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**SUPREME COURT
OF THE STATE OF NEVADA**

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

Appellants,

vs.

**NEVADA DEPARTMENT OF
TAXATION**, et al.,

Respondents.

Supreme Court Docket: 69886

District Court Case: A-11-648894-J
Consolidated with A-14-697515-J

Appellants' Appendix

APPELLANTS' APPENDIX
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CIVIL COVER SHEET

A - 11 - 648894 - J

Clark County, Nevada

Case No. _____

XXX

(Assigned by Clerk's Office)

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

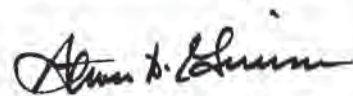
Date

Signature of initiating party or representative

See other side for family-related case filings.

Appellants' Appendix

Page 1



CLERK OF THE COURT

JUDR

WILLIAM H. BROWN
Nevada Bar No.: 7623
LAW OFFICES OF WILLIAM H. BROWN, LTD.
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Las Vegas, NV 89148
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Will@whbesq.com
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Lansing, Michigan 48906-2110
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-11-648894-J
Dept. No. ~~Xf~~ - XXX

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;

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 22nd day of September, 2011.

23 Respectfully submitted,
24

25 BY: /s/ William H. Brown
26 WILLIAM H. BROWN
27 Nevada Bar No.: 7623
28 LAW OFFICES OF WILLIAM H. BROWN, LTD.
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1 *Counsel for Petitioners*

2
3 BRADLEY J. SHAFER,
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5 SHAFER & ASSOCIATES, P.C.
6 3800 Capital City Blvd., Suite #2
7 Lansing, Michigan 48906-2110
8 Brad@bradshaferlaw.com
9 *Co-Counsel for Petitioners*
10 **Pending Admission Pro Hac Vice*
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1
2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on the 22nd 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.

1 **IAFD**

2 William H. Brown, Esq.
3 Nevada Bar # 7623
4 6029 S. Ft. Apache Rd., #100
5 Las Vegas, Nevada 89148
6 (702) 385-7280

DISTRICT COURT

CLARK COUNTY, NEVADA

7 K-KEL, INC., d/b/a Spearmint Rhino
8 Gentlemen's Club, OLYMPUS GARDEN,
9 INC., d/b/a Olympic Garden, SHAC,
10 L.L.C. d/b/a Sapphire, THE POWER
11 COMPANY, INC., d/b/a Crazy Horse Too
12 Gentlemen's Club, D. WESTWOOD,
13 INC., d/b/a Treasures, D.I. FOOD &
14 BEVERAGE OF LAS VEGAS, LLC, d/b/a
15 Scores, DEJA VU SHOWGIRLS OF LAS
16 VEGAS, LLC, d/b/a/ Deja Vu and LITTLE
17 DARLINGS OF LAS VEGAS, LLC, d/b/a
18 Little Darlings,

CASE NO. _____

DEPT. NO. _____

15 Plaintiff(s),

16 -vs-

17 NEVADA DEPARTMENT OF TAXATION,
18 and NEVADA TAX COMMISSION,

19 Defendant(s).

20
21 **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

22 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
23 submitted for parties appearing in the above entitled action as indicated below:
24

New Complaint Fee	1 st 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

25 Name: K-KEL, INC., d/b/a Spearmint Rhino

26 Gentlemen's Club
27
28

OLYMPUS GARDEN, INC., d/b/a Olympic Garden	x <input type="checkbox"/> \$30
SHAC, L.L.C. d/b/a Sapphire	x <input type="checkbox"/> \$30
THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club	x <input type="checkbox"/> \$30
D. WESTWOOD, INC., d/b/a Treasures	x <input type="checkbox"/> \$30
3 <input type="checkbox"/> Total of Continuation Sheet Attached	3 <input type="checkbox"/> \$90.00
TOTAL REMITTED: (Required)	Total Paid \$ <u>210.00</u>

DATED this 22nd day of Sept., 2011.

/s/ William H. Brown
William H. Brown, Esq.

1 **INITIAL APPEARANCE FEE CONTINUATION SHEET:**

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

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

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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>

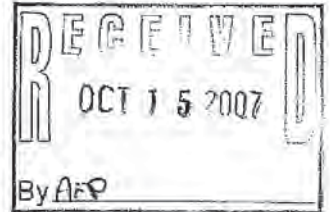
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Reno, Nevada 89502
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Fax: (775) 688-1303

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Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

October 12, 2007



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Shafer and Associates
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Lansing, Michigan 48906

CERTIFIED MAIL 7003 1680 0001 3683 7108

Dianna L. Sullivan, Esq.
Ghanem & Sullivan
8861 W. Sahara Ave., Ste 120
Las Vegas, Nevada 89117

CERTIFIED MAIL 7003 1680 0001 3683 6538

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)



BRIAN SANDOVAL
Attorney General

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ANN WILKINSON
Assistant Attorney General

November 17, 2003

Norman J. Azevedo, Esq.
338 California Avenue
Reno, Nevada 89509

Re: Southern California Edison (Edison)

Dr. Mr. Azevedo:

You have asked that the Department delineate the hearing process for the upcoming hearing before the Nevada Tax Commission. I am responding in my capacity as counsel to the Department.

Please note that in order to initiate a claim for a refund, a taxpayer must submit a written claim stating "the specific grounds upon which the claim is founded." NRS 372.645. The claim must be accompanied by: "(a) A statement setting forth the amount of the claim; (b) A statement setting forth all grounds upon which the claim is based; (c) All evidence the claimant relied upon in determining the claim, including affidavits of any witnesses; and (d) Any other information and documentation requested by the department." NAC 360.480.

