

CLERK OF THE COURT

Electronically Filed
Jul 11 2016 10:11 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

ANOA

WILLIAM H. BROWN (7623)
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Las Vegas, Nevada 89101
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Attorney for Petitioner
K-Kel, Inc.

BRADLEY J. SHAFER
Michigan Bar No. P36604
SHAFFER & ASSOCIATES, P.C.
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Email: Brad@bradshaferlaw.com
Co-Counsel Pro Hac Vice for all
Petitioners except SHAC, LLC

[Additional counsel on following page]

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioners,
vs.

NEVADA DEPARTMENT OF
TAXATION, and NEVADA TAX
COMMISSION,

Respondents.

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

Dept. 30

Amended Notice of Appeal

1 Counsel—continued:

2 MARK E. FERRARIO (1625)
3 GREENBERG TRAURIG, LLP
4 3773 Howard Hughes Parkway
5 Suite 400 North
6 Las Vegas, Nevada 89169
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8 Fax: (702) 792-9002
9 Email: ferrariom@gtlaw.com
10 *Counsel for Petitioner*
11 *SHAC, LLC*

12 **Amended Notice of Appeal**

13 Notice is hereby given that petitioners hereby appeal to the Supreme
14 Court of Nevada from the amended order denying judicial review of
15 administrative decision filed on June 23, 2016, notice of entry filed on June
16 24, 2016.

17 Date: June 24, 2016

18 Respectfully submitted,

19 LAMBROSE | BROWN

20 By: /s/ William H. Brown

21 William H. Brown, Esq. (7623)
22 300 S. Fourth St., Ste. 700
23 Las Vegas, Nevada 89101
24 Tel: (702) 816-2200
25 Fax: (702) 816-2300
26 Email: WBrown@LambroseBrown.com
27 *Attorney for Petitioner, K-Kel, Inc.*
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Amended Notice of Appeal** was filed with the Clark County Nevada District Court by way of the Court's electronic filing system, the operation of which will cause service upon:

E-service

With a courtesy copy to:

Adam Paul Laxalt
Attorney General

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

David J. Pope
Senior Deputy Attorney General
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Attorneys for *Respondents*

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Shayna Noyce
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Tami Cowden
Email: cowdent@gtlaw.com

Date: June 24, 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
Supreme Court No.: 69886

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. |

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

Retained
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 | |

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












| | |
|------------|---|
| | <p>Filed By: Defendant Nevada Department of Taxation <i>Notice of Entry of Order</i></p> |
| 11/21/2011 | <p> Stipulation and Order Filed by: Defendant Nevada Department of Taxation <i>Stipulation and Order for Continuance</i></p> |
| 12/09/2011 | <p> 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></p> |
| 12/16/2011 | <p> 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></p> |
| 01/26/2012 | <p> 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></p> |
| 02/01/2012 | <p> Order Filed By: Defendant Nevada Department of Taxation <i>Order Granting Plaintiff's Application for Leave to Present Additional Evidence to the Nevada Tax Commission</i></p> |
| 02/02/2012 | <p> Notice of Entry of Order Filed By: Defendant Nevada Department of Taxation <i>Notice of Entry of Order</i></p> |
| 02/02/2012 | <p> Notice of Entry of Order Filed By: Defendant Nevada Department of Taxation <i>Notice of Entry of Order</i></p> |
| 05/02/2012 | <p> Opposition to Motion Filed By: Defendant Nevada Department of Taxation <i>Opposition to Motion for Stay on OST</i></p> |
| 05/07/2012 | <p> 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></p> |
| 05/23/2012 | <p> Supplement to Opposition Filed By: Defendant Nevada Department of Taxation <i>Supplement to Opposition to Motion for Stay</i></p> |
| 06/01/2012 | <p> 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></p> |
| 06/08/2012 | <p> Motion For Stay (9:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> |

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

Petitioners' Motion to Stay Administrative Hearing Pending Superseding Appeals Currently 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

