Court were:
 - 23 a. Petition for Judicial Review of the Nevada Tax Commission October 12, 2007
24 decision denying Petitioners requests for refunds of Live Entertainment Tax
25 ("NLET") paid, and finding that the NLET does not violate the U.S.
26 Constitution or Nevada Constitution, is not targeted at gentlemen's clubs,
27 and is not a tax based on the content of the taxpayer's message.

- b. Petition for Judicial Review of the Nevada Tax Commission's decision dated September 6, 2012 finding that discovery would not be reopened to allow depositions, and decision on February 12, 2014 upholding the Hearing Officers Hearing on Remand finding that the more than 1,500 pages of supplemental materials were insufficient to cause the Commission's October 12, 2007 decision to be reversed or amended.
 - c. Petitioner's supplemental briefing claiming that the U.S. Supreme Court decision in Reed v. Gilbert Arizona changed the standard of review for determining the constitutionality of the Live Entertainment Tax to strict scrutiny.
 3. The Petitioners made the following arguments:
 - a. That the NLET is unconstitutional because it is a direct tax on First Amendment activities and is statutorily gerrymandered to apply only to a narrowly defined group of speakers, and in doing so discriminates based on the content of the entertainment;
 - b. The Commission should have permitted Petitioners to conduct the requested depositions in order to shed further light on the drafting and amending of the NLET and to identify the purpose for each and every one of the exceptions to the definition of live entertainment set forth in NRS 368A; and
 - c. Based on the recent ruling in Reed v. Town of Gilbert, Arizona, U.S. , 135 S. Ct. 2218 (2015), strict scrutiny applies, and the NLET does not pass the constitutional muster because there is a differentiation of the application of a law based upon the content of the expression.
 4. The Department made the following arguments:
 - a. That the NLET is Constitutional revenue raising tax and not a tax on a First Amendment right, and the tax has not been applied to the Petitioners in an unconstitutional manner. The Nevada Supreme Court found that the NLET is

1 constitutional on its face in Deja Vu Showgirls v. Department of Taxation, 334
2 P.3d 392 (2014). In that case, the Nevada Supreme Court established that
3 the standard of review for the NLET is a rational basis analysis, because it
4 does not regulate live entertainment, it does not discriminate on the basis of
5 the taxpayers' speech, and it does not target a small group of speakers or
6 threaten to suppress viewpoints. Deja vu, 334 P.3d at 401;

- 7 b. That the Commission's decision on remand to deny depositions should be
8 upheld because, while NRS 233B.131(2) provides for additional evidence
9 under very specific conditions, it does not provide for additional evidence
10 after receiving an adverse decision. Moreover, the information that the
11 Petitioners were seeking was available in 2007. On January 24, 2012, the
12 Court remanded the case to the Commission for review of evidence, not to
13 allow additional evidence to be gathered; and
- 14 c. The standard used by the court to review a tax matter has been in place
15 more than 125 years and has not changed on the basis of a sign ordinance
16 case (Reed). The Court in Deja Vu had previously ruled that heightened
17 scrutiny does not apply to tax classification unless the classification is hostile
18 and oppressive discrimination against particular person and classes.

19 The Court made the following conclusions of law:

- 20 5. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of
21 the agency as to the weight of evidence on a question of fact. NRS 233B.135(3).
- 22 6. Pursuant to NRS 233B.135(3), the Court can remand, affirm, or set aside the
23 Commission's decision if the substantial rights of the petitioner have been
24 prejudiced because the agency's decision is in violation of statutory provisions, in
25 excess of the statutory authority of the agency, made upon unlawful procedure,
26 affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse
27 of discretion.
- 28

- 1 7. The Commission did not find Petitioner's argument with respect to reopening
2 discovery to allow depositions meritorious because all the information that
3 Petitioners sought recently was available prior to 2007, and the information sought
4 was consistently determined to be irrelevant. The Commission's decision did not
5 violate the constitution or a statute, was not in excess of its statutory authority, was
6 not made upon unlawful procedure, was not affected by other error of law, was not
7 clearly erroneous, and was not arbitrary, capricious, or an abuse of discretion.
8 These findings of fact by the Commission may not be disturbed by this Court. The
9 Commission's determination with regard to the request to take depositions is hereby
10 AFFIRMED.
- 11 8. The construction of a statute is a question of law, and therefore, independent review
12 is appropriate. However, the court will not readily disturb an administrative
13 interpretation of statutory language. City of Reno v. Reno Police Protective Ass'n.,
14 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is
15 constitutional as applied to the Petitioners is supported by the fact that the Nevada
16 Supreme Court has determined that the NLET does not regulate live entertainment
17 and is simply a tax on a business transaction, and not a tax on the expressive
18 activity taking place within the facility.
- 19 9. Petitioners have failed to meet their burden to show that the NLET has attacked the
20 content of their message.
- 21 10. The Commission did not exceed their authority by concluding that NLET, as applied
22 to Petitioners, is not an impermissible differential tax, and does not place a burden
23 on a narrowly defined group of speakers.
- 24 11. Reed v. Town of Gilbert, Arizona, 135 U.S. 2218 (2015), does not apply to tax
25 classification unless the classification is hostile and oppressive discrimination
26 against particular person and classes. This Court does not find any evidence here
27 that NLET triggers the application of Reed.
- 28

12. The Commission's decision that NLET is not a content-based tax on first amendment activity, but a legitimate tax scheme, evenly applied, and used to raise state revenue shall not be disturbed.