Moreover, the taxpayer must submit the claim "within 3 years after the last day of the month following the close of the period for which the overpayment was made," NRS 372.365. Failure to file a claim within this 3-year period "constitutes a waiver of any demand against the state on account of overpayment," NRS 372.650. If the Department disallows the claim in whole or in part, the Department must serve the taxpayer with written notice of its determination, NRS 372.655. The taxpayer may then appeal the Department's determination to the Commission, NRS 360.245. If the Commission upholds the Department's determination, the taxpayer may file a law suit against the Department "on the grounds set forth in the claim. . . for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed." NRS 372.680.

The statutory process for resolving claims for refund does not include an evidentiary hearing unless (a) the Department fails to mail notice of action on a claim within 6 months after the claim is filed, or (b) the claim arises in connection

000369

Norm Azevedo
November 17, 2003
Re: So. Cal. Edison

with a deficiency determination resulting from an audit. NRS 372.685 and NRS 360.360. Indeed, NAC 360.480 provides that the taxpayer must supply all relevant documentation, including "affidavits of any witnesses," when the taxpayer initially submits a claim for refund.

The statutory process, as described above, establishes an abbreviated process for addressing refund claims. It does not contemplate an evidentiary hearing unless a claim for refund is based upon disputed facts.¹ When Edison initially presented the documentation to substantiate its claims for refund, Edison did not indicate that it would be raising claims for a refund of taxes paid on transportation charges, or taxes paid on state, local and/or tribal taxes. Please see Tab 6 of the materials that you provided on November 10, 2003. Consequently, the Department had no reason to believe that there would be any factual disputes.

On November 10, 2003, you provided additional documentary evidence -- evidence that Edison did not provide with its initial claims for refund. Edison's initial claims for refund sought credit for the Arizona Transactions Privilege Tax, and a recomputation of the tax liability based upon taxes or fees paid to the federal government. See Tab 6. Edison's additional evidence appears to relate to claims that are barred by the statute of limitations. More specifically, it appears to relate to Edison's recent claims: (1) that its consumption of coal in Nevada is exempt from taxation (a claim first raised by Paul Bancroft on January 31, 2003); and (2) that the measure of the tax, if applicable, should exclude transportation charges and various state, local and tribal taxes (a claim first raised by you on October 27, 2003).

Please be advised that upon the advice of counsel, the Department will take the position that the foregoing claims are time-barred by the statute of limitation. Consequently, the documentary evidence that you submitted on November 10, with the exception of the materials submitted by Edison in connection with its original claims, may be irrelevant depending upon how the Commission decides the statute of limitations issue.

The Department will supply the members of the Commission with all of the materials that you provided, including the materials deemed above to be potentially irrelevant. This will occur well in advance of the hearing. The Department will prepare a prehearing brief wherein it will delineate the issues as the Department views them, and then set forth its arguments. The Department anticipates that it will serve you with its brief by November 21, 2003. The Department would urge you to submit a brief on behalf of Edison, but will not wait to receive a brief from you before preparing its own brief.

¹ Please note that unlike NRS 361.420, NRS 372.680 does not limit the taxpayer to a review of the administrative record on appeal. Consequently, the failure to conduct an evidentiary hearing at the administrative level does not prejudice the taxpayer at the district court level. Quite frankly, given the nature of Edison's constitutional claims, it may be advantageous for Edison to place this matter before the district court as quickly as possible.

000370

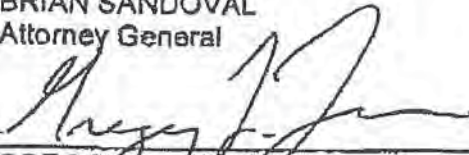
Norm Azevedo
November 17, 2003
Re: So. Cal. Edison

If the Commission resolves the statute of limitations issue in favor of Edison, you should be prepared to direct the members of the Commission to the documentary evidence that you wish them to consider. However, it may be prudent at that point to request that the Commission remand the matter to the Department's audit staff so that the Department may review and render an Initial determination on Edison's so-called "amended" claims.

If you are dissatisfied with the above process, I recommend that you raise an objection in your brief to the Commission. I don't see the need for an additional exchange of correspondence on this matter.

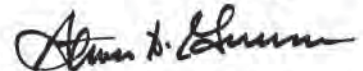
Sincerely,

BRIAN SANDOVAL
Attorney General


GREGORY L. ZUNINO
Senior Deputy Attorney General

cc. Chuck Chinnock
Josh Hicks

000371



CLERK OF THE COURT

1 **SAO**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
10 VIVienne RAKOWSKY
11 Deputy Attorney General
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13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 P: (702) 486-3426
16 F: (702) 486-3416
17 dpope@ag.nv.gov
18 Attorneys for Respondents

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

19 Petitioners,

20 v.

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

23 Respondents.

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

24
25 **STIPULATION AND ORDER FOR EXTENSION OF TIME**

26 IT IS HEREBY STIPULATED AND AGREED by and between CATHERINE CORTEZ
27 MASTO, Attorney General; DAVID J. POPE, Senior Deputy Attorney General; BLAKE A.
28 DOERR, Senior Deputy Attorney General; VIVienne RAKOWSKY, Deputy Attorney General,

Appellants' Appendix

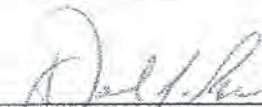
Page 16


1 counsel for Respondents; and WILLIAM H. BROWN and BRADLEY J. SHAFER, counsel for
2 Petitioners, that Respondents shall have up to and including October 21, 2011, in which to file
3 their response to Petitioner's Application for Leave to Present Additional Evidence to the
4 Nevada Tax Commission.