02/04/2016












Notice of Entry of Order

Filed By: Defendant Nevada Department of Taxation

Notice of Entry of Order Denying Judicial Review of Administrative Decision

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

| | |
|------------|---|
| 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> |
| 06/23/2016 |  Stipulation and Order Filed by: Consolidated Case Party SHAC LLC <i>Stipulation and Proposed Amended Order</i> |
| 06/23/2016 |  Amended Order Filed By: Defendant Nevada Department of Taxation <i>Amended Order Denying Judicial Review of Administrative Decision</i> |
| 06/23/2016 | Amended 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: 06/23/2016, Docketed: 01/22/2016 |
| 06/24/2016 |  Amended Notice of Appeal Party: Plaintiff K-Kel, Inc. <i>Amended Notice of Appeal</i> |
| 06/24/2016 |  Notice of Entry of Order Filed By: Plaintiff Shac LLC <i>Notice of Entry of Amended Order Denying Judicial Review of Administrative Decision</i> |
| 06/27/2016 |  Notice of Entry of Stipulation and Order Filed By: Plaintiff K-Kel, Inc. <i>Notice of Entry of Stipulation and Proposed Amended Order</i> |

| DATE | FINANCIAL INFORMATION | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|---|--|---------------|------|----------------------------|------|-----------------------------------|-------------|---|--|---------------|-------|----------------------------|-------|-----------------------------------|-------------|---------------------------------|--|---------------|-------|----------------------------|-------|-----------------------------------|-------------|
| | <table> <tr> <td>Consolidated Case Party SHAC LLC</td><td></td></tr> <tr> <td>Total Charges</td><td>0.00</td></tr> <tr> <td>Total Payments and Credits</td><td>0.00</td></tr> <tr> <td>Balance Due as of 7/5/2016</td><td>0.00</td></tr> <tr> <td>Plaintiff D I Food and Beverage of Las Vegas LLC</td><td></td></tr> <tr> <td>Total Charges</td><td>30.00</td></tr> <tr> <td>Total Payments and Credits</td><td>30.00</td></tr> <tr> <td>Balance Due as of 7/5/2016</td><td>0.00</td></tr> <tr> <td>Plaintiff D Westwood Inc</td><td></td></tr> <tr> <td>Total Charges</td><td>30.00</td></tr> <tr> <td>Total Payments and Credits</td><td>30.00</td></tr> <tr> <td>Balance Due as of 7/5/2016</td><td>0.00</td></tr> </table> | Consolidated Case Party SHAC LLC | | Total Charges | 0.00 | Total Payments and Credits | 0.00 | Balance Due as of 7/5/2016 | 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 7/5/2016 | 0.00 | Plaintiff D Westwood Inc | | Total Charges | 30.00 | Total Payments and Credits | 30.00 | Balance Due as of 7/5/2016 | 0.00 |
| Consolidated Case Party SHAC LLC | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total Charges | 0.00 | | | | | | | | | | | | | | | | | | | | | | | | |
| Total Payments and Credits | 0.00 | | | | | | | | | | | | | | | | | | | | | | | | |
| Balance Due as of 7/5/2016 | 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 7/5/2016 | 0.00 | | | | | | | | | | | | | | | | | | | | | | | | |
| Plaintiff D Westwood Inc | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total Charges | 30.00 | | | | | | | | | | | | | | | | | | | | | | | | |
| Total Payments and Credits | 30.00 | | | | | | | | | | | | | | | | | | | | | | | | |
| Balance Due as of 7/5/2016 | 0.00 | | | | | | | | | | | | | | | | | | | | | | | | |

