

**IN THE SUPREME COURT  
OF THE STATE OF NEVADA**

Electronically Filed  
Mar 23 2016 08:26 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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, DEJA VU  
SHOWGIRLS OF LAS VEGAS, LLC,  
d/b/a/ Déjà vu, and LITTLE  
DARLINGS OF LAS VEGAS, LLC,  
d/b/a Little Darlings,

Appellants,

vs.

NEVADA DEPARTMENT OF  
TAXATION, and NEVADA TAX  
COMMISSION,

Respondents

No.: 69886

**DOCKETING STATEMENT  
CIVIL APPEALS**

1. Judicial District:	Eighth Judicial District
Department:	Clark County Dept. 30
Judge:	Hon. Jerry A. Wiese II
Dist. Ct. Case No.:	A-11-648894-J, consolidated A-14-697515-J

## **2. Attorney filing this docketing statement**

WILLIAM H. BROWN (7623)  
LAMBROSE | BROWN PLLC  
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Fax: (702) 816-2300  
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Client: K-Kel, Inc.

This is a joint statement by multiple appellants. The names and addresses of other counsel, and the names of their clients are listed on an accompanying sheet with a certification that they concur in the filing of this statement.

## **3. Attorneys representing respondents**

ADAM PAUL LAXALT  
Attorney General  
DAVID J. POPE (8617)  
Email: [DPope@ag.nv.gov](mailto:DPope@ag.nv.gov);  
Senior Deputy Attorney General  
VIVIENNE RAKOWSKY (9160)  
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Deputy Attorney General  
555 E. Washington Ave., Suite 3900  
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Tel: (702) 486-3103  
Fax: (702) 486-3416

Clients: Nevada Department of Taxation, Nevada Tax Commission

## **4. Nature of disposition below**

Review of agency determination

**5. Does this appeal raise issues concerning any of the following:**

N/A

**6. Pending and prior proceedings in this court.**

Two prior cases are related to this appeal—*Deja Vu I*, and *Deja Vu II*:

*Deja Vu I*:

*Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.*

Clark County Dist. Court Case No.: A554970

Nevada Supreme Court Docket No.: 59752

Reported: 130 Nev. Adv. Op. 72, 334 P.3d 387 (2014) cert. denied  
sub nom. SHAC, LLC v. Nevada Dep't of Taxation, 135 S. Ct.  
1431, 191 L. Ed. 2d 367 (2015) (“*Deja Vu I*”)

*Deja Vu II*:

*Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.*

Clark County Dist. Court Case No.: A533273

Nevada Supreme Court Docket No.: 60037

Reported: 130 Nev. Adv. Op. 73, 334 P.3d 392 (2014) (“*Deja Vu II*”)

**7. Pending and prior proceedings in other courts.**

N/A

**8. Nature of the action.**

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

Following the NTC decision, the petitioners sued (as plaintiffs) in *Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.* (A554970). That case was dismissed by the district court, which then ordered it to proceed as a petition for judicial review. Accordingly, the petitioners appealed the NTC decision via a petition for judicial review under NRS Chapter 233B.

On January 15, 2016, the district court entered its order denying judicial review of the NTC decision. The court found there was substantial evidence supporting Nevada Tax Commission's decisions and they did not violate NRS 233B.135. Consequently, the district court affirmed the NTC decision, and denied the petitioner's petition for judicial review. That decision is the order appealed from.

**9. Issues on appeal.**

Broadly stated, this appeal presents one issue: whether, facially, or as applied, Nevada's Live Entertainment Tax (NRS Chapter 368A (the "LET")) is an unconstitutional tax on protected expression. Within that analysis, there is one sub-issue: whether appellants were improperly denied the right to conduct discovery, including specifically depositions, in the administrative review process.

**10. Pending proceedings in this court raising the same or similar issues.**

Appellants are not aware of any pending proceedings in this court raising the same or similar issues.

**11. Constitutional issues.**

In light of the constitutional issues raised, the appropriate state agencies are parties to this appeal.

**12. Other issues.**

N/A

**13. Assignment to the Court of Appeals or retention in the Supreme Court.**

This case is an appeal from a district court order reviewing an appeal from an administrative agency involving tax and thus, under NRAP 17(a)(9), retained by the Supreme Court. See NRAP 17(a)(9).