5 Dated: 10/14/11

Dated: 10-17-11

6 CATHERINE CORTEZ MASTO
7 Attorney General

8 By: 
9 DAVID J. POPE
10 Senior Deputy Attorney General
11 Nevada Bar No. 008617
12 555 E. Washington Ave., Ste. 3900
13 Las Vegas, Nevada 89101
14 Attorneys for Respondents

By: 
WILLIAM H. BROWN
6029 S. Ft. Apache Rd., #100
Las Vegas, Nevada 89101
BRADLEY J. SHAFER
3800 Capital City Blvd., Ste. 2
Lansing, Michigan 48906
Attorneys for Petitioners

ORDER

Based upon the foregoing Stipulation, Respondents shall have up to and including October 21, 2011, in which to file their response to the Petitioner's Application for Leave to Present Additional Evidence to the Nevada Tax Commission in the above-entitled matter.

IT IS SO ORDERED.

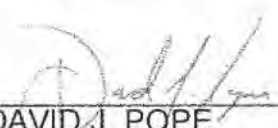
DATED this 19th day of October, 2011.



DISTRICT COURT JUDGE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By:


DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Attorneys for Respondents



CLERK OF THE COURT

1 **NEOJ**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
10 VIVIENNE RAKOWSKY
11 Deputy Attorney General
12 Nevada Bar No. 009160
13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 P: (702) 486-3426
16 F: (702) 486-3416
17 dpope@ag.nv.gov
18 Attorneys for Respondents

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

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

19 Petitioners,

20 v.

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

23 Respondents.

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

NOTICE OF ENTRY OF ORDER

25 PLEASE TAKE NOTICE that a Stipulation and Order for Extension of Time was
26 entered on 19th day of October, 2011, and e-filed on the 25th day of October, 2011, a copy of
27 ...
28 ...

1 which is attached hereto.

2 DATED this 26th day of October, 2011.

3 Respectfully submitted:

4 CATHERINE CORTEZ MASTO
5 Attorney General

6 By: /S/ DAVID J. POPE

7 DAVID J. POPE
8 Senior Deputy Attorney General
9 BLAKE A. DOERR
10 Senior Deputy Attorney General
11 VIVIENNE RAKOWSKY
12 Deputy Attorney General
13 Attorneys for Defendants
14
15
16
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21
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28

CERTIFICATE OF SERVICE

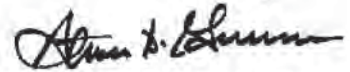
I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 26th day of October, 2011, I deposited in the U.S. mail, postage prepaid, First Class Mail, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** addressed as follows:

William H. Brown
Law Offices of William H. Brown, Ltd.
6029 S. Ft. Apache Rd., Ste. 100
Las Vegas, NV 89148

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

Mark E. Ferrario, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400 N.
Las Vegas, NV 89169
Attorneys for Shac LLC, dba Sapphire (only)

/S/ TRACI PLOTNICK
An employee of the Office of the Attorney General



CLERK OF THE COURT

1 **SAO**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
10 VIVIENNE RAKOWSKY
11 Deputy Attorney General
12 Nevada Bar No. 009160
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17 dpope@ag.nv.gov
18 Attorneys for Respondents

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

13 K-KEL, INC., d/b/a Spearmint Rhino)
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20 LAS VEGAS, LLC, d/b/a Scores, DÉJÀ VU)
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22 Déjà vu; and LITTLE DARLINGS OF LAS)
23 VEGAS, LLC, d/b/a Little Darlings,)

19 Petitioners,

20 v.

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

23 Respondents.

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

24 **STIPULATION AND ORDER FOR EXTENSION OF TIME**


25 IT IS HEREBY STIPULATED AND AGREED by and between CATHERINE CORTEZ
26 MASTO, Attorney General; DAVID J. POPE, Senior Deputy Attorney General; BLAKE A.
27 DOERR, Senior Deputy Attorney General; VIVIENNE RAKOWSKY, Deputy Attorney General,
28 Appellants' Appendix

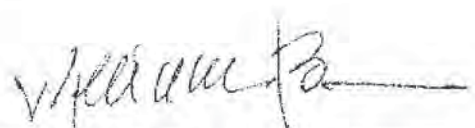
1 counsel for Respondents; and WILLIAM H. BROWN and BRADLEY J. SHAFER, counsel for
2 Petitioners, that Respondents shall have up to and including October 21, 2011, in which to file
3 their response to Petitioner's Application for Leave to Present Additional Evidence to the
4 Nevada Tax Commission.

5 Dated: 10/14/11

Dated: 10-17-11

6 CATHERINE CORTEZ MASTO
7 Attorney General

8 By: 
9 DAVID J. POPE
10 Senior Deputy Attorney General
11 Nevada Bar No. 008617
12 555 E. Washington Ave., Ste. 3900
13 Las Vegas, Nevada 89101
14 Attorneys for Respondents

By: 
WILLIAM H. BROWN
6029 S. Ft. Apache Rd., #100
Las Vegas, Nevada 89101

BRADLEY J. SHAFER
3800 Capital City Blvd., Ste. 2
Lansing, Michigan 48906
Attorneys for Petitioners

ORDER

Based upon the foregoing Stipulation, Respondents shall have up to and including October 21, 2011, in which to file their response to the Petitioner's Application for Leave to Present Additional Evidence to the Nevada Tax Commission in the above-entitled matter.

