

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

v.

State of Nevada, ex rel. Department of
Taxation and Tax Commission,

Respondents.

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Tracie K. Lindeman
Clerk of Supreme Court
Supreme Court Case No. 69886
District Court Case No. A-11-648894-J consolidated with A-14-697515-J

COME NOW, Respondents, the State of Nevada, Department of Taxation and Nevada Tax Commission, by and through its attorney, Attorney General Adam Paul Laxalt, Vivienne Rakowsky, Deputy Attorney General, and David J. Pope, Senior Deputy Attorney General hereby submits its AMENDED RESPONSE TO DOCKETING STATEMENT CIVIL APPEALS pursuant to the NRAP 14(f).

Appellants responded to Question 9, Issues on Appeal, by stating that "... this appeal presents one issue: whether *facially*, or as applied, Nevada's Live Entertainment Tax.... is an unconstitutional tax on protected expression." (emphasis added). Contrary to the Appellant's statement, the facial challenge, which was not part of the PJR below should not be included in this appeal. The Live Entertainment Tax ("NLET") has already been found facially constitutional by this Honorable Court in an appeal brought by the Appellants.¹ See Déjà Vu Showgirls et. al. v. Nevada Department of Taxation, 190 Nev. Adv. Op. 73, 334 P.3d 392 (2014).

¹ Two parties were removed for failure to exhaust administrative remedies. Déjà Vu Showgirls, 334 P.3d 387 n.4 (2014).

1 The doctrine of "the law of the case" precludes the court from reconsidering the
2 same issue in later phases of that lawsuit. *See generally, Recontrust Co. v. Zhang*, 317
3 P.3d 814, 818, 130 Nev. Adv. Op. 1 (2014), *Ferguson v. LV Metropolitan Police Dep't*,
4 364 P.3d 592, 597, 131 Nev. Adv. Op. 94 (2015). The Appeal before this Court is the
5 third part of the same lawsuit. *See Déjà Vu Showgirls et. al. v. Nevada Department of*
6 *Taxation* lawsuit. 190 Nev. Adv. Op. 72, 334 P.3d 387, 387-390 (2014), *Déjà Vu*
7 *Showgirls et. al. v. Nevada Department of Taxation*, 190 Nev. Adv. Op. 73, 334 P.3d
8 392, 396-97 (2014). Accordingly, this Appeal should solely be limited to the as-applied
9 challenge to the NLET and a sub-issue concerning depositions.
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11 DATED this 1st day of April, 2016.

12 Respectfully submitted:

13 ADAM PAUL LAXALT
14 Attorney General

15 By: /S/ VIVIENNE RAKOWSKY
16 DAVID J. POPE
17 Senior Deputy Attorney General
18 VIVIENNE RAKOWSKY
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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 1st day of April, 2016, I filed and served the foregoing **AMENDED RESPONSE TO DOCKETING STATEMENT CIVIL APPEALS** 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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