**14. Trial**

N/A

**15. Judicial Disqualification.**

N/A

**TIMELINESS OF NOTICE OF APPEAL**

**16. Date of entry of written judgment or order appealed from.**

January 15, 2016

**17. Date written notice of entry of judgment or order was served.**

February 4, 2016

Service: via mail/electronic

**18. Post-judgment motions (NRCP 50(b), or 52(b), or 59) tolling timing for filing notice of appeal**

N/A

**19. Date notice of appeal was filed**

February 26, 2016

**20. Specify statute or rule governing time limit for filing the notice of appeal.**

NRAP 4(a)

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from**

NRS 233B.150

- 22. List all parties involved in the action or consolidated actions in the district court.**

**(a) Parties:**

*Petitioners:* 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, DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a Déjà vu, and LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little Darlings

*Respondents:* NEVADA DEPARTMENT OF TAXATION, and NEVADA TAX COMMISSION

- (b) If all parties in the district court are not parties in this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:**

N/A

- 23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Petitioners raised identical claims via a petition for judicial review of a decision by the Nevada Tax Commission ("NTC"). The district court disposed of these claims on January 15, 2016 in an order denying judicial review of the NTC decision.

- 24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

Yes.

25. If you answered “No” to question 24, complete the following:

N/A

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

*Exhibit 1:* Petition for Judicial Review (filed 9-23-2011)

*Exhibit 2:* Notice of Entry of Order Denying Judicial Review of Administrative Decision (filed 2-4-16); and Order Denying Judicial Review of Administrative Decision (filed 1-15-16)

### VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

**Name of appellant:** K-Kel, Inc.

**Name of counsel of record:** William H. Brown (7623)

**Signature of counsel of record:** /s/ *William H. Brown*

**Date:** March 22, 2016

**State and county where signed:** Clark County, Nevada

## CERTIFICATE OF SERVICE

I certify that on March 22, 2016, I served a copy of this completed **Docketing Statement** to the parties below, upon all counsel of record by mailing by first class mail with sufficient postage fully prepaid, and by e-filing and e-serving via the Supreme Court of Nevada's e-filing and e-service system to the following address(es):

DAVID J. POPE (8617)  
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VIVIENNE RAKOWSKY (9160)  
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*Counsel for Respondents*  
*Nevada Department of Taxation and*  
*Nevada Tax Commission*

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Email: [Brad@bradshaferlaw.com](mailto:Brad@bradshaferlaw.com)  
*Counsel, and co-counsel, for*  
*Appellants D. WESTWOOD, INC.,*  
*d/b/a Treasures, DEJA VU*  
*SHOWGIRLS OF LAS VEGAS, LLC,*  
*d/b/a Déjà vu, LITTLE DARLINGS*  
*OF LAS VEGAS, LLC, d/b/a Little*  
*Darlings, and OLYMPUS GARDEN,*  
*INC., d/b/a Olympic Garden*

NEIL BELLER (2360)  
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*Local Counsel for Appellants*  
*DEJA VU SHOWGIRLS OF LAS*  
*VEGAS, LLC, d/b/a Déjà vu, and*  
*LITTLE DARLINGS OF LAS*  
*VEGAS, LLC, d/b/a Little Darlings*

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*Counsel for Appellant*  
*SHAC, L.L.C. d/b/a Sapphire*

Lansford Levitt, Esq.  
(Settlement Judge)  
4747 Caughlin Parkway, Suite 6  
Reno, Nevada 89519

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



## CERTIFICATION OF CONCURRENCE

This is a joint statement by multiple appellants. By signing below, the below counsel on behalf of their respective clients hereby certify that they concur in the filing of this statement.