IT IS SO ORDERED.


DATED this 19th day of October, 2011.

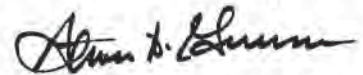

DISTRICT COURT JUDGE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By:


DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Attorneys for Respondents



CLERK OF THE COURT

1 **SAO**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
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11 Deputy Attorney General
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17 dpope@ag.nv.gov
18 Attorneys for Respondents

11 **DISTRICT COURT**

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

23 Respondents.

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

25 **STIPULATION AND ORDER FOR CONTINUANCE**


26 IT IS HEREBY STIPULATED AND AGREED by and between CATHERINE CORTEZ
27 MASTO, Attorney General; DAVID J. POPE, Senior Deputy Attorney General; BLAKE A.
28 DOERR, Senior Deputy Attorney General; VIVIENNE RAKOWSKY, Deputy Attorney General,

1 counsel for Respondents; and WILLIAM H. BROWN and BRADLEY J. SHAFER, counsel for
2 Petitioners, that the hearing regarding Petitioner's Application for Leave to Present Additional
3 Evidence to the Nevada Tax Commission, currently scheduled for November 18, 2011, be
4 continued to December 9, 2011 at 9:00 a.m.

5 Dated this 15th day of November, 2011.

Dated this 15th day of November, 2011.

6 CATHERINE CORTEZ MASTO
7 Attorney General

8 By: 
9 DAVID J. POPE
10 Senior Deputy Attorney General
11 Nevada Bar No. 008617
12 555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Attorneys for Respondents

By: /s/ WILLIAM H. BROWN
WILLIAM H. BROWN
6029 S. Ft. Apache Rd., #100
Las Vegas, Nevada
Attorneys for Petitioners

13 Dated this 15th day of November, 2011.

14 SHAFER & ASSOCIATES, P.C.

15
16 By: /s/ BRADLEY J. SHAFER
17 BRADLEY J. SHAFER
18 3800 Capital City Blvd., Ste. 2
19 Lansing, Michigan 48906
20 Attorneys for Petitioners
21
22
23
24
25
26
27
28

ORDER

Based upon the foregoing Stipulation, the hearing regarding Petitioner's Application for Leave to Present Additional Evidence to the Nevada Tax Commission, currently scheduled for November 18, 2011, be continued to December 9, 2011 at 9:00 a.m.

IT IS SO ORDERED.

DATED this 15th day of November, 2011.



DISTRICT COURT JUDGE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By:



DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Attorneys for Respondents



CLERK OF THE COURT

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Attorney General
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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,
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Treasures; D.I. FOOD & BEVERAGE OF
LAS VEGAS, LLC, d/b/a Scores, 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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that a Stipulation and Order for Continuance was entered on
15th day of November, 2011, and e-filed on the 21st day of November, 2011, a copy of

...

...

1 which is attached hereto.

2 DATED this 21st day of November, 2011.

3 Respectfully submitted:

4 CATHERINE CORTEZ MASTO
5 Attorney General

6 By: /S/ DAVID J. POPE

7 DAVID J. POPE
8 Senior Deputy Attorney General
9 BLAKE A. DOERR
10 Senior Deputy Attorney General
11 VIVIENNE RAKOWSKY
12 Deputy Attorney General
13 Attorneys for Defendants
14
15
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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 21st day of November, 2011, I deposited in the U.S. mail, postage prepaid, First Class Mail, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** addressed as follows:

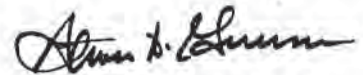
William H. Brown
Law Offices of William H. Brown, Ltd.
6029 S. Ft. Apache Rd., Ste. 100
Las Vegas, NV 89148

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

Mark E. Ferrario, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400 N.
Las Vegas, NV 89169
Attorneys for Shac LLC, dba Sapphire (only)

/S/ TRACI PLOTNICK

An employee of the Office of the Attorney General



CLERK OF THE COURT

1 **SAO**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 DAVID J. POPE
5 Senior Deputy Attorney General
6 Nevada Bar No. 008617
7 BLAKE A. DOERR
8 Senior Deputy Attorney General
9 Nevada Bar No. 009001
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17 dpope@ag.nv.gov
18 Attorneys for Respondents

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 K-KEL, INC., d/b/a Spearmint Rhino
14 Gentlemen's Club; OLYMPUS GARDEN,
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17 INC., d/b/a Crazy Horse Too Gentlemen's
18 Club; D. WESTWOOD, INC., d/b/a
19 Treasures; D.I. FOOD & BEVERAGE OF
20 LAS VEGAS, LLC, d/b/a Scores, DÉJÀ VU
21 SHOWGIRLS OF LAS VEGAS, LLC, d/b/a
22 Déjà vu; and LITTLE DARLINGS OF LAS
23 VEGAS, LLC, d/b/a Little Darlings,

19 Petitioners,

20 v.

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

23 Respondents.

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

25 **STIPULATION AND ORDER FOR CONTINUANCE**


26 IT IS HEREBY STIPULATED AND AGREED by and between CATHERINE CORTEZ
27 MASTO, Attorney General; DAVID J. POPE, Senior Deputy Attorney General; BLAKE A.
28 DOERR, Senior Deputy Attorney General; VIVIENNE RAKOWSKY, Deputy Attorney General,

1 counsel for Respondents; and WILLIAM H. BROWN and BRADLEY J. SHAFER, counsel for
2 Petitioners, that the hearing regarding Petitioner's Application for Leave to Present Additional
3 Evidence to the Nevada Tax Commission, currently scheduled for November 18, 2011, be
4 continued to December 9, 2011 at 9:00 a.m.