ORDER

Based upon the foregoing, this Court Orders that there was substantial evidence supporting the Commission's decisions and that the Commission's decisions did not violate NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. The Petition for Judicial Review is DENIED.

IT IS SO ORDERED

DATED this 13 day of January, 2016.


DISTRICT COURT JUDGE

Respectfully Submitted By:


VIVENNE RAKOWSKY
Deputy Attorney General

EXHIBIT A

EXHIBIT A

REGISTER OF ACTIONS

CASE NO. A-11-648894-J

K-Kel, Inc., Plaintiff(s) vs. Nevada Department of Taxation, Defendant(s)

Case Type:

Civil Petition for Judgment Review

Date Filed: 09/23/2011

Location: Department 30

Cross-Reference Case Number: A648894

Number:

RELATED CASE INFORMATION

Related Cases

A-14-697515-J (Consolidated)

PARTY INFORMATION

Defendant	Nevada Department of Taxation	Lead Attorneys David J. Pope A A Retained 7026568084(W)
Defendant	Nevada Tax Commission	David J. Pope A A Retained 7026568084(W)
Plaintiff	D I Food and Beverage of Las Vegas LLC	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	D Westwood Inc	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Deja Vu Showgirls of Las Vegas	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	K-Kel, Inc.	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Little Darlings of Las Vegas LLC	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Olympus Garden Inc	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Power Company Inc	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Shac LLC	William H. Brown A A Retained 702-816-2200(W)

11/24/2015 Minute Order (9:00 AM) (Judicial Officer Wiese, Jerry A.)

Minutes

11/24/2015 9:00 AM

- The above-referenced matter came before Judge Jerry Wiese with regard to a Petition for Judicial Review filed by Petitioners, K-KEL, INC., d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, LLC d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, D J VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a D j vu and LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little Darlings. Briefs were filed in this matter, and the Court also heard oral argument. After supplemental briefing regarding the Reed case, and after oral argument, the Court took the matter under advisement. Based upon the pleadings and papers on file, after hearing oral argument, and good cause appearing, the Court now renders the following decision: This Court will not reiterate the procedural history or the factual background of this case, as the parties essentially agree to the underlying facts. Petitioners argue that the Commission should have permitted Petitioners to conduct the requested depositions in order to shed further light on the drafting and amending of the NLET and to identify the purpose for each and every one of the exceptions to the definition of live entertainment set forth in NRS 368A. Petitioners also argue that NLET is unconstitutional because it is a direct tax on First Amendment activities and is statutorily gerrymandered to apply only to a narrowly defined group of speakers, and in doing so discriminates based on the content of the entertainment. Lastly, Petitioners argue that in light of the recent ruling in *Reed v. Town of Gilbert, Arizona*, ___ U.S. ___, 135 S. Ct. 2218 (2015), the NLET does not pass the constitutional muster of strict scrutiny that now applies, whereas in this case, there is a differentiation of the application of a law based upon the content of expression. The Department of Taxation (Department) argues that the Commission's decision on remand to deny depositions should be upheld because, while NRS 233B.131(2) provides for additional evidence under very specific conditions, it does not provide for additional evidence after receiving an adverse decision. This Court remanded the case to the Commission for review of evidence, not to allow additional evidence to be gathered. The Department also argues that NLET is a Constitutional revenue raising tax and not a tax on a First Amendment right, and it has not been applied to the Petitioners in an unconstitutional manner. Furthermore, the Department notes that the Nevada Supreme Court found that the NLET is constitutional on its face in *D j Vu Showgirls v. Department of Taxation*, 334 P.3d 392 (2014). In that case, the Nevada Supreme Court established that the standard of review for the NLET is a rational basis analysis, because it does not regulate live entertainment, it does not discriminate on the basis of the taxpayers' speech, and it does not target a small group of speakers or threaten to suppress viewpoints. *D j vu*, 334 P.3d at 401. Finally, the Department argues that the standard of review for a tax matter has been in place more than 125 years and has not changed on the basis of a sign ordinance case (*Reed*). The Department argues that the Court in *D j Vu* ruled that heightened scrutiny does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. (NRS 233B.135[3]). Pursuant to NRS 33B.135(3), the Court can remand, affirm, or set aside the Commission's decision if the substantial rights of the petitioner have been prejudiced because the agency's decision is in violation of statutory provisions, in excess of the statutory authority of the agency, made upon unlawful procedure, affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse of discretion. The Commission did not find Petitioner's argument with respect to reopening discovery to allow depositions meritorious because all the information that Petitioners sought recently was available prior to 2007, and the information sought was consistently determined to be irrelevant. These are findings of fact by the Commission that may not be disturbed by this Court. The Court does not find that the Commission's determination violated the constitution or a statute, was in excess of its statutory authority, was made upon unlawful procedure, was affected by other error of law, was clearly erroneous, or was arbitrary, capricious, or an abuse of discretion. Consequently, the Commission's determination with regard to the request to take depositions, is hereby **AFFIRMED**. The construction of a statute is a question of law, and therefore, independent review is appropriate. However, this court will not readily disturb an administrative interpretation of statutory language. *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is constitutional as applied to the Petitioners is supported by the fact that the Nevada Supreme Court has determined that the NLET does not regulate live entertainment and is simply a tax on a business transaction, and not on the expressive activity taking place within the facility. Petitioners have failed to meet their burden to show that the NLET has attacked the content of their message. In addition, this Court finds that the Commission did not exceed their authority by concluding that NLET, as applied to Petitioners, is not an impermissible differential tax, and does not place a burden on a narrowly defined group of speakers. This court agrees that *Reed* does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes, which there is no