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

| | |
|---|---------------|
| Plaintiff Deja Vu Showgirls of Las Vegas | |
| Total Charges | 30.00 |
| Total Payments and Credits | 30.00 |
| Balance Due as of 7/5/2016 | 0.00 |
| | |
| Plaintiff K-Kel, Inc. | |
| Total Charges | 294.00 |
| Total Payments and Credits | 294.00 |
| Balance Due as of 7/5/2016 | 0.00 |
| | |
| Plaintiff Little Darlings of Las Vegas LLC | |
| Total Charges | 30.00 |
| Total Payments and Credits | 30.00 |
| Balance Due as of 7/5/2016 | 0.00 |
| | |
| Plaintiff Olympus Garden Inc | |
| Total Charges | 30.00 |
| Total Payments and Credits | 30.00 |
| Balance Due as of 7/5/2016 | 0.00 |
| | |
| Plaintiff Power Company Inc | |
| Total Charges | 30.00 |
| Total Payments and Credits | 30.00 |
| Balance Due as of 7/5/2016 | 0.00 |
| | |
| Plaintiff Shac LLC | |
| Total Charges | 30.00 |
| Total Payments and Credits | 30.00 |
| Balance Due as of 7/5/2016 | 0.00 |
| | |
| Plaintiff K-Kel, Inc. | |
| Appeal Bond Balance as of 7/5/2016 | 500.00 |

CIVIL COVER SHEET

Clark County, Nevada

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

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

XXX

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"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning | <input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other | <input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <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"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate | <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <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"/> Civil Petition for Judicial Review <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"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <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"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

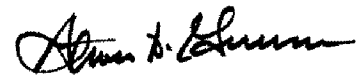
September 22, 2011

/s/ William H. Brown

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

ODJR
ADAM PAUL LAXALT
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
VIVIENNE RAKOWSKY
Deputy Attorney General
Nevada Bar No. 009160
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
P: (702) 486-3103
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VRakowsky@ag.nv.gov
DJPope @ag.nv.gov
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-14-697515-J

AMENDED ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

Before the Court are the Consolidated Petitions for Judicial Review of the decisions by the Nevada Tax Commission (hereinafter "Commission"). Originally, eight Petitioners (local erotic dance establishments) were named: K-KEL, INC., dba Spearmint Rhino Gentlemen's Club ("Spearmint Rhino"); OLYMPUS GARDEN, INC., dba Olympic Garden ("Olympic

1 Garden"); SHAC, L.L.C. dba Sapphire ("Sapphire"); THE POWER COMPANY, INC., dba
2 Crazy Horse Too Gentlemen's Club ("Crazy Horse Too"); D. WESTWOOD, INC., dba
3 Treasures ("Treasures"); D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores
4 ("Scores"); DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, dba Déjà Vu ("Deja Vu"); and
5 LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little Darlings ("Little Darlings").

6 Pursuant to the parties' stipulation, the claims of Petitioners Déjà Vu, Little Darlings,
7 and Scores are hereby dismissed with prejudice, leaving the claims of Petitioners, K-KEL,
8 INC., d/b/a Spearmint Rhino Gentlemen s Club, OLYMPUS GARDEN, INC., d/b/a Olympic
9 Garden, SHAC, LLC d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, and THE
10 POWER COMPANY INC. d/b/a Crazy Horse Too (collectively, "Petitioners").

11 Both sides filed briefs, and the Court heard oral argument. The Petitioners were
12 represented by William Brown Esq., Mark Ferrario, Esq. and Bradley Shafer, Esq.(admitted
13 Pro Hac Vice). The Nevada Tax Commission was represented by Vivienne Rakowsky,
14 Deputy Attorney General and David Pope, Senior Deputy Attorney General.

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

19 The procedural history of this matter dates back to a decision by the Nevada Tax
20 Commission dated October 12, 2007 upholding the Live Entertainment Tax ("NLET")(PJR-11-
21 648894-J), a remand in January 2012 to allow the Commission to review additional evidence
22 and determine whether it would amend, affirm or reverse its 2007 decision and re-open
23 discovery to allow depositions (PJR 14-697515-J), and supplemental briefing to determine
24 whether the standard of review for the NLET changed based on the U.S. Supreme Court
25 decision in Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (2015).