<p>Dated: March 22, 2016</p> <p><i>/s/ <u>Bradley J. Shafer</u></i> BRADLEY J. SHAFER Michigan Bar No. P36604 SHAHER &amp; ASSOCIATES, P.C. 3800 Capital City Blvd., Suite #2 Lansing, Michigan 48906-2110 Email: <a href="mailto:Brad@bradshaferlaw.com">Brad@bradshaferlaw.com</a> <i>Counsel, and co-counsel, for</i> <i>Appellants D. WESTWOOD, INC.,</i> <i>d/b/a Treasures, DEJA VU</i> <i>SHOWGIRLS OF LAS VEGAS,</i> <i>LLC, d/b/a/ Déjà vu, LITTLE</i> <i>DARLINGS OF LAS VEGAS, LLC,</i> <i>d/b/a Little Darlings, and</i> <i>OLYMPUS GARDEN, INC., d/b/a</i> <i>Olympic Garden</i></p>	<p>Dated: March 22, 2016</p> <p><i>/s/ <u>Mark E. Ferrario</u></i> MARK E. FERRARIO (1625) GREENBERG TRAURIG, LLP 3773 Howard Hughes Parkway Suite 400 North Las Vegas, Nevada 89169 Email: <a href="mailto:ferrariom@gtlaw.com">ferrariom@gtlaw.com</a> <i>Counsel for Appellant</i> <i>SHAC, L.L.C. d/b/a Sapphire</i></p>
<p>Dated: March 22, 2016</p> <p><i>/s/ <u>Neil J. Beller</u></i> NEIL BELLER (2360) NEIL J. BELLER, LTD. 7408 W. Sahara Ave. Las Vegas, Nevada 89117 Email: <a href="mailto:nbeller@njbltd.com">nbeller@njbltd.com</a> <i>Local Counsel for Appellants</i> <i>DEJA VU SHOWGIRLS OF LAS</i> <i>VEGAS, LLC, d/b/a Déjà vu, and</i> <i>LITTLE DARLINGS OF LAS</i> <i>VEGAS, LLC, d/b/a Little Darlings</i></p>	

# EXHIBIT 1

CIVIL COVER SHEET

Clark County, Nevada

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

A - 1 1 - 6 4 8 8 9 4 - J

X X X

I. Party Information

Plaintiff(s) (name/address/phone): K-Kel, Inc., et al.	Defendant(s) (name/address/phone): Nevada Dept. of Taxation and Nevada Tax Commission
Attorney (name/address/phone): William H. Brown, Esq., 6029 S. Ft. Apache, #100, LV, NV 89148	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases		
Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> <b>Negligence – Auto</b> <input type="checkbox"/> <b>Negligence – Medical/Dental</b> <input type="checkbox"/> <b>Negligence – Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence – Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input checked="" type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)


<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
--	---	---

September 22, 2011  
Date

/s/ William H. Brown  
Signature of initiating party or representative

See other side for family-related case filings.





CLERK OF THE COURT

**JUDR**

WILLIAM H. BROWN  
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Will@whbesq.com  
*Counsel for Petitioners*

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Michigan Bar No. P36604\*  
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3800 Capital City Blvd., Suite #2  
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Telephone: (517) 886-6560  
Facsimile: (517) 886-6565  
*Co-Counsel for Petitioners*  
*\*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, 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*, D.I.  
FOOD & BEVERAGE OF LAS VEGAS, LLC,  
d/b/a *Scores*, DEJA VU SHOWGIRLS OF LAS  
VEGAS, LLC, d/b/a/ *Deja Vu* and LITTLE  
DARLINGS OF LAS VEGAS, LLC, d/b/a  
*Little Darlings*,

Petitioners,

vs.

NEVADA DEPARTMENT OF TAXATION,  
and NEVADA TAX COMMISSION,

Respondents.

Case No. A - 1 1 - 6 4 8 8 9 4 - J  
Dept. No. ~~XT~~ - X X X

**PETITION FOR JUDICIAL REVIEW**

Date of Hearing: n/a  
Time of Hearing: n/a

**PETITION FOR JUDICIAL REVIEW**

1 COME NOW the Petitioners, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*,  
2 OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE  
3 POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC.,  
4 d/b/a *Treasures*, D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*, DEJA VU  
5 SHOWGIRLS OF LAS VEGAS, LLC, d/b/a/ *Deja Vu* and LITTLE DARLINGS OF LAS  
6 VEGAS, LLC, d/b/a *Little Darlings*, by and through their attorneys, WILLIAM H. BROWN,  
7 ESQ. of TURCO & DRASKOVICH, and petition this Court for judicial review of the decision  
8 of the NEVADA TAX COMMISSION upholding the NEVADA DEPARTMENT OF  
9 TAXATION's denial of refunds of Live Entertainment Taxes paid by the Petitioners for the tax  
10 periods of January through April, 2004. That ruling was filed on October 12, 2007, and a copy  
11 of it is attached hereto as Exhibit 1.