evidence of here. Therefore, the Commission's decision that NLET is not a content-based tax on first amendment activity, but a legitimate tax scheme, evenly applied, and used to raise state revenue shall not be disturbed. Based upon the foregoing, this Court concludes that there was substantial evidence supporting the Commission's decisions that the Commission's decisions did not violate NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. The Petition for Judicial Review is DENIED. Respondent's counsel is to prepare an Order consistent with this Minute Order within 10 days, have it approved as to form and content by Petitioner's counsel, and submit to this Court for signature.

[Return to Register of Actions](#)


CLERK OF THE COURT

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Attorneys for Respondents

DISTRICT COURT
CLARK COUNTY, NEVADA

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; D. WESTWOOD, INC.,
d/b/a Treasures; DÉJÀ VU SHOWGIRLS
OF LAS VEGAS, LLC, d/b/a Déjà vu; and
LITTLE DARLINGS OF LAS VEGAS, LLC,
d/b/a Little Darlings,

Petitioners,

v.

STATE OF NEVADA, ex rel.
DEPARTMENT OF TAXATION and TAX
COMMISSION,

Respondents.

Case No.: A-11-648894-J
Dept. No.: XXX

Consolidated with:
Case No.: A-14-697585-J

**NOTICE OF ENTRY OF ORDER DENYING
JUDICIAL REVIEW OF ADMINISTRATIVE
DECISION**

PLEASE TAKE NOTICE that the ORDER DENYING JUDICIAL REVIEW OF
ADMINISTRATIVE DECISION was entered on January 13, 2016, and electronically filed on

...

...

...

...

1 January 15th, 2016, a copy of which is attached hereto.

2 DATED this 4th day of February, 2016.

3 Respectfully submitted:

4 ADAM PAUL LAXALT
5 Attorney General

6 By: /S/ VIVIENNE RAKOWSKY
7 DAVID J. POPE
8 Senior Deputy Attorney General
9 VIVIENNE RAKOWSKY
10 Deputy Attorney General
11 Attorneys for Respondents
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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

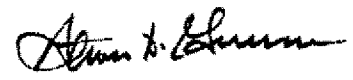
I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 4th day of February, 2016, I filed and served the foregoing **ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION** with the Clerk of the Court by using the electronic filing system and placing a true and accurate copy of the foregoing in U.S. Mail at Las Vegas, Nevada, first class, postage prepaid, and via e-mail, to the following:

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/S/ MICHELE CARO
An employee of the Office of the Attorney General



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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; D. WESTWOOD, INC.,
d/b/a Treasures; DÉJÀ VU SHOWGIRLS
OF LAS VEGAS, LLC, d/b/a Déjà vu; and
LITTLE DARLINGS OF LAS VEGAS, LLC,
d/b/a Little Darlings,

Petitioners,

v.

STATE OF NEVADA, ex rel.
DEPARTMENT OF TAXATION and TAX
COMMISSION,

Respondents.

Case No.: A-11-648894-J
Dept. No.: XXX

Consolidated with:
Case No.: A-14-697515-J

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Dismissed by Plaintiff	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Dismissed by Defendant	<input type="checkbox"/> Judgment of Arbitration

ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

The above-referenced matter came before the Honorable Judge Jerry Wiese with regard to the Consolidated Petitions for Judicial Review of the decisions by the Nevada Tax Commission (hereinafter "Commission") filed by Petitioners, K-KEL, INC., d/b/a Spearmint Rhino Gentlemen s Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, LLC

1 d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, DEJA VU SHOWGIRLS OF LAS
2 VEGAS, LLC, d/b/a Deja vu and LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little
3 Darlings ("Petitioners"). Both sides filed briefs, and the Court heard oral argument. The
4 Petitioners were represented by William Brown Esq., Mark Ferrario, Esq. and Bradley Shafer,
5 Esq. (admitted Pro Hac Vice). The Nevada Tax Commission was represented by Vivienne
6 Rakowsky, Deputy Attorney General and David Pope, Senior Deputy Attorney General.