26 Based upon the pleadings and papers on file, after hearing oral argument, and good
27 cause appearing, the Court renders the following findings of fact:
28

1. The parties essentially agreed to the procedural history and underlying factual background of this case.
2. The three issues before this Court were:
 - a. Petition for Judicial Review of the Nevada Tax Commission October 12, 2007 decision denying Petitioners requests for refunds of NLET paid, and finding that the NLET does not violate the U.S. Constitution or Nevada Constitution, is not targeted at gentlemen's clubs, 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 NLET 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

1 S. Ct. 2218 (2015), strict scrutiny applies, and the NLET does not pass the
2 constitutional muster because there is a differentiation of the application of a
3 law based upon the content of the expression.

4 4. The Department made the following arguments:

- 5 a. That the NLET is Constitutional revenue raising tax and not a tax on a First
6 Amendment right, and the tax has not been applied to the Petitioners in an
7 unconstitutional manner. The Nevada Supreme Court found that the NLET is
8 constitutional on its face in Deja Vu Showgirls v. Department of Taxation, 334
9 P.3d 392 (2014). In that case, the Nevada Supreme Court established that
10 the standard of review for the NLET is a rational basis analysis, because it
11 does not regulate live entertainment, it does not discriminate on the basis of
12 the taxpayers' speech, and it does not target a small group of speakers or
13 threaten to suppress viewpoints. Deja vu, 334 P.3d at 401;
- 14 b. That the Commission's decision on remand to deny depositions should be
15 upheld because, while NRS 233B.131(2) provides for additional evidence
16 under very specific conditions, it does not provide for additional evidence
17 after receiving an adverse decision. Moreover, the information that the
18 Petitioners were seeking was available in 2007. On January 24, 2012, the
19 Court remanded the case to the Commission for review of evidence, not to
20 allow additional evidence to be gathered; and
- 21 c. The standard used by the court to review a tax matter has been in place
22 more than 125 years and has not changed on the basis of a sign ordinance
23 case (Reed). The Court in Deja Vu had already ruled that heightened
24 scrutiny does not apply to tax classification unless the classification is hostile
25 and oppressive discrimination against particular person and classes.

26 The Court made the following conclusions of law:

- 27 5. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of
28

- 1 the agency as to the weight of evidence on a question of fact. NRS 233B.135(3).
- 2 6. Pursuant to NRS 233B.135(3), the Court can remand, affirm, or set aside the
- 3 Commission's decision if the substantial rights of the petitioner have been
- 4 prejudiced because the agency's decision is in violation of statutory provisions, in
- 5 excess of the statutory authority of the agency, made upon unlawful procedure,
- 6 affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse
- 7 of discretion.
- 8 7. The Commission did not find Petitioner's argument with respect to reopening
- 9 discovery to allow depositions meritorious because all the information that
- 10 Petitioners sought recently was available prior to 2007, and the information sought
- 11 was consistently determined to be irrelevant. The Commission's decision did not
- 12 violate the constitution or a statute, was not in excess of its statutory authority, was
- 13 not made upon unlawful procedure, was not affected by other error of law, was not
- 14 clearly erroneous, and was not arbitrary, capricious, or an abuse of discretion.
- 15 These findings of fact by the Commission may not be disturbed by this Court. The
- 16 Commission's determination with regard to the request to take depositions is hereby
- 17 AFFIRMED.
- 18 8. The construction of a statute is a question of law, and therefore, independent review
- 19 is appropriate. However, the court will not readily disturb an administrative
- 20 interpretation of statutory language. City of Reno v. Reno Police Protective Ass'n.,
- 21 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is
- 22 constitutional as applied to the Petitioners is supported by the fact that the Nevada
- 23 Supreme Court has determined that the NLET does not regulate live entertainment
- 24 and is simply a tax on a business transaction, and not a tax on the expressive
- 25 activity taking place within the facility.
- 26 9. Petitioners have failed to meet their burden to show that the NLET has attacked the
- 27 content of their message.
- 28

10. 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.