14 The instant Petition for Judicial Review is filed pursuant to a ruling made by the District  
15 Court, Division XI, in Case No. 08A554970, which held that in light of the Nevada Supreme  
16 Court's decision in **Southern California Edison v. First Judicial District**, 127 Nev.Adv.Op. 22  
17 (May 26, 2011), judicial review is the appropriate avenue of redress for a party aggrieved by a  
18 final decision of the Nevada Tax Commission. During oral argument on August 23, 2011, the  
19 Court in Division XI stated that Petitioners (who were all Plaintiffs in that case) should have  
20 appealed the October 12, 2007, decision via the petition for judicial review process. A written  
21 order has not yet been entered, but the Court held that the petition for judicial review should be  
22 filed within thirty days of that hearing.

25 The decisions of the Nevada Department of Taxation and the Nevada Tax Commission to  
26 deny Petitioners' requests for refunds were in violation of both the Nevada and Federal  
27 constitutions and statutory provisions; were in excess of the statutory authority of the agency;  
28

1 were made upon unlawful procedure; were based upon errors of law; were clearly erroneous in  
2 view of the reliable, probative and substantial evidence on the whole record; and were arbitrary  
3 and capricious in nature and/or characterized by abuse of discretion. The Petitioners specifically  
4 request, pursuant to NRS 233B.133, that this Court receive written briefs and hear oral argument.  
5

6 In addition, Petitioners are filing contemporaneously herewith an application to this Court  
7 for leave to present additional evidence to the Nevada Tax Commission pursuant to NRS  
8 233B.131(2), since discovery was not conducted in the administrative proceedings, and since  
9 Petitioners were led to believe, pursuant to then-existing precedence, that the proper avenue of  
10 judicial relief from the decision of the Nevada Tax Commission would be by way of an original  
11 action under NRS 368A.290, where de novo review would occur, and where discovery could  
12 take place. Indeed, the parties conducted discovery in the Division XI litigation, and it was only  
13 after three years into those proceedings that the State attempted to argue that Petitioners should  
14 have filed a petition for judicial review, and were not entitled to discovery. Nonetheless, the  
15 discovery conducted to date has disclosed critical information that should be presented to the  
16 Nevada Tax Commission before this Court reviews its ultimate decision.  
17

18  
19 Petitioners respectfully request that this Honorable Court set the October 12, 2007,  
20 decision aside in its entirety.  
21

22 DATED this 22<sup>nd</sup> day of September, 2011.

23 Respectfully submitted,

24  
25 BY: /s/ William H. Brown  
WILLIAM H. BROWN  
Nevada Bar No.: 7623  
26 LAW OFFICES OF WILLIAM H. BROWN, LTD.  
6029 S. Ft. Apache Rd., Ste. 100  
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*Counsel for Petitioners*

BRADLEY J. SHAFER,  
Michigan Bar No. P36604\*  
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Lansing, Michigan 48906-2110  
Brad@bradshaferlaw.com  
*Co-Counsel for Petitioners*  
*\*Pending Admission Pro Hac Vice*



1  
2  
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on the 22<sup>nd</sup> day of September, 2011, the foregoing **PETITION FOR**  
5 **JUDICIAL REVIEW** was served on the party(ies) by faxing a copy and mailing of same in the  
6 United States mail, postage prepaid thereon, addressed as follows:  
7

8  
9 William Chisel  
10 Director  
11 Nevada Department of Taxation  
12 1550 College Parkway  
13 Carson City, Nevada 89706  
Facsimile (775) 684-2020  
*Representative for Respondents*

14 Catherine Cortez Masto  
15 Attorney General  
16 David J. Pope  
17 Sr. Deputy Attorney General  
18 Blake A. Doerr  
19 Deputy Attorney General  
20 555 E. Washington Ave., Suite 3900  
21 Las Vegas, NV 89101  
22 Facsimile: (702) 486-3420  
23 *Attorneys for the Respondents*  
24

25  
26  
27  
28  
/s/ Arleen Viano  
An employee of LAW OFFICES OF WILLIAM H.  
BROWN, LTD.

**IAFD**

William H. Brown, Esq.  
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6029 S. Ft. Apache Rd., #100  
Las Vegas, Nevada 89148  
(702) 385-7280

**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, THE POWER  
COMPANY, INC., d/b/a Crazy Horse Too  
Gentlemen's Club, D. WESTWOOD,  
INC., d/b/a Treasures, D.I. FOOD &  
BEVERAGE OF LAS VEGAS, LLC, d/b/a  
Scores, DEJA VU SHOWGIRLS OF LAS  
VEGAS, LLC, d/b/a/ Deja Vu and LITTLE  
DARLINGS OF LAS VEGAS, LLC, d/b/a  
Little Darlings,

Plaintiff(s),

-VS-

NEVADA DEPARTMENT OF TAXATION,  
and NEVADA TAX COMMISSION,

Defendant(s).

CASE NO. \_\_\_\_\_

DEPT. NO. \_\_\_\_\_

**INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are  
submitted for parties appearing in the above entitled action as indicated below:

New Complaint Fee	1 <sup>st</sup> Appearance Fee
<input type="checkbox"/> \$1530 <input type="checkbox"/> \$520 <input type="checkbox"/> \$299 x \$270.00	<input type="checkbox"/> \$1483.00 <input type="checkbox"/> \$473.00 <input type="checkbox"/> \$223.00

Name: K-KEL, INC., d/b/a Spearmint Rhino  
Gentlemen's Club

1 OLYMPUS GARDEN, INC., d/b/a Olympic x ☐ \$30  
2 Garden

3 SHAC, L.L.C. d/b/a Sapphire x ☐ \$30

4 THE POWER COMPANY, INC., d/b/a Crazy x ☐ \$30  
5 Horse Too Gentlemen's Club

6 D. WESTWOOD, INC., d/b/a Treasures x ☐ \$30

7 3 ☐ Total of Continuation Sheet Attached 3 ☐ \$90.00

8 TOTAL REMITTED: (Required) Total Paid \$ 210.00

9  
10 DATED this 22<sup>nd</sup> day of Sept., 2011.

11 /s/ William H. Brown  
12 William H. Brown, Esq.  
13  
14  
15  
16  
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28

**INITIAL APPEARANCE FEE CONTINUATION SHEET:**

List names of additional parties (plaintiff or defendant) and the appropriate fees below:

D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a Scores	\$30.00
DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a/ Deja Vu	\$30.00
LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little Darlings	\$30.00

Total fees to be listed on first page of form (Line 23)



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>

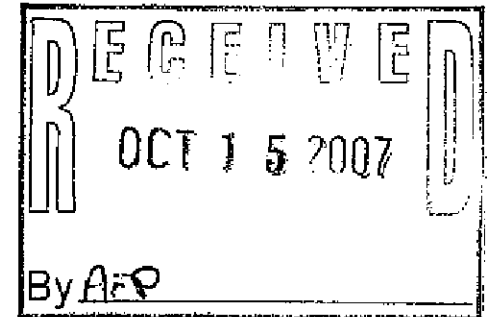
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October 12, 2007



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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 2

  
CLERK OF THE COURT

NEOJ  
ADAM PAUL LAXALT  
Attorney General  
DAVID J. POPE  
Senior Deputy Attorney General  
Nevada Bar No. 008617  
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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  
12  
13  
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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

1 **ODJR**  
2 ADAM PAUL LAXALT  
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15 DJPope @ag.nv.gov  
16 Attorneys for Respondents

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

12 K-KEL, INC., d/b/a Spearmint Rhino  
13 Gentlemen's Club; OLYMPUS GARDEN,  
14 INC., d/b/a Olympic Garden; SHAC, L.L.C.,  
15 d/b/a Sapphire; D. WESTWOOD, INC.,  
16 d/b/a Treasures; DÉJÀ VU SHOWGIRLS  
17 OF LAS VEGAS, LLC, d/b/a Déjà vu; and  
18 LITTLE DARLINGS OF LAS VEGAS, LLC,  
19 d/b/a Little Darlings,

Petitioners,

v.

18 STATE OF NEVADA, ex rel.  
19 DEPARTMENT OF TAXATION and TAX  
20 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"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Dismissal for Failure to Appear	<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 May, 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

### RELATED CASE INFORMATION

#### Related Cases

A-14-697515-J (Consolidated)

### PARTY INFORMATION

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