7 After supplemental briefing regarding the Supreme Court decision in Reed v Town of
8 Gilbert, Arizona, 135 U.S. 2218 (2015), and after oral argument, the Court took the matter
9 under advisement and issued a Minute Order on November 24, 2015 which is attached hereto
10 as Exhibit "A".

11 The procedural history of this matter dates back to a decision by the Nevada Tax
12 Commission dated October 12, 2007 upholding the Live Entertainment Tax
13 (PJR-11-648894-J), a remand in January 2012 to allow the Commission to review additional
14 evidence and determine whether it would amend, affirm or reverse its 2007 decision and re-
15 open discovery to allow depositions (PJR 14-697515-J), and supplemental briefing to
16 determine whether the standard of review for the Live Entertainment Tax changed based on
17 the U.S. Supreme Court decision in Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (2015).

18 Based upon the pleadings and papers on file, after hearing oral argument, and good
19 cause appearing, the Court renders the following findings of fact:

- 20 1. The parties essentially agreed to the procedural history and underlying factual
21 background of this case.
- 22 2. The three issues before this Court were:
 - 23 a. Petition for Judicial Review of the Nevada Tax Commission October 12, 2007
24 decision denying Petitioners requests for refunds of Live Entertainment Tax
25 ("NLET") paid, and finding that the NLET does not violate the U.S.
26 Constitution or Nevada Constitution, is not targeted at gentlemen's clubs,
27 and is not a tax based on the content of the taxpayer's message.

- b. Petition for Judicial Review of the Nevada Tax Commission's decision dated September 6, 2012 finding that discovery would not be reopened to allow depositions, and decision on February 12, 2014 upholding the Hearing Officers Hearing on Remand finding that the more than 1,500 pages of supplemental materials were insufficient to cause the Commission's October 12, 2007 decision to be reversed or amended.
 - c. Petitioner's supplemental briefing claiming that the U.S. Supreme Court decision in Reed v. Gilbert Arizona changed the standard of review for determining the constitutionality of the Live Entertainment Tax to strict scrutiny.
 3. The Petitioners made the following arguments:
 - a. That the NLET is unconstitutional because it is a direct tax on First Amendment activities and is statutorily gerrymandered to apply only to a narrowly defined group of speakers, and in doing so discriminates based on the content of the entertainment;
 - b. The Commission should have permitted Petitioners to conduct the requested depositions in order to shed further light on the drafting and amending of the NLET and to identify the purpose for each and every one of the exceptions to the definition of live entertainment set forth in NRS 368A; and
 - c. Based on the recent ruling in Reed v. Town of Gilbert, Arizona, __U.S. __, 135 S. Ct. 2218 (2015), strict scrutiny applies, and the NLET does not pass the constitutional muster because there is a differentiation of the application of a law based upon the content of the expression.
 4. The Department made the following arguments:
 - a. That the NLET is Constitutional revenue raising tax and not a tax on a First Amendment right, and the tax has not been applied to the Petitioners in an unconstitutional manner. The Nevada Supreme Court found that the NLET is

1 constitutional on its face in Deja Vu Showgirls v. Department of Taxation, 334
2 P.3d 392 (2014). In that case, the Nevada Supreme Court established that
3 the standard of review for the NLET is a rational basis analysis, because it
4 does not regulate live entertainment, it does not discriminate on the basis of
5 the taxpayers' speech, and it does not target a small group of speakers or
6 threaten to suppress viewpoints. Deja vu, 334 P.3d at 401;

7 b. That the Commission's decision on remand to deny depositions should be
8 upheld because, while NRS 233B.131(2) provides for additional evidence
9 under very specific conditions, it does not provide for additional evidence
10 after receiving an adverse decision. Moreover, the information that the
11 Petitioners were seeking was available in 2007. On January 24, 2012, the
12 Court remanded the case to the Commission for review of evidence, not to
13 allow additional evidence to be gathered; and

14 c. The standard used by the court to review a tax matter has been in place
15 more than 125 years and has not changed on the basis of a sign ordinance
16 case (Reed). The Court in Deja Vu had previously ruled that heightened
17 scrutiny does not apply to tax classification unless the classification is hostile
18 and oppressive discrimination against particular person and classes.