11. Reed v Town of Gilbert, Arizona, 135 U.S. 2218 (2015), does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. This Court does not find any evidence here that NLET triggers the application of Reed.


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. As to all remaining Petitioners, the Petition for Judicial Review is DENIED.

IT IS SO ORDERED

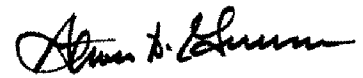
DATED this 22 day of June, 2016.


DISTRICT COURT JUDGE

Respectfully Submitted By:

/s/ Vivenne Rakowsky

VIVENNE RAKOWSKY
Deputy Attorney General



CLERK OF THE COURT

1 WILLIAM H. BROWN (7623)
2 LAMBROSE | BROWN PLLC
3 300 S. Fourth St., Ste. 700
4 Las Vegas, Nevada 89101
5 Tel: (702) 816-2200
6 Fax: (702) 816-2300
7 Email: WBrown@LambroseBrown.com
8 *Counsel for Petitioner*
9 *K-Kel, Inc., and*
10 *Local counsel for Petitioners*
11 *OLYMPUS GARDEN, INC.,*
12 *d/b/a Olympic Garden, and D.*
13 *WESTWOOD, INC., d/b/a Treasures*

14 BRADLEY J. SHAFER
15 Michigan Bar No. P36604
16 SHAFER & ASSOCIATES, P.C.
17 3800 Capital City Blvd., Suite #2
18 Lansing, Michigan 48906-2110
19 Tel: (517) 886-6560
20 Fax: (517) 886-6565
21 Email: Brad@bradshaferlaw.com
22 *Co-Counsel Pro Hac Vice for all*
23 *Petitioners except SHAC, LLC*

24 [Counsel continued, following page]

25 DISTRICT COURT
26 CLARK COUNTY, NEVADA

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

Petitioners,

vs.

NEVADA DEPARTMENT OF
TAXATION, et al.,

Respondents.

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

**Notice of Entry of Amended
Order Denying Judicial Review
of Administrative Decision**

1 [counsel continued]

2 NEIL BELLER (2360)
3 NEIL J. BELLER, LTD.
4 7408 W. Sahara Ave.
5 Las Vegas, Nevada 89117
6 Tel: (702) 368-7767
7 Fax: (702) 368-7720
8 Email: NBeller@NJBlltd.com
9 *Local Counsel for Petitioners*
10 *DEJA VU SHOWGIRLS OF LAS*
11 *VEGAS, LLC, d/b/a/ Déjà vu, and*
12 *LITTLE DARLINGS OF LAS VEGAS,*
13 *LLC, d/b/a Little Darlings*

14 MARK E. FERRARIO (1625)
15 GREENBERG TRAURIG, LLP
16 3773 Howard Hughes Parkway
17 Suite 400 North
18 Las Vegas, Nevada 89169
19 Tel: (702) 792-3773
20 Fax: (702) 792-9002
21 Email: ferrariom@gtlaw.com
22 *Counsel for Petitioner*
23 *SHAC, LLC*

24
25 **Notice of Entry of Amended Order Denying Judicial Review of**
26 **Administrative Decision**

27 Please take notice that an amended order denying judicial review of
28 administrative decision was entered on June 23, 2016, a copy of which is
attached hereto.

Dated: June 24, 2016

By: /s/ William H. Brown
WILLIAM H. BROWN
Nevada Bar No.: 7623
LAMBROSE | BROWN
wbrown@lambrosebrown.com
Attorney for Petitioner K-Kel, Inc.