5 Dated this 15th day of November, 2011.

Dated this 15th day of November, 2011.

6 CATHERINE CORTEZ MASTO
7 Attorney General

8
9 By: 
10 DAVID J. POPE
11 Senior Deputy Attorney General
12 Nevada Bar No. 008617
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Attorneys for Respondents

By: /s/ WILLIAM H. BROWN
WILLIAM H. BROWN
6029 S. Ft. Apache Rd., #100
Las Vegas, Nevada
Attorneys for Petitioners

13 Dated this 15th day of November, 2011.

14 SHAFER & ASSOCIATES, P.C.

15
16 By: /s/ BRADLEY J. SHAFER
17 BRADLEY J. SHAFER
18 3800 Capital City Blvd., Ste. 2
19 Lansing, Michigan 48906
20 Attorneys for Petitioners
21
22
23
24
25
26 ...
27 ...
28 ...

ORDER

Based upon the foregoing Stipulation, the hearing regarding Petitioner's Application for Leave to Present Additional Evidence to the Nevada Tax Commission, currently scheduled for November 18, 2011, be continued to December 9, 2011 at 9:00 a.m.

IT IS SO ORDERED.

DATED this 15th day of November, 2011.


DISTRICT COURT JUDGE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By: 

DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Attorneys for Respondents

1 CASE NO. A648894

2 DEPT. NO. 30

3 DOCKET U

ORIGINAL

Electronically Filed
10/30/2012 10:52:01 AM

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

Allen D. Quinn

6 * * * * *

CLERK OF THE COURT

7 K-KEL, INC., d/b/a Spearmint)
Rhino Gentlemen's Club:)
8 OLYMPUS GARDEN, INC., d/b/a)
Olympic Garden; SHAC, LLC,)
9 d/b/a Sapphire; THE POWER)
COMPANY, INC., d/b/a Crazy)
10 Horse Too Gentlemen's Club; D.)
WESTWOOD, INC., d/b/a)
11 Treasures; D.I. FOOD &)
BEVERAGE OF LAS VEGAS, LLC,)
12 d/b/a Scores, DEJA VU)
SHOWGIRLS OF LAS EGAS, LLC)
13 d/b/a Deja vu; and LITTLE)
DARLINGS OF LAS VEGAS, LLC,)
14 d/b/a Little Darlings,)

15 Petitioners,)

16 vs.)

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

19 Respondents.)
20

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 BEFORE THE HONORABLE JERRY A. WIESE, II

23 DEPARTMENT XXX

24 DATED FRIDAY, DECEMBER 9, 2011

25 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
CA CSR #13529

CLERK OF THE COURT

OCT 29 2012

CLERK

1 APPEARANCES:

2 For the Petitioners:

3 LAW OFFICES OF WILLIAM H. BROWN, LTD.
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6029 South Fort Apache Road
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7 GREENBERG TRAURIG
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10 (702) 792-3773

11 LAW OFFICE OF BRADLEY J. SCHAFER
12 BY: BRADLEY J. SCHAFER, ESQ.
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14 (517) 886-6560

15 For the Respondents:

16 ATTORNEY GENERALS OFFICE
17 BY: VIVIENNE RAKOWSKY, ESQ.
BY: BLAKE DOERR, ESQ.
18 BY: DAVID J. POPE, ESQ.
555 East Washington Avenue
Suite 3900
Las Vegas, Nevada 89101
20 (702) 486-3426
tplotnick@agnv.gov

22 * * * * *

1 LAS VEGAS, NEVADA, FRIDAY, DECEMBER 9, 2011;
2 8:49 A.M.
3
4 P R O C E E D I N G S
5 * * * * *
6
7 THE COURT: Yours is the K-Kel case?
8 MR. FERRARIO: Right.
9 THE COURT: I'll take care of it real fast.
10 How about that?
11 MR. FERRARIO: Well, depends on which way
12 you're going to rule.
13 THE COURT: Do we have both sides here?
14 MR. FERRARIO: Yes, but if you could --
15 THE COURT: I'll take care of your case real
16 fast. Come on up.
17 K-Kel versus Nevada Department of Taxation.
18 THE BAILIFF: If the other counselors can
19 have a seat for a few minutes, we'll get to you.
20 THE COURT: It's on page 9. You want this
21 reported, Counsel?
22 MR. BROWN: Yes, Your Honor.
23 THE COURT: Case No. 648894. This is on for
24 the plaintiffs' application for leave to present
25 additional evidence to the Nevada Tax Commission. I'm

1 going to tell you what my inclination is.

2 Well, actually, is everybody checked in?

3 MR. FERRARIO: Yes.

4 THE COURT: You want to make appearances for
5 the record?

6 MR. DOERR: Sure.

7 MS. RAKOWSKY: Vivienne Rakowsky for the
8 Department of Taxation from the Attorney's General
9 Office.

10 MR. POPE: David Pope also with the Attorney
11 General's Office on behalf of the respondents.

12 MR. DOERR: Blake Doerr from the Attorney
13 General's Office on behalf of the Department of
14 Taxation.

15 MR. FERRARIO: Mark Ferrario appearing on
16 behalf of Shac.

17 MR. BROWN: William Brown, local counsel for
18 the other plaintiffs.

19 MR. SHAFER: Your Honor, my name is Brad
20 Shafer. I'm an attorney from Michigan, licensed in
21 Michigan and Arizona. I filed a pro hac vice motion at
22 some point in this matter.

23 THE COURT: Okay. Let me tell you what my
24 inclination is, and if you want to argue and make a
25 record, you can. I looked at the briefs. Based on

1 NRS 233B.133, subsection 2, if I want to -- to send
2 this back down to the administrative agency, I have to
3 find that there's good cause. As discussed in Garcia
4 versus Scolari's Food and Drug case, I have to find
5 additional evidence must be material.

6 I think it's close, but based upon the -- the
7 issues as they are, and -- and the -- the status of --
8 there's one case going on. There's a second case that
9 was going on that ended up getting dismissed because of
10 the -- whatever that new case was, Edison case, I don't
11 know that there was necessarily -- necessarily an
12 obligation to do discovery under the -- in the
13 administrative portion of the case. There is -- I -- I
14 found some law that says that there's no state or
15 federal constitutional right in an administrative
16 proceeding to prehearing discovery. Nevada Rules of
17 Civil Procedure do not apply to administrative
18 proceedings, and the Nevada Administrative Procedure
19 Act makes no provision for discovery. I think that
20 there's probably a valid basis for the plaintiffs to
21 have not discovered the things that they are now saying
22 that they want to bring before the agency.

23 My inclination is that there is good cause
24 and that the evidence is material, and I would prefer
25 that the tax commission review everything before I

1 review it.

2 MS. RAKOWSKY: Your Honor, can I make two
3 brief points?

4 THE COURT: You can make whatever record you
5 want to make. I just want to let you know what my
6 thoughts are, and you can try to convince me otherwise
7 if you'd like to.

8 MS. RAKOWSKY: Well, the cases that -- that
9 you referred to, which was Duchess, they did say that.
10 But they also went on to say, and I quote, "Thus the
11 extent to which a party engaged in an administrative
12 hearing for the board of discovery is determined by the
13 statutes governing the board and its adopted
14 regulations." That was the next sentence. That was
15 not included in their brief.

16 So if you go to the rules and regulations,
17 the statutes and regulations for the Nevada Department
18 of Taxation and the Nevada Tax Commission, you'll find
19 under NAC 135 -- 360.135, there's rules on how you get
20 a subpoena, that any party desiring to subpoena a
21 witness must submit an application to the hearing
22 officer stating the reason why the subpoena is
23 requested.

24 The hearing officer may require that a
25 subpoena requested by a party for the production of

1 books, waybills, papers, accounts or other documents be
2 issued after the submission of an application in
3 writing, which specifies as clearly as may be, the
4 books, waybills, papers, accounts or other documents
5 desired.

6 And -- and then the hearing officer shall
7 grant and issue the -- grant the application and issue
8 the subpoena.

9 They did not ask. They never asked for any
10 discovery. In fact, during the administrative hearing
11 in front of the tax commission, they said, we didn't
12 ask for any discovery. And they were still given
13 another month to present any kind of discovery that
14 they wanted. And they -- and they submitted 500 to
15 1,000 pages of information that they wanted considered
16 by the commission. When the commission told them this,
17 they said, Do you want everything? And the commission
18 said we want everything you want considered. If you
19 don't have it in, there will be no -- there will be no
20 additional evidence; you're done. They agreed.

21 They submitted the stuff. The hearing was
22 postponed and took place a month later. There's
23 94 pages of hearing transcript, where 47 pages are
24 devoted to questions to -- to these -- to them
25 regarding the evidence that they submitted. They

1 looked at all the evidence. They looked at everything,
2 and they came to a decision. There was substantial
3 evidence.

4 And according to the latest case, which is --
5 which is the Cabinet case, Maskall Cabinet (phonetic)
6 case, they say that the -- when you do a judicial
7 review, the issue is was there substantial evidence?
8 And the Department of Taxation says there was
9 substantial evidence. There's no need to add to the
10 record.

11 And the second point is that Judge Gonzalez
12 when we had the hearing in front of her on August the
13 23rd stated -- they asked for a remand. And she said
14 no, she is not going to give them a remand. Pursuant
15 to Rule 19, for them to get a remand, there has to be
16 an agreement between you and Judge Gonzalez that she's
17 willing to forego that order.

18 THE COURT: It's a different case than
19 Judge Gonzalez's case, isn't it?

20 MS. RAKOWSKY: But she said she's not
21 remanding this case to the Nevada Tax Commission.

22 THE COURT: Is this the same case that's in
23 front of Judge Gonzalez?

24 MS. RAKOWSKY: She -- she ended up going
25 through the facial challenge, dismissing the as-applied

1 challenge and giving them 30 days to file for judicial
2 review. Although they should have filed for judicial
3 review in 2007, she extended that 30- or 45-day
4 deadline to give them 30 days to now file for judicial
5 review. It's the same case. It's -- with the
6 exception of the plaintiff that they added that I
7 understand that they're going to now dismiss, it's the
8 same plaintiffs. It's the same issues. It's the same
9 documents. It's -- it's -- everything is identical,
10 except now it's judicial review.

11 MR. POPE: Your Honor, I just have two
12 points. It's the same regulation. NAC 360.145 allows
13 for depositions. It's under the section in the NAC for
14 hearings, but the point is, is that petitioners never
15 requested depositions from the -- from the commission.
16 The commission could have granted or could have allowed
17 it pursuant to that regulation or possibly remanded to
18 a hearing officer for that to happen.

19 The next point is that petitioners have more
20 or less agreed in their moving papers that this is the
21 same type of evidence. Cumulative evidence is to be
22 excluded both under 233B.123 and NAC 360.145, sub 4.
23 So those are -- those are two other reasons not to
24 supplement the record.

25 MR. DOERR: I'll just also add that -- that

1 the issue that's before you today is the issue that
2 we've been conducting discovery on while the matters
3 were still before Judge -- first Judge Togliatti and
4 then Judge Gonzalez. So our -- the discovery that
5 they're asking for is the period -- it's been open for
6 three or four years now, five years running. And
7 they're just trying to extend this, get more in, waste
8 our time, waste our resources, and looking for
9 something else, and they don't have anything.

10 And I think they have the opportunity to ask
11 for all this in the administrative proceeding.

12 MR. ROITMAN: Your Honor --

13 MS. RAKOWSKY: And, finally, Your Honor, what
14 they're asking you to admit is hearsay, and the
15 regulations -- and the regulations to the Nevada Tax
16 Commission and Nevada Department of Taxation are very
17 specific in NAC 360.145. It says, "Hearsay evidence,
18 as that term is used in civil actions, may be admitted
19 for the purpose of supplementing or explaining other
20 evidence, but it is not sufficient to support findings
21 of fact unless it would be admissible over objection in
22 civil actions."

23 They're looking to admit e-mails which are
24 clearly hearsay. They're not -- they would not be
25 admissible in any civil action, nor would any of the

1 other documents because it's inadmissible evidence,
2 so ...

3 THE COURT: Mr. Roitman, give me a few
4 minutes.

5 All right. Counsel, I understand your
6 arguments with regard to whether or not things are
7 admissible, whether it's duplicative, whether it's
8 hearsay, if it's admissible evidence or not. I don't
9 think that's in front of me at this point. I think
10 that that's something that the administrative agency
11 needs to take up first. I understand your arguments,
12 and -- and I would be making the same arguments if I
13 was sitting at your table.

14 The thing is, as a judge, I want to try to do
15 the right thing, and if the right thing requires me to
16 only look at the record on a petition for judicial
17 review, I'm limited to review of the record. If
18 there's a question whether or not something is in the
19 record that should be or something's missing from the
20 record that maybe should be in the record, I'm inclined
21 to allow the administrative agency an opportunity to
22 review that so that when it comes up to me, and I'm
23 sure this will come back up to me, that I've got all
24 the evidence.

25 So I'm not going to dismiss the case, but

1 what I'm going to do is I'm going to remand it right
2 now for purposes -- so the administrative agency can --
3 can look at the evidence that's requested by the
4 petitioners. And I'm guessing that as soon as that
5 happens, they'll either come up with an amended
6 decision or a different decision or they'll just say
7 that the same decision applies.

8 Whatever happens, it will come back in front
9 of me on a petition for judicial review. You have to
10 let me know when that happens, and we'll probably have
11 to set a status hearing to decide if the parties want
12 to submit supplemental briefs to me based upon the
13 additional evidence that's submitted to the tax
14 commission.

15 MR. POPE: Your Honor, we haven't really
16 gotten into briefing yet. They haven't done their --

17 THE COURT: So there's no briefs at all yet?

18 MR. BROWN: That's correct.

19 MR. FERRARIO: Your Honor, we'll prepare an
20 order reflecting your ruling, run it by the State, and
21 then working out briefing schedules after we come back
22 or keeping you apprised of what's happening at the
23 administrative level won't be a problem.

24 THE COURT: Appreciate that.

25 MR. FERRARIO: Thanks, Your Honor.

1 MS. RAKOWSKY: Thank you.

2 MR. BROWN: Judge, I also have an unopposed
3 motion to withdraw if I could.

4 THE COURT: You have an unopposed motion to
5 withdraw. Give me one second. Let's take care of
6 Mr. Roitman real quick because he's anxious to get out
7 of here.

8 MR. ROITMAN: I got to get over to probate
9 court. Figueroa versus Green Valley Ranch.

10 MR. FERRARIO: Your Honor, thank you for the
11 consideration. I appreciate it.

12 (Thereupon, the proceedings
13 concluded at 9:01 a.m.)
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CERTIFICATE OF REPORTER

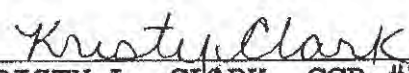
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kristy L. Clark, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I reported the proceedings commencing on
Friday, December 9, 2011, at 8:49 o'clock a.m.

That I thereafter transcribed my said
shorthand notes into typewriting and that the
typewritten transcript is a complete, true and accurate
transcription of my said shorthand notes.

I further certify that I am not a relative or
employee of counsel of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
19th day of December, 2011.



KRISTY L. CLARK, CCR #708

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Location : District Court Civil/Criminal [Help](#)**REGISTER OF ACTIONS****CASE NO. A-11-648894-J****K-Kel, Inc., Plaintiff(s) vs. Nevada Department of Taxation, Defendant(s)**§
§
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§Case Type: **Civil Petition for Judicial Review**Date Filed: **09/23/2011**Location: **Department 30**Cross-Reference Case Number: **A648894**Supreme Court No.: **69886****RELATED CASE INFORMATION****Related Cases**

A-14-697515-J (Consolidated)

PARTY INFORMATION

		Lead Attorneys
Defendant	Nevada Department of Taxation	David J. Pope Retained 7026568084(W)
Defendant	Nevada Tax Commission	David J. Pope Retained 7026568084(W)
Plaintiff	D I Food and Beverage of Las Vegas LLC Doing Business As Scores	William H. Brown Retained 702-816-2200(W)
Plaintiff	D Westwood Inc Doing Business As Treasures	William H. Brown Retained 702-816-2200(W)
Plaintiff	Deja Vu Showgirls of Las Vegas Doing Business As Deja Vu	William H. Brown Retained 702-816-2200(W)
Plaintiff	K-Kel, Inc. Doing Business As Spearmint Rhino Gentlemens Club	William H. Brown Retained 702-816-2200(W)
Plaintiff	Little Darlings of Las Vegas LLC Doing Business As Little Darlings	William H. Brown Retained 702-816-2200(W)
Plaintiff	Olympus Garden Inc Doing Business As Olympic Garden	William H. Brown Retained 702-816-2200(W)
Plaintiff	Power Company Inc Doing Business As Crazy Horse Too Gentlemens Club	William H. Brown Retained 702-816-2200(W)
Plaintiff	Shac LLC Doing Business As Sapphire	William H. Brown Retained 702-816-2200(W)

EVENTS & ORDERS OF THE COURT

12/09/2011 **Motion for Leave** (9:00 AM) (Judicial Officer Wiese, Jerry A.)
 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 have filed a Petition for Leave to Present Additional Evidence to the Nevada Tax Commission

Appellants Appendix**Page 48**

Minutes

11/14/2011 9:00 AM

11/18/2011 9:00 AM

12/09/2011 9:00 AM

- 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.

[Parties Present](#)[Return to Register of Actions](#)

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Location : District Court Civil/Criminal [Help](#)**REGISTER OF ACTIONS****CASE NO. A-11-648894-J****K-Kel, Inc., Plaintiff(s) vs. Nevada Department of Taxation, Defendant(s)**§
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Plaintiff	Power Company Inc Doing Business As Crazy Horse Too Gentlemens Club	William H. Brown Retained 702-816-2200(W)
Plaintiff	Shac LLC Doing Business As Sapphire	William H. Brown Retained 702-816-2200(W)

EVENTS & ORDERS OF THE COURT

12/16/2011 | **Motion to Dismiss** (9:00 AM) (Judicial Officer Wiese, Jerry A.)
Nevada Department of Taxation's and Nevada Tax Commission's Motion to Dismiss Petitioner's Deja Vu and Little Darlings

Minutes

Appellants' Appendix**Page 50**

12/16/2011 9:00 AM

- 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.

[Return to Register of Actions](#)

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE 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; 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, 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

**ORDER GRANTING PLAINTIFFS'
APPLICATION FOR LEAVE TO PRESENT
ADDITIONAL EVIDENCE TO THE NEVADA
TAX COMMISSION**

PETITIONERS' Application for Leave to Present Additional Evidence to the Nevada Tax Commission in the above-captioned matter came on for hearing on December 9, 2011.

David J. Pope, Senior Deputy Attorney General, Blake A. Doerr, Senior Deputy Attorney General, and Vivienne Rakowsky, Deputy Attorney General appeared on behalf of the Respondents; and,

William J. Brown, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the Petitioners; and, Mark E. Ferrario appeared on behalf of Petitioner SHAC, LLC.

The Court having considered the papers and pleadings as well as the oral argument, hereby ORDERS:

Petitioner's Application for leave to present additional evidence to the Nevada Tax Commission is GRANTED so the administrative agency can look at additional

1 evidence and do one of the following: Amend the Findings of Fact, Conclusions of
2 Law dated Oct. 12, 2007, Reverse the Decision, or Affirm the Decision.
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5 **IT IS SO ORDERED.**

6 DATED this 24 day of January, 2012.
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10 DISTRICT COURT JUDGE
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CLERK OF THE COURT

NEOJ
CATHERINE CORTEZ MASTO
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
BLAKE A. DOERR
Senior Deputy Attorney General
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VIVIENNE RAKOWSKY
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555 E. Washington Ave., Ste. 3900
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dpope@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; 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, 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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Application for Leave to
Present Additional Evidence to the Nevada Tax Commission was entered on 24th day of

...

...

1 January, 2012, and e-filed on the 1st day of February, 2012, a copy of which is attached
2 hereto as Exhibit "A".

3 DATED this 2nd day of February, 2012.

4 Respectfully submitted:

5 CATHERINE CORTEZ MASTO
6 Attorney General

7 By: /S/ VIVIENNE RAKOWSKY
8 DAVID J. POPE
9 Senior Deputy Attorney General
10 BLAKE A. DOERR
11 Senior Deputy Attorney General
12 VIVIENNE RAKOWSKY
13 Deputy Attorney General
14 Attorneys for Defendants
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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 2nd day of February, 2012, I deposited in the U.S. mail, postage prepaid, First Class Mail, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** addressed as follows:

William H. Brown
Law Offices of William H. Brown, Ltd.
6029 S. Ft. Apache Rd., Ste. 100
Las Vegas, NV 89148

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

Mark E. Ferrario, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400 N.
Las Vegas, NV 89169
Attorneys for Shac LLC, dba Sapphire (only)


/S/ TRACI PLOTNICK

An employee of the Office of the Attorney General

EXHIBIT “A”

Appellants' Appendix

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE 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; THE POWER COMPANY, INC., d/b/a
Crazy Horse Too Gentlemen's Club; D.
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& BEVERAGE OF LAS VEGAS, LLC, d/b/a
Scores, DÉJÀ VU SHOWGIRLS OF LAS
VEGAS, LLC, d/b/a Déjà vu; and LITTLE
DARLINGS OF LAS VEGAS, LLC, d/b/a Little
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9 DISTRICT COURT JUDGE
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