19 The Court made the following conclusions of law:

- 20 5. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of
21 the agency as to the weight of evidence on a question of fact. NRS 233B.135(3).
22 6. Pursuant to NRS 233B.135(3), the Court can remand, affirm, or set aside the
23 Commission's decision if the substantial rights of the petitioner have been
24 prejudiced because the agency's decision is in violation of statutory provisions, in
25 excess of the statutory authority of the agency, made upon unlawful procedure,
26 affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse
27 of discretion.
28

- 1 7. The Commission did not find Petitioner's argument with respect to reopening
2 discovery to allow depositions meritorious because all the information that
3 Petitioners sought recently was available prior to 2007, and the information sought
4 was consistently determined to be irrelevant. The Commission's decision did not
5 violate the constitution or a statute, was not in excess of its statutory authority, was
6 not made upon unlawful procedure, was not affected by other error of law, was not
7 clearly erroneous, and was not arbitrary, capricious, or an abuse of discretion.
8 These findings of fact by the Commission may not be disturbed by this Court. The
9 Commission's determination with regard to the request to take depositions is hereby
10 AFFIRMED.
- 11 8. The construction of a statute is a question of law, and therefore, independent review
12 is appropriate. However, the court will not readily disturb an administrative
13 interpretation of statutory language. City of Reno v. Reno Police Protective Ass'n.,
14 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is
15 constitutional as applied to the Petitioners is supported by the fact that the Nevada
16 Supreme Court has determined that the NLET does not regulate live entertainment
17 and is simply a tax on a business transaction, and not a tax on the expressive
18 activity taking place within the facility.
- 19 9. Petitioners have failed to meet their burden to show that the NLET has attacked the
20 content of their message.
- 21 10. The Commission did not exceed their authority by concluding that NLET, as applied
22 to Petitioners, is not an impermissible differential tax, and does not place a burden
23 on a narrowly defined group of speakers.
- 24 11. Reed v Town of Gilbert, Arizona, 135 U.S. 2218 (2015), does not apply to tax
25 classification unless the classification is hostile and oppressive discrimination
26 against particular person and classes. This Court does not find any evidence here
27 that NLET triggers the application of Reed.
- 28

1 12. The Commission's decision that NLET is not a content-based tax on first
2 amendment activity, but a legitimate tax scheme, evenly applied, and used to raise
3 state revenue shall not be disturbed.

4 **ORDER**

5 Based upon the foregoing, this Court Orders that there was substantial evidence
6 supporting the Commission's decisions and that the Commission's decisions did not violate
7 NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. The
8 Petition for Judicial Review is DENIED.

9 **IT IS SO ORDERED**

10 DATED this 13 day of May, 2016.

11
12
13
14 
DISTRICT COURT JUDGE

15 Respectfully Submitted By:

16 
17 VIVENNE RAKOWSKY
18 Deputy Attorney General
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EXHIBIT A

EXHIBIT A

REGISTER OF ACTIONS

CASE NO. A-11-648894-J

K-Kel, Inc., Plaintiff(s) vs. Nevada Department of Taxation,
 Defendant(s)

§
 20
 15
 10
 5
 0

Case Type: Civil Petition for Juvenile Review
 Date Filed: 09/23/2011
 Location: Department 30
 Cross-Reference Case Number: A648894

RELATED CASE INFORMATION

Related Cases

A-14-697515-J (Consolidated)

PARTY INFORMATION

Defendant	Nevada Department of Taxation	Lead Attorneys David J. Pope A A Retained 7026568084(W)
Defendant	Nevada Tax Commission	David J. Pope A A Retained 7026568084(W)
Plaintiff	D I Food and Beverage of Las Vegas LLC	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	D Westwood Inc	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Deja Vu Showgirls of Las Vegas	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	K-Kel, Inc.	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Little Darlings of Las Vegas LLC	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Olympus Garden Inc	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Power Company Inc	William H. Brown A A Retained 702-816-2200(W)
Plaintiff	Shac LLC	William H. Brown A A Retained 702-816-2200(W)

11/24/2015 Minute Order (9:00 AM) (Judicial Officer Wiese, Jerry A.)

Minutes

11/24/2015 9:00 AM

- The above-referenced matter came before Judge Jerry Wiese with regard to a Petition for Judicial Review filed by Petitioners, K-KEL, INC., d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, LLC d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, D J VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a D j vu and LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little Darlings. Briefs were filed in this matter, and the Court also heard oral argument. After supplemental briefing regarding the Reed case, and after oral argument, the Court took the matter under advisement. Based upon the pleadings and papers on file, after hearing oral argument, and good cause appearing, the Court now renders the following decision: This Court will not reiterate the procedural history or the factual background of this case, as the parties essentially agree to the underlying facts. Petitioners argue that the Commission should have permitted Petitioners to conduct the requested depositions in order to shed further light on the drafting and amending of the NLET and to identify the purpose for each and every one of the exceptions to the definition of live entertainment set forth in NRS 368A. Petitioners also argue that NLET is unconstitutional because it is a direct tax on First Amendment activities and is statutorily gerrymandered to apply only to a narrowly defined group of speakers, and in doing so discriminates based on the content of the entertainment. Lastly, Petitioners argue that in light of the recent ruling in *Reed v. Town of Gilbert, Arizona*, U.S. , 135 S. Ct. 2218 (2015), the NLET does not pass the constitutional muster of strict scrutiny that now applies, whereas in this case, there is a differentiation of the application of a law based upon the content of expression. The Department of Taxation (Department) argues that the Commission's decision on remand to deny depositions should be upheld because, while NRS 233B.131(2) provides for additional evidence under very specific conditions, it does not provide for additional evidence after receiving an adverse decision. This Court remanded the case to the Commission for review of evidence, not to allow additional evidence to be gathered. The Department also argues that NLET is a Constitutional revenue raising tax and not a tax on a First Amendment right, and it has not been applied to the Petitioners in an unconstitutional manner. Furthermore, the Department notes that the Nevada Supreme Court found that the NLET is constitutional on its face in *D j Vu Showgirls v. Department of Taxation*, 334 P.3d 392 (2014). In that case, the Nevada Supreme Court established that the standard of review for the NLET is a rational basis analysis, because it does not regulate live entertainment, it does not discriminate on the basis of the taxpayers' speech, and it does not target a small group of speakers or threaten to suppress viewpoints. *D j vu*, 334 P.3d at 401. Finally, the Department argues that the standard of review for a tax matter has been in place more than 125 years and has not changed on the basis of a sign ordinance case (*Reed*). The Department argues that the Court in *D j Vu* ruled that heightened scrutiny does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. (NRS 233B.135(3)). Pursuant to NRS 33B.135(3), the Court can remand, affirm, or set aside the Commission's decision if the substantial rights of the petitioner have been prejudiced because the agency's decision is in violation of statutory provisions, in excess of the statutory authority of the agency, made upon unlawful procedure, affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse of discretion. The Commission did not find Petitioner's argument with respect to reopening discovery to allow depositions meritorious because all the information that Petitioners sought recently was available prior to 2007, and the information sought was consistently determined to be irrelevant. These are findings of fact by the Commission that may not be disturbed by this Court. The Court does not find that the Commission's determination violated the constitution or a statute, was in excess of its statutory authority, was made upon unlawful procedure, was affected by other error of law, was clearly erroneous, or was arbitrary, capricious, or an abuse of discretion. Consequently, the Commission's determination with regard to the request to take depositions, is hereby AFFIRMED. The construction of a statute is a question of law, and therefore, independent review is appropriate. However, this court will not readily disturb an administrative interpretation of statutory language. *City of Reno v. Reno Police Protective Ass'n.*, 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is constitutional as applied to the Petitioners is supported by the fact that the Nevada Supreme Court has determined that the NLET does not regulate live entertainment and is simply a tax on a business transaction, and not on the expressive activity taking place within the facility. Petitioners have failed to meet their burden to show that the NLET has attacked the content of their message. In addition, this Court finds that the Commission did not exceed their authority by concluding that NLET, as applied to Petitioners, is not an impermissible differential tax, and does not place a burden on a narrowly defined group of speakers. This court agrees that *Reed* does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes, which there is no

evidence of here. Therefore, the Commission's decision that NLET is not a content-based tax on first amendment activity, but a legitimate tax scheme, evenly applied, and used to raise state revenue shall not be disturbed. Based upon the foregoing, this Court concludes that there was substantial evidence supporting the Commission's decisions that the Commission's decisions did not violate NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. The Petition for Judicial Review is DENIED. Respondent's counsel is to prepare an Order consistent with this Minute Order within 10 days, have it approved as to form and content by Petitioner's counsel, and submit to this Court for signature.

[Return to Register of Actions](#)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial
Review

COURT MINUTES

December 09, 2011

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

December 09, 2011 9:00 AM Motion for Leave

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14B

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER:

PARTIES

PRESENT: Brown, William H. Attorney
Doerr, Blake A. Attorney
Ferrario, Mark E., ESQ Attorney
Pope, David J. Attorney
RAKOWSKY, VIVIENNE, ESQ Attorney

JOURNAL ENTRIES

- Mr. Rakwosky noted there was a similar matter being heard in front of Judge Gonzalez. Arguments by Mr. Pope, Ms. Rakwosky, and Mr. Doerr. COURT ADVISED counsel the Administrative Agency should take the matter up first as the Court could only review the record provided. COURT ORDERED case REMANDED to the Administrative Agency to review evidence requested by the Petitioner.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial
Review

COURT MINUTES

December 16, 2011

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

December 16, 2011 9:00 AM Motion to Dismiss

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14B

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES
PRESENT:

JOURNAL ENTRIES

- There being no parties present. Court noted the motion was withdrawn as the parties indicated they were working to resolve the matter. Therefore, COURT ORDERED, matter OFF CALENDAR.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial Review

COURT MINUTES

June 08, 2012

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

June 08, 2012 9:00 AM Motion For Stay

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14B

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT:	Brown, William H.	Attorney
	Doerr, Blake A.	Attorney
	Pope, David J.	Attorney

JOURNAL ENTRIES

- Colloquy regarding remand and continuing jurisdiction. Mr. Brown requested to stay the Administrative Hearing pending a ruling on appeal. Colloquy regarding similar cases, facial challenge and as it applies challenge. Opposition and statement regarding Judicial Review by Mr. Pope. COURT ORDERED, motion DENIED. Mr. Pope to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Civil Petition for Judicial
Review**

COURT MINUTES

October 15, 2013

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

October 15, 2013 9:00 AM Status Check

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT:

JOURNAL ENTRIES

- There being no parties present. Court noted that it received correspondence from Lambrose/Brown Firm indicating the status of a remand. COURT ORDERED, matter CONTINUED for further Status Check.

CONTINUED....4/15/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial
Review

COURT MINUTES

March 25, 2014

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

March 25, 2014 9:00 AM Status Check

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Brown, William H. Attorney
Doerr, Blake A. Attorney
Pope, David J. Attorney
RAKOWSKY, VIVIENNE, ESQ Attorney

JOURNAL ENTRIES

- Colloquy regarding constitutional challenge on tax. Statement by Mr. Brown regarding Petition for Judicial Review. Court suggested to wait until the Supreme Court ruled on that issue. Counsel stipulated to stay the case. COURT APPROVED of the stay pending the Supreme Court outcome. COURT ORDERED, matter CONTINUED for further status check.

CONTINUED....9/23/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial Review

COURT MINUTES

September 23, 2014

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

September 23, 2014 9:00 AM Status Check

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT:	Brown, William H.	Attorney
	Doerr, Blake A.	Attorney
	Pope, David J.	Attorney

JOURNAL ENTRIES

- Counsel indicated the Supreme Court Affirmed the District Courts decision, therefore, would be creating a proposal. COURT ORDERED, matter CONTINUED.

CONTINUED....10/21/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial
Review

COURT MINUTES

October 21, 2014

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

October 21, 2014 9:00 AM Status Check

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Brown, William H. Attorney
Doerr, Blake A. Attorney
Ferrario, Mark E., ESQ Attorney
Pope, David J. Attorney
RAKOWSKY, VIVIENNE, ESQ Attorney

JOURNAL ENTRIES

- Counsel stipulated to a briefing schedule for the Petition for Judicial Review. COURT ORDERED, matter SET oral argument.

4/23/15 9:00 am HEARING: Judicial Review

CLERK'S NOTE: Briefing schedule set as follows: Opening briefs due 1/20/15; Response 3/6/15; Reply 4/10/15; Decision/oral argument 4/23/15.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial
Review

COURT MINUTES

September 22, 2015

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

September 22, 2015 9:00 AM Motion for Leave

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Brown, William H. Attorney
 Pope, David J. Attorney
 RAKOWSKY, VIVIENNE, ESQ Attorney

JOURNAL ENTRIES

- Motion for Leave to File Supplemental Brief Regarding New U.S. Supreme Court Precedent

There being no objection. COURT ORDERED, motion GRANTED. Briefing schedule set as followed:

10/6/15 Response

10/13/15 Reply

10/27/15 9:00 am Hearing: Petition for Judicial Review

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial
Review

COURT MINUTES

October 27, 2015

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

October 27, 2015 9:00 AM Hearing

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Brown, William H. Attorney
 Ferrario, Mark E., ESQ Attorney
 Pope, David J. Attorney
 RAKOWSKY, VIVienne, ESQ Attorney

JOURNAL ENTRIES

- Following arguments by counsel regarding facial challenge of live entertainment tax and first amendment right. COURT ORDERED, matter UNDER ADVISEMENT and will issue a written order from Chambers.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial
Review

COURT MINUTES

November 24, 2015

A-11-648894-J K-Kel, Inc., Plaintiff(s)
vs.
Nevada Department of Taxation, Defendant(s)

November 24, 2015 9:00 AM Minute Order

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The above-referenced matter came before Judge Jerry Wiese with regard to a Petition for Judicial Review filed by Petitioners, K-KEL, INC., d/b/a Spearmint Rhino Gentlemen s Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, LLC d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, D J VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a D j vu and LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little Darlings. Briefs were filed in this matter, and the Court also heard oral argument. After supplemental briefing regarding the Reed case, and after oral argument, the Court took the matter under advisement. Based upon the pleadings and papers on file, after hearing oral argument, and good cause appearing, the Court now renders the following decision:

This Court will not reiterate the procedural history or the factual background of this case, as the parties essentially agree to the underlying facts.

Petitioners argue that the Commission should have permitted Petitioners to conduct the requested depositions in order to shed further light on the drafting and amending of the NLET and to identify the purpose for each and every one of the exceptions to the definition of live entertainment set forth in NRS 368A. Petitioners also argue that NLET is unconstitutional because it is a direct tax on First Amendment activities and is statutorily gerrymandered to apply only to a narrowly defined group of speakers, and in doing so discriminates based on the content of the entertainment. Lastly,

Petitioners argue that in light of the recent ruling in *Reed v. Town of Gilbert, Arizona*, _U.S._, 135 S. Ct. 2218 (2015), the NLET does not pass the constitutional muster of strict scrutiny that now applies, whereas in this case, there is a differentiation of the application of a law based upon the content of expression.

The Department of Taxation (Department) argues that the Commission's decision on remand to deny depositions should be upheld because, while NRS 233B.131(2) provides for additional evidence under very specific conditions, it does not provide for additional evidence after receiving an adverse decision. This Court remanded the case to the Commission for review of evidence, not to allow additional evidence to be gathered. The Department also argues that NLET is a Constitutional revenue raising tax and not a tax on a First Amendment right, and it has not been applied to the Petitioners in an unconstitutional manner. Furthermore, the Department notes that the Nevada Supreme Court found that the NLET is constitutional on its face in *D j Vu Showgirls v. Department of Taxation*, 334 P.3d 392 (2014). In that case, the Nevada Supreme Court established that the standard of review for the NLET is a rational basis analysis, because it does not regulate live entertainment, it does not discriminate on the basis of the taxpayers' speech, and it does not target a small group of speakers or threaten to suppress viewpoints. *D j vu*, 334 P.3d at 401. Finally, the Department argues that the standard of review for a tax matter has been in place more than 125 years and has not changed on the basis of a sign ordinance case (*Reed*). The Department argues that the Court in *D j Vu* ruled that heightened scrutiny does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. (NRS 233B.135[3]). Pursuant to NRS 33B.135(3), the Court can remand, affirm, or set aside the Commission's decision if the substantial rights of the petitioner have been prejudiced because the agency's decision is in violation of statutory provisions, in excess of the statutory authority of the agency, made upon unlawful procedure, affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse of discretion. The Commission did not find Petitioner's argument with respect to reopening discovery to allow depositions meritorious because all the information that Petitioners sought recently was available prior to 2007, and the information sought was consistently determined to be irrelevant. These are findings of fact by the Commission that may not be disturbed by this Court. The Court does not find that the Commission's determination violated the constitution or a statute, was in excess of its statutory authority, was made upon unlawful procedure, was affected by other error of law, was clearly erroneous, or was arbitrary, capricious, or an abuse of discretion. Consequently, the Commission's determination with regard to the request to take depositions, is hereby AFFIRMED.

The construction of a statute is a question of law, and therefore, independent review is appropriate. However, this court will not readily disturb an administrative interpretation of statutory language. *City of Reno v. Reno Police Protective Ass n.*, 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is constitutional as applied to the Petitioners is supported by the fact that the Nevada Supreme Court has determined that the NLET does not regulate live entertainment and is simply a tax on a business transaction, and not on the expressive activity taking place within the facility. Petitioners have failed to meet their burden to show that the NLET has attacked the content of their message. In addition, this Court finds that the Commission did not exceed their authority by concluding that NLET, as applied to Petitioners, is not an impermissible differential tax,

and does not place a burden on a narrowly defined group of speakers. This court agrees that Reed does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes, which there is no evidence of here. Therefore, the Commission's decision that NLET is not a content-based tax on first amendment activity, but a legitimate tax scheme, evenly applied, and used to raise state revenue shall not be disturbed.

Based upon the foregoing, this Court concludes that there was substantial evidence supporting the Commission's decisions that the Commission's decisions did not violate NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. The Petition for Judicial Review is DENIED.

Respondent's counsel is to prepare an Order consistent with this Minute Order within 10 days, have it approved as to form and content by Petitioner's counsel, and submit to this Court for signature.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF DEPOSITING SECURITY FOR COSTS ON APPEAL; REQUEST FOR TRANSCRIPT OF PROCEEDINGS ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION; NOTICE OF ENTRY OF ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION; DISTRICT COURT MINUTES

K-KEL, INC. dba SPEARMENT RHINO GENTLEMEN'S CLUB; OLYMPUS GARDEN, INC. dba OLYMPIC GARDEN; SHAC, LLC dba SAPPHIRE; THE POWER COMPANY, INC. dba CRAZY HORSE TOO GENTLEMEN'S CLUB; D. WESTWOOD, INC. dba TREASURES; D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC dba SCORES; DEJA VU SHOWGIRLS OF LAS VEGAS, LLC dba DEJA VU; LITTLE DARLINGS OF LAS VEGAS, LLC dba LITTLE DARLINGS,

Plaintiff(s),

vs.

NEVADA DEPARTMENT OF TAXATION;
NEVADA TAX COMMISSION,

Defendant(s),

Case No: A648894

Consolidated with A697515

Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 1 day of March 2016.


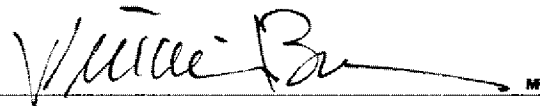
Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, appearing to read "Heather Ungermann", is written over a horizontal line. The signature is cursive and fluid.

Heather Ungermann, Deputy Clerk

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LAW OFFICES OF WILLIAM H BROWN

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