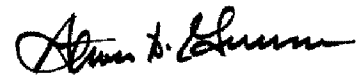
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Entry of Amended Order Denying Judicial Review of Administrative Decision** was filed with the Clark County Nevada District Court by way of the Court's electronic filing system, the operation of which will cause service upon:

DAVID J. POPE
Senior Deputy Attorney General
VIVIENNE RAKOWSKY
Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101
Email: DPope@ag.nv.gov
VRakowsky@ag.nv.gov
Counsel for Respondents
Nevada Department of Taxation
and Nevada Tax Commission

Dated: June 24, 2016

/s/ Deidra Hufnagle
An employee of
LAMBROSE | BROWN



CLERK OF THE COURT

ODJR
ADAM PAUL LAXALT
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
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VRakowsky@ag.nv.gov
DJPope @ag.nv.gov
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
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LITTLE DARLINGS OF LAS VEGAS, LLC,
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Petitioners,

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STATE OF NEVADA, ex rel.
DEPARTMENT OF TAXATION and TAX
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Consolidated with:
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AMENDED ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

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2 Crazy Horse Too Gentlemen's Club ("Crazy Horse Too"); D. WESTWOOD, INC., dba
3 Treasures ("Treasures"); D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores
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6 Pursuant to the parties' stipulation, the claims of Petitioners Déjà Vu, Little Darlings,
7 and Scores are hereby dismissed with prejudice, leaving the claims of Petitioners, K-KEL,
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9 Garden, SHAC, LLC d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, and THE
10 POWER COMPANY INC. d/b/a Crazy Horse Too (collectively, "Petitioners").

11 Both sides filed briefs, and the Court heard oral argument. The Petitioners were
12 represented by William Brown Esq., Mark Ferrario, Esq. and Bradley Shafer, Esq.(admitted
13 Pro Hac Vice). The Nevada Tax Commission was represented by Vivienne Rakowsky,
14 Deputy Attorney General and David Pope, Senior Deputy Attorney General.

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

19 The procedural history of this matter dates back to a decision by the Nevada Tax
20 Commission dated October 12, 2007 upholding the Live Entertainment Tax ("NLET")(PJR-11-
21 648894-J), a remand in January 2012 to allow the Commission to review additional evidence
22 and determine whether it would amend, affirm or reverse its 2007 decision and re-open
23 discovery to allow depositions (PJR 14-697515-J), and supplemental briefing to determine
24 whether the standard of review for the NLET changed based on the U.S. Supreme Court
25 decision in Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (2015).

26 Based upon the pleadings and papers on file, after hearing oral argument, and good
27 cause appearing, the Court renders the following findings of fact:
28

- 1 1. The parties essentially agreed to the procedural history and underlying factual
2 background of this case.
- 3 2. The three issues before this Court were:
 - 4 a. Petition for Judicial Review of the Nevada Tax Commission October 12, 2007
5 decision denying Petitioners requests for refunds of NLET paid, and finding
6 that the NLET does not violate the U.S. Constitution or Nevada Constitution,
7 is not targeted at gentlemen's clubs, and is not a tax based on the content of
8 the taxpayer's message.
 - 9 b. Petition for Judicial Review of the Nevada Tax Commission's decision dated
10 September 6, 2012 finding that discovery would not be reopened to allow
11 depositions, and decision on February 12, 2014 upholding the Hearing
12 Officers Hearing on Remand finding that the more than 1,500 pages of
13 supplemental materials were insufficient to cause the Commission's October
14 12, 2007 decision to be reversed or amended.
 - 15 c. Petitioner's supplemental briefing claiming that the U.S. Supreme Court
16 decision in Reed v. Gilbert Arizona changed the standard of review for
17 determining the constitutionality of the NLET to strict scrutiny.
- 18 3. The Petitioners made the following arguments:
 - 19 a. That the NLET is unconstitutional because it is a direct tax on First
20 Amendment activities and is statutorily gerrymandered to apply only to a
21 narrowly defined group of speakers, and in doing so discriminates based on
22 the content of the entertainment;
 - 23 b. The Commission should have permitted Petitioners to conduct the requested
24 depositions in order to shed further light on the drafting and amending of the
25 NLET and to identify the purpose for each and every one of the exceptions to
26 the definition of live entertainment set forth in NRS 368A; and
 - 27 c. Based on the recent ruling in Reed v. Town of Gilbert, Arizona, __U.S. __, 135
28

1 S. Ct. 2218 (2015), strict scrutiny applies, and the NLET does not pass the
2 constitutional muster because there is a differentiation of the application of a
3 law based upon the content of the expression.

4 4. The Department made the following arguments:

- 5 a. That the NLET is Constitutional revenue raising tax and not a tax on a First
6 Amendment right, and the tax has not been applied to the Petitioners in an
7 unconstitutional manner. The Nevada Supreme Court found that the NLET is
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18 Petitioners were seeking was available in 2007. On January 24, 2012, the
19 Court remanded the case to the Commission for review of evidence, not to
20 allow additional evidence to be gathered; and
- 21 c. The standard used by the court to review a tax matter has been in place
22 more than 125 years and has not changed on the basis of a sign ordinance
23 case (Reed). The Court in Deja Vu had already ruled that heightened
24 scrutiny does not apply to tax classification unless the classification is hostile
25 and oppressive discrimination against particular person and classes.

26 The Court made the following conclusions of law:

- 27 5. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of
28

- 1 the agency as to the weight of evidence on a question of fact. NRS 233B.135(3).
- 2 6. Pursuant to NRS 233B.135(3), the Court can remand, affirm, or set aside the
- 3 Commission's decision if the substantial rights of the petitioner have been
- 4 prejudiced because the agency's decision is in violation of statutory provisions, in
- 5 excess of the statutory authority of the agency, made upon unlawful procedure,
- 6 affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse
- 7 of discretion.
- 8 7. The Commission did not find Petitioner's argument with respect to reopening
- 9 discovery to allow depositions meritorious because all the information that
- 10 Petitioners sought recently was available prior to 2007, and the information sought
- 11 was consistently determined to be irrelevant. The Commission's decision did not
- 12 violate the constitution or a statute, was not in excess of its statutory authority, was
- 13 not made upon unlawful procedure, was not affected by other error of law, was not
- 14 clearly erroneous, and was not arbitrary, capricious, or an abuse of discretion.
- 15 These findings of fact by the Commission may not be disturbed by this Court. The
- 16 Commission's determination with regard to the request to take depositions is hereby
- 17 AFFIRMED.
- 18 8. The construction of a statute is a question of law, and therefore, independent review
- 19 is appropriate. However, the court will not readily disturb an administrative
- 20 interpretation of statutory language. City of Reno v. Reno Police Protective Ass'n.,
- 21 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is
- 22 constitutional as applied to the Petitioners is supported by the fact that the Nevada
- 23 Supreme Court has determined that the NLET does not regulate live entertainment
- 24 and is simply a tax on a business transaction, and not a tax on the expressive
- 25 activity taking place within the facility.
- 26 9. Petitioners have failed to meet their burden to show that the NLET has attacked the
- 27 content of their message.
- 28

10. 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.

11. Reed v Town of Gilbert, Arizona, 135 U.S. 2218 (2015), does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. This Court does not find any evidence here that NLET triggers the application of Reed.


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. As to all remaining Petitioners, the Petition for Judicial Review is DENIED.

IT IS SO ORDERED

DATED this 22 day of June, 2016.


DISTRICT COURT JUDGE

Respectfully Submitted By:

/s/ Vivienne Rakowsky

VIVENNE RAKOWSKY
Deputy Attorney General

**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

RECORDED:

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):

AMENDED NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES;
CIVIL COVER SHEET; AMENDED ORDER DENYING JUDICIAL REVIEW OF
ADMINISTRATIVE DECISION; NOTICE OF ENTRY OF AMENDED 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: A-11-648894-J

Consolidated with A-14-697515-J

Dept No: XXX

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 5 day of July 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk