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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
VOLUME 8, PAGES 1695 – 1932

INDEX TO APPELLANTS' APPENDIX

Filing Date	Description	Vol.	Page																
06/24/2016	Amended Notice of Appeal	19	4036-4038																
06/23/2016	Amended Order Denying Judicial Review of Administrative Decision	19	4021-4026																
09/28/2011	Application for Leave to Present Additional Evidence to the Nevada Tax Commission Exhibit 13 (ONLY) – Department Letter of November 17, 20013 Re: Southern California Edison (This exhibit was erroneously omitted in the Supplement to the Record Filed on January 26, 2015)	1	13-15																
01/26/2015	Entire Record of Administrative Proceedings Filed with District Court via Compact Disc (District Court Case No. A-11-648894-J): <table border="1"><tr><td>Application for Leave to Present Additional Evidence to the Nevada Tax Commission, dated 09/28/11</td><td>1-30</td></tr><tr><td>Ex. 1 – Charts by the Department showing LET Collections by Taxpayer Group.</td><td>31-34</td></tr><tr><td>Ex. 2 – March 14, 2005, Department memo discussing the specific inclusion of gentlemen’s clubs in the proposed amended version of Chapter 368A.</td><td>35-37</td></tr><tr><td>Ex. 3 – October 9, 2003, email to former Department Director Dino</td><td>38-43</td></tr></table>	Application for Leave to Present Additional Evidence to the Nevada Tax Commission, dated 09/28/11	1-30	Ex. 1 – Charts by the Department showing LET Collections by Taxpayer Group.	31-34	Ex. 2 – March 14, 2005, Department memo discussing the specific inclusion of gentlemen’s clubs in the proposed amended version of Chapter 368A.	35-37	Ex. 3 – October 9, 2003, email to former Department Director Dino	38-43	<table><tr><td>1</td><td>140-169</td></tr><tr><td>1</td><td>170-173</td></tr><tr><td>1</td><td>174-176</td></tr><tr><td>1</td><td>177-182</td></tr></table>	1	140-169	1	170-173	1	174-176	1	177-182	
Application for Leave to Present Additional Evidence to the Nevada Tax Commission, dated 09/28/11	1-30																		
Ex. 1 – Charts by the Department showing LET Collections by Taxpayer Group.	31-34																		
Ex. 2 – March 14, 2005, Department memo discussing the specific inclusion of gentlemen’s clubs in the proposed amended version of Chapter 368A.	35-37																		
Ex. 3 – October 9, 2003, email to former Department Director Dino	38-43																		
1	140-169																		
1	170-173																		
1	174-176																		
1	177-182																		

Filing Date	Description	Vol.	Page
	DiCianno from an attorney on behalf of the Bellagio hotel and casino discussion the constitutionality of the proposed amendments.		
	Ex. 4 – October 21, 2003, email to DiCianno with a transcript of the Nevada Gaming Commission discussing the importance of subjecting the gentlemen’s clubs to the LET.	44-67	1 183-206
	Ex. 5 – First Reprint of Senate Bill 247 which contains a counsel digest specifically referencing adult entertainment and what would happen if that proposed portion of the Bill were held unconstitutional.	68-92	1 207-231
	Ex. 6 – Minutes of the May 16, 2005, meeting of the Assembly Committee on Commerce and Labor which discusses what happens if the proposed live adult entertainment provisions are held unconstitutional.	93-110	1 232-249
	Ex. 7 – Minutes of the May 26, 2005, meeting of the Assembly Committee on Ways and Means, which specifically references the Department’s position on there being two distinct categories: live entertainment and live adult entertainment. Exhibit E to the minutes is an email from DiCianno setting forth this distinction.	111-118	2 250-257

Filing Date	Description	Vol.	Page
	Ex. 8 – Untitled Revenue Analysis.	119-121	258-260
	Ex. 9 – November 9, 2004, Memo to Chinnock, Executive Director of Department.	122	261
	Ex. 10 – April 24, 2004, DiCianno Email.	123	262
	Ex. 11 – November 18, 2003, Barbara Smith Campbell Email.	124-125	263-264
	Ex. 12 – Minutes of June 5, 2005, Meeting of Senate Committee on Taxation.	126-137	265-276
	Ex. 14 – <u>Deja Vu Showgirls of Las Vegas, L.L.C., v. Nevada Dept. of Taxation</u> , 2006 WL 2161980 (D. Nev. July 28, 2006) – dismissal of lawsuit.	138-141	277-280
	Ex. 15 – Motion to Dismiss Amended Complaint, Document 12, U.S.D.C. Nevada, Case No. 2:06-cv-00480, filed May 10, 2006.	142-153	281-292
	Ex. 16 – Reply to Motion to Dismiss Complaint, Document 17, U.S.D.C. Nevada, Case No. 2:06-cv-00480, filed June 14, 2006.	154-165	293-304
	8 th Judicial District Court Administrative Record, filed 10/21/11		
	(Index of Documents)	166-170	306-309

Filing Date	Description			Vol.	Page
	Petitioner's Claims for Refund of Tax on Live Entertainment, February 27, 2007 (Tax Period: January 2004)	1-41	171-211	2	310-350
	Petitioners' Claim for Refund of Tax on Live Entertainment, March 28, 2007 (Tax Period: February 2004)	42-84	212-254	2	351-393
	Respondent's Response to Refund Requests, April 3, 2007	85-96	255-266	2	394-405
	Petitioners' Claims for Refund of Tax on Live Entertainment, April 26, 2007 (Tax Period: March 2004)	97-139	267-309	2	406-448
	Respondent's Response to Refund Requests, April 30, 2007	140-145	310-315	2	449-454
	Petitioners' Claims for Refund of Tax on Live Entertainment, May 30, 2007 (Tax Period: April 2004)	146-188	316-358	2	455-497
	Respondent's Response to Refund Requests, June 4, 2007	189-194	359-364	3	498-503
	Petitioners' Formal Notice of Appeal, May 1, 2007 (The following pages in this section were intentionally left blank)	195-273	365-443	3	504-582
	Petitioners' Correspondence Regarding Amended Notice of Hearing, June 19, 2007	274-276	444-446	3	583-585

Filing Date	Description			Vol.	Page
	Respondents' Amended Notice of Hearing, June 8, 2007	277-280	447-450	3	586-589
	Respondents' Notice of Hearing, June 7, 2007	281-284	451-454	3	590-593
	Bradley J. Shafer Formal Notice of Appearance, June 8, 2007	285-286	455-456	3	594-595
	Petitioners' Correspondence Regarding Notice of Appeal of Denial of Claim for Refund, June 21, 2007	287-333	457-503	3	596-642
	Department's Brief and Exhibits in Support of the Department's Denial of Appellant's Refund Requests, June 15, 2007	334-351	504-521	3	643-660
	Appellants' Reply Brief and Exhibits in Opposition to the Nevada Department of Taxation's Denial of Appellant's Refund Requests	352-387	522-557	3	661-696
	Department's Supplemental Brief in Support of the Department's Denial of Appellant's Refund Requests	388-392	558-562	3	697-701
	Department's Power Point Presentation	393-415	563-585	3	702-724
	Department's Appendix of Cases, Statutes and Other Authorities				
	(Index of Appendix)	416-418	586-588	3	725-727

Filing Date	Description			Vol.	Page
	Appendix 1 – Sheriff v. Burdg	419-426	589-596	3	728-735
	Appendix 2 – Cashman Photo Concessions and Labs v. Nevada Gaming Commission	427-432	597-602	3	736-741
	Appendix 3 – List v. Whisler	433-441	603-611	4	742-750
	Appendix 4 – Whitehead v. Comm’n on Judicial Discipline	442-482	612-652	4	751-791
	Appendix 5 – Murdock v. Commonwealth of Pennsylvania	483-493	653-663	4	792-802
	Appendix 6 – Jimmy Swaggart Ministries v. Board of Equalization	494-509	664-679	4	803-818
	Appendix 7 – Minneapolis Star v. Minnesota Comm’r of Revenue	510-530	680-700	4	819-839
	Appendix 8 – Adams Outdoor Advertising v. Borough of Stroudsburg	531-546	701-716	4	840-855
	Appendix 9 – Ward v. Rock Against Racism	547-568	717-738	4	856-877
	Appendix 10 – Leathers v. Medlock	569-586	739-756	4	878-895

Filing Date	Description			Vol.	Page
	Appendix 11 – Madden v. Kentucky	587-596	757-766	4	896-905
	Appendix 12 – Forbes v. City of Seattle	597-612	767-782	4	906-921
	Appendix 13 – Simon & Schuster, Inc. v. Members of New York State Crime Victims Board	613-630	783-800	4	922-939
	Appendix 14 – City of Las Angeles v. Alameda Books, Inc.	631-651	801-821	4	940-960
	Appendix 15 – California Highway Patrol v. Superior Court	652-668	822-838	4	961-977
	Appendix 16 – Vermont Society of Assoc. Executives v. Milne	669-680	839-850	4	978-989
	Appendix 17 – Comptroller of the Treasury v. Clyde’s of Chevy Chase, Inc.	681-704	851-874	5	990-1013
	Appendix 18 – Chapter 368A	705-720	875-890	5	1014-1029
	Appendix 19 – IRC §§ 4231 through 4234	721-727	891-897	5	1030-1036
	Appendix 20 – Nevada State Attorney General Opinion No. 85-17	728-733	898-903	5	1037-1042

Filing Date	Description			Vol.	Page
	Appendix 21 – Committee Notes regarding S.B. 497, June 6, 1995	734-746	904-916	5	1043-1055
	Petitioners’ Correspondence Regarding Supplemental Material Submitted for Appeal	747-749	917-919	5	1056-1058
	Petitioners’ Power Point Presentation	750-787	920-957	5	1059-1096
	Supplemental Submission on Behalf of Taxpayers/Appellants				
	Index	788-792	958-962	5	1097-1101
	1. Arkansas Writers Project, Inc. v. Charles D. Ragland	793-803	963-973	5	1102-1112
	2. Grosjean v. American Press Co.	804-812	974-982	5	1113-1121
	3. Jimmy Swaggard Ministries v. Board of Equalization of California	813-826	983-996	5	1122-1135
	4. Leathers v. Medlock	827-843	997-1013	5	1136-1152
	5. Minneapolis Star and Tribune Company v. Minnesota Commissioners of Revenue	844-863	1014-1033	5	1153-1172
	6. Murdock v. Commonwealth of Pennsylvania	864-872	1034-1042	5	1173-1181

Filing Date	Description			Vol.	Page
	7. Regan v. Taxation with Representation of Washington and Taxation with Representation of Washington v. Donald T. Regan	873-884	1043-1054	5	1182-1193
	8. City of Las Angeles v. Alameda Books, Inc.	885-907	1055-1077	5	1194-1216
	9. TK's Video, Inc. v. Denton County, Texas	908-935	1078-1105	6	1217-1244
	Theresa Enterprises, Inc. v. United State of America	936-949	1106-1119	6	1245-1258
	10. Festival Enterprises, Inc. v. City of Pleasant Hill	950-954	1120-1124	6	1259-1263
	11. United Artists Communications, Inc. v. City of Montclair	955-960	1125-1130	6	1264-1269
	12. Vermont Society of Association Executives v. James Milne	961-982	1131-1152	6	1270-1291
	13. Church of the Lukumi Babalu Ave, Inc. v. City of Hialeah	983-1017	1153-1187	6	1292-1326
	14. City of LaDue v. Margaret Gilleo	1018-1029	1188-1199	6	1327-1338
	15. United States v. Eichman	1030-1039	1200-1209	6	1339-1348

Filing Date	Description			Vol.	Page
	16. Adams Outdoor Advertising v. Borough or Stroudsburg	1040-1052	1210-1222	6	1349-1361
	17. Forbes v. City of Seattle	1053-1066	1223-1236	6	1362-1375
	18. NRS 360.291	1067-1070	1237-1240	6	1376-1379
	19. NRS Chapter 368 A	1071-1086	1241-1256	6	1380-1395
	20. Excerpts of Minutes of Senate Committee on Taxation – May 26, 2003	1087-1090	1257-1260	6	1396-1399
	21. Excerpts of Senate Bill No. 8 – 2003 Nevada Laws 20 th Sp. Sess. Ch. 5 (S.B. 8)	1091-1109	1261-1279	6	1400-1418
	22. Adopted Regulation of the Nevada tax Commission – R212-03	1110-1122	1280-1292	6	1419-1431
	23. Excerpts of the Legislative History of A.B. 554-2005	1123-1146	1293-1316	6	1432-1455
	24. Excerpts of Minutes of the Assembly Committee on Commerce and Labor Meeting – May 16, 2005	1147-1162	1317-1332	7	1456-1471
	25. Senate Bill No. 3 – 2005 Nevada Laws 22 nd Sp. Sess. Ch. 9 (S.B. 3)	1163-1171	1333-1341	7	1472-1480

Filing Date	Description			Vol.	Page
	26. Assembly Bill No. 554 – 2005 Nevada Laws Ch. 484 (A.B. 554)	1172- 1179	1342- 1349	7	1481-1488
	27. Assembly Bill No. 487 – 2007 Nevada Laws Ch. 547 (A.B. 487)	1180- 1182	1350- 1352	7	1489-1491
	28. Nevada Department of Taxation Annual Report for Fiscal Years 2004- 2005 and 2005-2006	1183- 1187	1353- 1357	7	1492-1496
	29. Initial Request for Refund Letter (specimen copy)	1188- 1194	1358- 1364		1497-1503
	30. Nevada Tax Department’s Denials of Request for Refunds	1195- 1218	1365- 1388	7	1504-1527
	Transcript of the State of Nevada Tax Commission Teleconferenced Open Meeting, Monday, July 9, 2007	1219- 1237	1389- 1407	7	1528-1546
	Transcript of the State of Nevada Tax Commission Teleconferenced Open Meeting, Monday, August 6, 2007	1238- 1332	1408- 1502	7	1547-1641
	Commission’s Findings of Facts and Conclusions of Law and Decision, October 12, 2007	1333- 1334	1503- 1504	7	1642-1643
	Petitioners’ Request for a Copy of the Nevada Tax Commission’s Formal	1335	1505	7	1644

Filing Date	Description	Vol.	Page
	Written Ruling, August 22, 2007		
	These Bates Numbered Pages Were Left Blank Intentionally: 202; 210; 218; 226; 234; 242; 250; 258; 266; 294; 309; 317; 318; and 326		
	Opposition to Petitioner's Application for Leave to Present Additional Evidence to the Nevada Tax Commission, filed 10/21/11	1506-1555	7
	Reply in Support of Application for Leave to Present Additional Evidence to the Nevada Tax Commission, filed 11/07/11	1556-1642	8
	Transcript of Hearing, dated 12/09/11	1643-1656	8
	Notice of Entry of Order Granting Petitioner's Application for Leave to Present Additional Evidence to the Nevada Tax Commission, filed 02/02/12	1657-1662	8
	Document submitted by Taxpayer on Remand		
	A – Memorandum - Analysis of Revenue Impact	1663-1665	8
	B – Live Entertainment Tax by number of seats (2004)	1666-1668	8
	C – Department of Taxation Update Request	1669-1672	8
	D – Live Entertainment Tax information and press releases	1673-1681	8
			1645-1694
			1695-1781
			1782-1795
			1796-1801
			1802-1804
			1805-1807
			1808-1811
			1812-1820

Filing Date	Description	Vol.	Page
	(various dated and undated documents)		
	E – LET Updates, Southern Nevada, 7/19/04	1682-1683	8 1821-1822
	F – Live Entertainment Tax- Seating Capacity 300-7400, January-December 2004	1684-1685	8 1823-1824
	G – LET by venue (DV000028-blank page)	1686-1694	8 1825-1833
	H – LET by category and venue	1695-1699	8 1834-1838
	I – 10% LET- Gentleman's Clubs	1700-1703	8 1839-1842
	J – LET account summary	1704-1710	8 1843-1849
	K – Various Correspondence to and from taxpayers - December 10, 2003, December 12, 2003, May 17, 2005, April 2, 2007, January 3, 2008	1711-1720	8 1850-1859
	L – LET Tax received 2004- 2008	1721-1777	8 1860-1916
	M – LET Tax received fiscal year 2007	1778-1779	8 1917-1918
	N – Monthly deposit report, prepared April 17 2009	1780-1788	8 1919-1927
	O – General Fund Revenues, fiscal year 2005- 2008, forecast 2009 - 2011	1789-1790	8 1928-1929
	P – SB 247 Bill History	1791-1793	8 1930-1932

Filing Date	Description	Vol.	Page
	Q – Department of Taxation- "What You Need to Know About Nevada's Live Entertainment Tax" 10/21/03, 7/6/05 and 8/15/05 and PowerPoint presentation	1794-1855	9 1933-1994
	R – Seating capacity information by district	1856-1858	9 1995-1997
	S – LET tax information for LCB	1859-1862	9 1998-2001
	T – Memorandum regarding LET tax- 5/21/04	1863-1867	9 2002-2006
	U – LET tax seating capacity 300 - 7400, January - September 2004	1868-1869	9 2007-2008
	V – AB 281 information regarding LET	1870-1872	9 2009-2011
	W – Draft Regulations for discussions 8/25/03	1873-1881	9 2012-2020
	X – Changes effective July 2005	1882-1883	9 2021-2022
	Y – Public Notice September 5, 2003, proposed regulations	1884-1935	9 2023-2074
	Z – Memorandum and adopted regulations, December 7, 2003	1936-2007	9 2075-2146
	AA – Regulation, LCB File No. R1 05-05, February 23, 2006	2008-2055	10 2147-2194
	BB – Minutes of Senate Committee on Taxation June 5, 2005	2056-2135	10 2195-2274

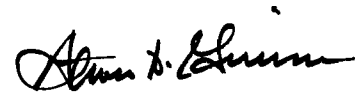
Filing Date	Description		Vol.	Page
	CC – LET PowerPoint presentation	2136-2146	10	2275-2285
	DD – Public Notice September 26, 2003, proposed regulations	2147-2201	10	2286-2340
	EE – Public Notice October 23,2003 for meeting dated October 30, 2003	2202-2290	11	2341-2429
	FF – Public Notice October 24, 2003, proposed regulations	2291-2370	11	2430-2509
	GG – Notice of Public Meeting and Transcript of Public Meeting November 25, 2003	2371-2414	11	2510-2553
	HH – Nevada Tax Commission Meeting and Proposed Regulations - Posted November 19, 2003	2415-2496	12	2554-2635
	II – LET reports	2497-2512	12	2636-2651
	JJ – LET workshop- Compact Disc	2513-2514	12	2652-2653
	KK – Legislative History	2515-2569	12	2654-2708
	KK – Legislative History (Continued)	2570-2815	13	2709-2954
	KK – Legislative History (Continued)	2816-2856	14	2955-2995
	LET Updated Requests	2857-3064	14	2996-3203
	LET Updated Requests (Continued)	3065-3156	15	3204-3295
	LET PowerPoint	3157-3168	15	3296-3307

Filing Date	Description	Vol.	Page
	Letter from Petitioner's counsel to the Nevada Tax Commission re: NAC 360.135 Request for Subpoenas to Dino DiCianno, Michelle Jacobs, and Tesa Wanamaker, dated 06/14/12	3169-3173	15 3308-3312
	Letter from Respondent's counsel to the Nevada Tax Commission in opposition to the request for subpoenas, dated 06/15/12	3174-3179	15 3313-3318
	Letter from Petitioner's counsel to the Nevada Tax Commission in reply to Petitioner's opposition to the request for subpoenas, plus Exhibit A-B, dated 06/19/12	3180-3190	15 3319-3329
	Nevada Department of Taxation's Brief on Remand to Consider Additional Evidence, plus Exhibits A-G, dated 06/19/12	3191-3341	16 3330-3480
	Letter from Respondent's counsel to the Nevada Tax Commission re: Sur-Reply to the request for subpoenas, dated 06/20/12	3342-3373	16 3481-3512
	Letter from Petitioner's counsel to the Nevada Tax Commission re: Supplement to Reply to the request for subpoenas, dated 06/20/12	3374-3567	17 3513-3706
	Transcript of Nevada Tax Commission, 06/25/12	3658-3604	17 3707-3743
	Nevada Tax Commission Decision Letter, dated 09/06/12	3605-3610	17 3744-3749
	Hearing Officer's Order on Remand, dated 08/27/13	3611-3618	17 3750-3757
	Stipulation for Submission on the Record, 10/24/13	3619-3634	18 3758-3773
	Nevada Tax Commission Notice of Hearing, dated 11/22/13	3635-3636	18 3774-3775

Filing Date	Description		Vol.	Page
	Waiver of Notice, dated 11/22/13	3637	18	3776
	Transcript of Nevada Tax Commission (only the portions of Nevada Tax Commission relevant to this matter), 12/09/13	3638-3642	18	3777-3781
	Nevada Tax Commission’s Decision, 02/12/14	3643-3718	18	3782-3857
12/09/2011	Minutes		1	48-49
12/16/2011	Minutes		1	50-51
06/08/2012	Minutes		1	84-85
09/22/2015	Minutes		18	3867-3868
10/27/2015	Minutes		18	3877-3878
11/24/2015	Minutes		18	3907-3909
10/15/2013	Minutes – Status Check		1	95-96
02/26/2016	Notice of Appeal		18	3934-4006
06/24/2016	Notice of Entry of Amended Order Denying Judicial Review of Administrative Decision		19	4027-4035
10/26/2011	Notice of Entry of Order		1	19-23
11/21/2011	Notice of Entry of Order		1	28-33
02/02/2012	Notice of Entry of Order		1	54-59
06/22/2012	Notice of Entry of Order		1	88-93
3/28/2014	Notice of Entry of Order		1	119-126

Filing Date	Description	Vol.	Page
02/04/2016	Notice of Entry of Order Denying Judicial Review of Administrative Decision	18	3921-3933
10/13/2015	Notice of Entry of Order Granting Petitioner's Motion to File Supplemental Brief and Setting Hearing on Petition for Judicial Review	18	3872-3876
03/31/2015	Notice of Entry of Order Granting Stipulation and Order to Extend Time	18	3861-3866
03/26/2014	Notice of Entry of Stipulation and Order Consolidating Cases	1	111-118
01/22/2015	Notice of Entry of Stipulation and Order for Extension of Time	1	130-134
06/27/2016	Notice of Entry of Stipulation and Proposed Amended Order	19	4039-4055
01/15/2016	Order Denying Judicial Review of Administrative Decision	18	3911-3920
06/21/2012	Order Denying Stay	1	86-87
10/09/2015	Order Granting Petitioner's Motion to File Supplemental Brief and Setting Hearing on Petition for Judicial Review	18	3869-3871
02/01/2012	Order Granting Plaintiffs Application for Leave to Present Additional Evidence to the Nevada Tax Commission	1	52-53
09/09/2013	Order Scheduling Status Check	1	94
12/02/2015	Order to Statistically Close Case	18	3910
09/23/2011	Petition for Judicial Review	1	1-12

Filing Date	Description	Vol.	Page
03/11/2014	Petition for Judicial Review (District Court Case No. A-14-697515-J)	1	97-106
03/24/2014	Stipulation and Order Consolidating Cases (Consolidating A-14-697515-J with A-11-648894-J)	1	107-110
11/21/2011	Stipulation and Order for Continuance	1	25-27
10/25/2011	Stipulation and Order for Extension of Time	1	16-18
01/21/2015	Stipulation and Order for Extension of Time	1	127-129
03/30/2015	Stipulation and Order for Extension of Time	18	3858-3860
06/23/2016	Stipulation and Proposed Amended Order	19	4007-4020
01/26/2015	Supplement to the Record on Appeal in Accordance with the Nevada Administrative Procedure Act (Entire Record - Index)	1	136-139
12/09/2011	Transcript (Entered on 10/30/2012 into District Court Case No. A-11-648894-J)	1	34-47
06/08/2012	Transcript (Entered on 10/30/2012 into District Court Case No. A-11-648894-J)	1	60-83
10/27/2015	Transcript of Proceedings Before the Honorable Jerry A. Wiese, II – October 27, 2015 (Re: Oral Argument on Petition for Judicial Review) (District Court Case No. A- 11-648894-J) (Entered into District Court Case No. A-14-697515-J)	18	3879-3906
01/26/2015	Transmittal of Supplement to the Record on Appeal	1	135



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

K-KEL, INC., d/b/a Spearmint Rhino
Gentlemen's Club, OLYMPUS GARDEN,
INC., d/b/a Olympic Garden, SHAC, L.L.C.
d/b/a Sapphire, 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. XXX

**REPLY IN SUPPORT OF
APPLICATION FOR LEAVE TO
PRESENT ADDITIONAL EVIDENCE
TO THE NEVADA TAX
COMMISSION**

Date of Hearing: November 14, 2011
Time of Hearing: 9:00 a.m.

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MEMORANDUM OF POINTS AND AUTHORITIES¹

I. INTRODUCTION AND SUMMARY

In opposition to Petitioners' Application for Leave to Present Additional Evidence to the Tax Commission (the "Application" or "Pet. App."), Respondents argue that: 1) the additional evidence Petitioners seek to present to the Tax Commission is not "relevant"; 2) that there does not exist "good cause" for leave; and 3) that, in any event, the Court should exercise its discretion to deny the Application. Respondents' arguments fail on all three counts, but before replying to such contentions, Petitioners must point out the obvious in regard to that opposition.

At no place do the Respondents deny that: A) at the time that Petitioners appeared before the Tax Commission ("Commission), the precedent of this State² was such that the proper avenue of judicial relief from an adverse decision of the Commission was by way of an original action, where de novo review was provided and where discovery was permitted; B) that the same precedent established that the filing of a Petition for Judicial Review ("PJR") in regard to an adverse decision of the Commission was **subject to dismissal** by the District Court as being procedurally improper; C) that these matters were **so clear** that when the Petitioners filed their original action following the adverse decision of the Commission, the Respondents did **not** raise the propriety of the nature of the action as an affirmative defense, and in fact litigated that original action for over three years before raising the PJR issue; D) that precedent from the

¹ In order to reduce duplication of briefing, the Application above is incorporated herein by reference, and the definitions and short-form designations set forth therein are utilized here as well.

² See **Saveway v. Cafferata**, 104 Nev. 402, 760 P.2d 127 (1988).

1 United States Supreme Court as well as the Nevada Supreme Court³ establishes that
2 administrative tribunals are not properly suited to decide matters of constitutional law; E) that
3 discovery in the Commission is, at best, purely discretionary, and probably is not permitted at
4 all (demonstrating that there was no way for the Petitioners to have procured below the
5 documents they have now obtained thorough protracted discovery disputes in this District
6 Court); and F) that the relevant documents obtained to date by the Respondents have been
7 procured only after months of acrimonious motion practice in the District Court (including
8 appeals from the Discovery Commissioner to two different Judges of this Court) and where no
9 reasonable person would believe that the Respondents would have been able to obtain such
10 materials before the Commission even if it had, in its absolute discretion, permitted discovery.
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13 In any event, the additional evidence Petitioners seek to present to the Commission is,
14 indeed, material to the questions presented to that tribunal. This information can largely be
15 lumped into two categories: 1) additional evidence regarding the impact of the Live
16 Entertainment Tax (NRS 368.010 et seq.; the “LET”), and in particular what businesses are
17 paying the LET; and 2) additional evidence showing that the purpose of the exemptions and
18 amendments to the LET was to further target gentlemen’s clubs. Respondents note that
19 Petitioners were permitted to, and did, present the evidence then available to them on these
20 same issues to the Commission. This demonstrates that Petitioners are not seeking to change
21 strategy or to take a “second bite at the apple.” Rather, Petitioners only seek to create a full
22 record on these issues so that the Commission and this Honorable Court can reach informed
23 decisions on these important First Amendment issues.
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26 Respondents erroneously assert that the information Petitioners seek to present is not
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³ See **Malecon Tobacco, LLC v. State**, 118 Nev. 837, 59 P.3d 474 (2002) and **Thunder**

1 “material” because, they argue, it would probably not change the decision of the Commission.
2 However, as explained below, the United States Supreme Court has considered the exact same
3 type of evidence in the context of First Amendment challenges to taxes. Consequently, the
4 evidence bears directly on the issues that will be before this Honorable Court and is, then,
5 undeniably “material” within the meaning of NRS 233B131(2).
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7 As to the Respondents’ second and third points, whether there exists “good cause” is a
8 decision that is to be made in the discretion of this Honorable Court and, thus, it is redundant to
9 separately argue whether this Court, in its discretion, should or should not grant the Application.
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11 Nevertheless, Petitioners have shown “good cause” why this matter should be remanded
12 to the Commission for consideration of additional evidence. Simply and undeniably put, this is
13 a case where the rules changed in the fourth quarter. Petitioners filed their de novo action in the
14 District Court in 2008. Respondents actually identified Case 2 to the Ninth Circuit U.S. Court
15 of Appeals as evidence of Petitioners exercising their right to a state court remedy, in order to
16 secure the Ninth Circuit affirming the federal district court’s decision to dismiss Petitioners’
17 federal lawsuit. See Pet. App., pp. 23-27. All parties litigated that case as a de novo action for
18 over three years in the District Court prior to our Supreme Court’s decision in **Southern**
19 **California Edison v. First Judicial District**, 255 P.3d 231 (Nev. 2011), after which
20 Respondents renewed their previously unsuccessful motion to dismiss Case 2 for not having
21 been filed as a petition for judicial review.
22

23 In the end, Respondents seek to hold Petitioners to a higher standard than they
24 themselves followed. If the inability of the Petitioners to litigate a direct de novo action (from
25 the adverse decision of the Commission) was as clear as the Respondents now argue,
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28 **Basin Coal Co. v. Reich**, 510 U.S. 200, 215 (1994).

1 Respondents would have moved to dismiss the Case 2 complaint when it was filed in 2008,
2 rather than answering and litigating that suit for over three years. They did not. All parties
3 were litigating Case 2 under the rules as they existed pre-Edison.
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5 6 **II. ARGUMENT**

7 **A. THE EVIDENCE PETITIONERS SEEK TO SUBMIT IS MATERIAL TO** 8 **THE DISPUTE.**

9 Petitioners seek to present additional evidence that is material to whether the Live
10 Entertainment Tax is unconstitutional under the First and Fourteenth Amendments of the United
11 States Constitution and Article I, Sections 9 and 10, of the Nevada Constitution. Petitioners'
12 Application explains the constitutional issues and the arguments they raised before the
13 Commission in order to demonstrate that the additional evidence Petitioners seek to present is
14 material to the decision that this Court will ultimately review.
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16 Oddly, Respondents' Opposition argues in extensive detail that the issues and arguments
17 identified in Petitioners' Application are the very same as those raised before the Commission.
18 Of course they are. That is the point. Respondents therefore concede, in elaborate detail, that
19 Petitioners are not attempting to raise new arguments or change theories. As such, this is not a
20 circumstance where Petitioners lost before an administrative agency and subsequently seek to
21 change strategy and tactics. All parties agree that the new evidence relates to the very issues
22 Petitioners duly raised before the Commission (although they disagree as to why the additional
23 evidence was not presented at the time; a matter addressed below). This factor then weighs in
24 favor of the Court granting the Application.
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27 “‘Material evidence’ means ‘evidence, fact, statement, or information that, if believed,
28 would tend to influence or affect the issue under determination.’” U.S. v. Allen, 341 F.3d 870,

1 897 (9th Cir. 2003) (quoting U.S.S.G. § 3C1.1 (sentencing guidelines)). This standard is little
2 different from that as articulated by the Respondents in their Opposition to Petitioners'
3 Application for Leave to Present Additional Evidence to the Tax Commission ("Respondents'
4 Opposition," or "Resp. Opp."), p. 8, where they state that "[m]aterial evidence has an effect on
5 bearing on the question in issue." The evidence Petitioners seek to present easily meets this
6 standard.

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8 Nevertheless, Respondents argue that the evidence Petitioners seek to present is somehow
9 not "material" to the (same) issues before the Commission, and now before this Honorable
10 Court. Respectfully, Respondents are mistaken. As noted above and as specified in Petitioners'
11 Application, the new evidence is directly relevant (and, thus, material) to the question of whether
12 the LET in fact targets a narrowly-defined group of taxpayers and whether it was enacted with a
13 purpose of taxing such a group. There is no reasonable question that the evidence uncovered to
14 date is material to these two inquiries.

15
16 The new evidence that Petitioners seek to present below is the very same type of
17 evidence that the Supreme Court has considered in **invalidating** other taxes on First Amendment
18 grounds. Evidence of who bears the burden of paying the bulk of a tax was specifically analyzed
19 by the Court in Minneapolis Star and Tribune Co. v. Minnesota Comm'r of Revenue, 460
20 U.S. 575 (1983), where the Court stated:

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22 Ink and paper used in publications became the only items subject to the use tax
23 that were components of goods to be sold at retail. In 1974, the legislature again
24 amended the statute, this time to exempt the first \$100,000 worth of ink and paper
25 consumed by a publication in any calendar year, in effect giving each publication
26 an annual tax credit of \$4,000. . . .

27 After the enactment of the \$100,000 exemption, 11 publishers, producing 14 of
28 the 388 paid circulation newspapers in the State, incurred a tax liability in 1974.
Star Tribune was one of the 11, and, of the \$893,355 collected, it paid \$608,634,
or roughly two-thirds of the total revenue raised by the tax. []. That year, Star

1 Tribune again bore roughly two-thirds of the total receipts from the use tax on ink
2 and paper. [].

3 **Id.** at 577-578.

4 Ultimately, the Court concluded that “Minnesota’s ink and paper tax violates the First
5 Amendment not only because it singles out the press, **but also because** it targets a small group of
6 newspapers. The **effect** of the \$100,000 exemption enacted in 1974 is that only a handful of
7 publishers pay any tax at all, and even fewer pay any significant amount of tax.” **Id.** at 591.
8 Obviously, who **actually pays** the LET and in what amount (see, e.g., Ex.’s 1 and 3 to Pet. App.),
9 and who is **exempted from paying** the tax, is material to whether the LET passes muster under
10 the First Amendment. **Minneapolis Star** holds as much. A full record on this issue should be
11 presented to the Commission so that this Honorable Court will also have a full record on these
12 matters when it ultimately reviews the propriety of the ultimate decision of that tribunal.
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15 Next, Respondents reference the irrelevant (to the issues here) statement in **U.S. v.**
16 **O’Brien**, 391 U.S. 367, 383 (1968), that the “Court will not strike down an **otherwise**
17 **constitutional** statute on the basis of an alleged illicit legislative motive.” (Emphasis added).
18 Respondents also cite cases involving statutory interpretation, including **Garcia v. United**
19 **States**, 469 U.S. 70 (1984), and **A-NLV Cab Co. v. State of Nev.**, 108 Nev. 92, 825 P.2d 585
20 (1992).
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22 However, the **text** of the LET demonstrates impermissible, and thus unconstitutional,
23 gerrymandering (thereby taking this out of the “otherwise constitutional” language in **O’Brien**),
24 and the legislative history and related documents only further demonstrate and substantiate this
25 fact. Moreover, the task here is not to decipher the meaning of a sentence, phrase, or term used
26 in a law in order to determine how it should be technically applied to the facts before it. The task
27 in this case is to determine whether the LET was enacted with a purpose to tax a politically
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1 disfavored minority of businesses that present protected expression. When a court is tasked with
2 vetting discriminatory motive, the statements of legislators are **absolutely relevant**. In fact, in
3 **Minneapolis Star**, the Court recognized its prior decision in **Grosjean v. American Press Co.**
4 **Inc.**, 297 U.S. 233 (1936), where it invalidated a tax on First Amendment grounds, in part,
5 because of improper legislative motive:
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7 Both the brief and the argument of the publishers in this Court emphasized the
8 events leading up to the tax and the contemporary political climate in Louisiana. []
9]. All but one of the large papers subject to the tax had “ganged up” on Senator
10 Huey Long, and a circular distributed by Long and the governor to each member
11 of the state legislature described “lying newspapers” as conducting “a vicious
12 campaign” and the tax as “a tax on lying 2 [cents] a lie.” [].

13 **Minneapolis Star**, 460 U.S. at 580 (internal citations omitted and clarification added).

14 Nevertheless, the Court noted: “In the case before us, however, there is no legislative
15 history and no indication, apart from the structure of the tax itself, of any impermissible or
16 censorial motive on the part of the legislature.” **Id.** Thus, if the **Minneapolis Star** Court would
17 have had legislative history before it of the tax in question, there is no question that the Court
18 would have considered it. The legislative record is material, and the most complete record
19 possible should be presented to the Commission for its decision and so that it is ultimately
20 available to this Honorable Court in its review of the actions of the Commission.

21 Furthermore, the Court in **Minneapolis Star** rejected the overly-broad reading of
22 **O’Brien** that Respondents have presented to this Court, explaining that illicit motive is certainly
23 an important consideration in tax cases such as the one at bar.

24 Our subsequent cases have not been consistent in their reading of **Grosjean** on
25 this point. Compare **United States v. O’Brien**, 391 U.S. [at] 384-385 [] (stating
26 that legislative purpose was irrelevant in **Grosjean**) with **Houchins v. KQED,**
27 **Inc.**, 438 U.S. 1, 9-10 [] (1978) (plurality opinion) (suggesting that purpose was
28 relevant in **Grosjean**); **Pittsburg Press Co. v. Pittsburg Commission on**
Human Relations, 413 U.S. 376, 383 (1973) (same). Commentators have
generally viewed **Grosjean** as **dependent** on the improper censorial goals of the

1 legislature. []. We think that the result in Grosjean may have been attributable
2 in part to the perception on the part of the Court that the state imposes the tax with
an intent to penalize a selected group of newspapers.

3 Minneapolis Star, 460 U.S. at 580 (internal and parallel citation omitted; emphasis added).

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5 More recent cases further firmly establish that improper motive is material to determining
6 whether a law runs afoul of the First Amendment. In Church of Lukumi Bablu Aye, Inc., v.
7 Haileah, 508 U.S. 520, 534 (1993), the Court recognized that the First Amendment prohibits
8 “subtle departures from neutrality.” To determine whether “the object of the law is a neutral
9 one,”⁴ the Court instructed that “we may determine the City Council’s object from both direct
10 and circumstantial evidence.”⁵ Id. at 540.

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12 Relevant evidence includes, **among other things**, the historical background of the
13 decision under challenge, the specific series of events leading to the enactment or
14 official policy in question, **and the legislative or administrative history,**
including contemporaneous statements made by members of the decisionmaking
15 body. These objective factors **bear on the question of discriminatory object.**
Personnel Administrator of Mass. v. Feeney, 442 U.S. 256, 279, n.24 []
16 (1979).

17 Id. (emphasis added) (citing Arlington Heights v. Metropolitan Housing Development Corp.,
18 429 U.S. 252, 266-268 (1977)).

19 And, because the Lukumi Court ultimately struck the facially-neutral statute as issue,
20 such evidence proved to be not only relevant and material, but **decisive**. The very language used
21 by the Court in Lukumi (“bear on the question”) shows that this type of evidence certainly meets
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24 ⁴⁴ Of course, given its direct taxation on First Amendment expression, the content specific
25 nature of the various exceptions and exemptions from the tax, and the differences in tax rates
26 dependent upon the content of expression, it cannot even be seriously argued that the LET is a
“neutral” tax.

27 ⁵ The analysis in Lukumi was undertaken specifically under the Free Exercise Clause.
28 508 U.S. at 540. Still, the Court made clear that “[t]he principle underlying the generally
applicability requirement has parallels in our First Amendment Jurisprudence.” Id. at 543
(citing, inter alia, Minneapolis Star, 460 U.S. at 585; other citations omitted).

1 even the “effect or bearing on the question in issue” standard proposed by Respondents.

2 Furthermore, especially in light of Lukumi, there is no merit to Respondents’ argument
3 that some of the legislative history should not be considered because the discussions related
4 thereto occurred during consideration of amendments to the LET that ultimately did not pass.
5 The fact that therein, legislators acknowledged that they had to “hide” the legislative
6 gerrymandering (by the approach that was ultimately enacted) renders the Respondents’
7 assertions in this regard nothing short of absurd. This is all part of the “series of events leading
8 to the enactment.” 508 U.S. 540.
9

10 An inquiry into the purpose of the language used in the exceptions is entirely appropriate.
11 For example, in U.S. v. Eichman, 496 U.S. 310, 317-319 (1990), the Court found the facially
12 neutral Flag Protection Act to be unconstitutional because the act exempted from its prohibitions
13 acts “traditionally associated patriotic respect for the flag.” Here, discovery has further
14 confirmed that the many exceptions to the LET were designed to apply to facilities and
15 entertainment not typically associated with gentlemen’s clubs such as Plaintiffs, which further
16 establishes that the LET is unconstitutional.
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18 In addition, Respondents have specifically identified this legislative history as setting
19 forth the purpose of the LET. Prior to the Respondents moving to dismiss the de novo action,
20 Petitioners (Plaintiffs therein) propounded interrogatories to the Department of Taxation directed
21 at discovering the purposes and governmental interests to be served by the LET in general, the
22 exceptions/exemptions specifically, and the later amendments to those exceptions/exemptions.
23 See Nevada Department of Taxation’s Responses to Plaintiffs First Set of Interrogatories to
24 Defendants, Ex. 1, Interrogatories 8, 9, 10, 11, 16, 17, 18, 21, and 22. In response, the
25 Department repeatedly directed Plaintiffs to the Nevada Legislature’s legislative history of
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Senate Bill 4 of the 19th Special Session (2003), Senate Bill 5 of the 19th Special Session (2003), Senate Bill 247 of the 73rd Session (2005), and Assembly Bill 554 of the 73rd Session (2005). **Id.** Having, submitted these responses under signature, it is more than a bit disingenuous for Respondents to now change course and argue that this very same legislative history should not be considered in determining the purpose of the LET and the exceptions/exemptions therein.

B. GOOD REASONS EXIST FOR PETITIONERS BEING GRANTED LEAVE TO SUPPLEMENT THE RECORD.

Petitioners herein filed a de novo original action (Case 2) according to the law as it existed at the time. That case was later coordinated, and still later consolidated, with an earlier offensive action challenging the constitutionality of the LET (Case 1). Therein, Petitioners propounded numerous discovery requests upon the Nevada Department of Taxation and the Nevada Tax Commission (Respondents here), as well as the Nevada State Board of Examiners and Michelle Jacobs (in her official capacity only). The Defendants there voluntarily produced limited documents responsive thereto, but in light of numerous objections submitted by the Defendants therein (including these Respondents), the Petitioners fought to obtain additional needed discovery for over a year. After having been at least partially successful in these protracted discovery disputes (where the Court was obviously required to conclude, as a prerequisite to compelling additional disclosures, that the requested materials were relevant to the issues pending before the Court), Respondents now seek to deprive Petitioners of the discovery they fought so hard to secure. They do so by -- after litigating Case 2 themselves for over three years in this Court -- alleging that Petitioners should have known a de novo action was not available in District Court. That is absurd, and is belied by their **own actions**.

1. Respondents Own Actions Demonstrate That the Case Law was not Clear (and was, Indeed, Contrary) Prior to Our Supreme Court's Decision in Edison.

1 If the proper procedure in tax cases was as clear as Respondents claim, it would not have
2 been necessary for our Supreme Court to specifically clarify this issue in Edison, while
3 acknowledging that its then-existing precedent appeared to hold to the contrary. In fact,
4 Respondents' position completely ignores the procedural posture of the Edison case. Edison did
5 not involve an appeal as of right to the Supreme Court but, rather, a petition for writ of
6 mandamus; "an extraordinary remedy" which required to court to "consider, among other things,
7 whether the petition raises an important issue of law." 255 P.3d at 234 (citing Hickey v. District
8 Court, 105 Nev. 729, 731, 782 P.2d 133, 1338 (1989); Redeker v. Dist. Ct., 122 Nev. 164, 167,
9 127 P.3d 520, 522 (2006)).

10 The Court found that identifying the proper procedure by which the Tax Commission's
11 decisions may be challenged was an important issue (because it was unclear) that it should
12 address. The Court began by noting that "the Department [of Taxation] has adopted of new
13 policy for refund cases," which was asserting that judicial repair should proceed by way of a PJR
14 instead of by a direct de novo action in the District Court. Id. In granting the writ, the Court
15 stated that "[g]iven this change in the Department's approach to refund actions, and the resulting
16 confusion and potential disparate application of the law, we take this opportunity to clarify the
17 proper procedure when a taxpayer challenges a Commission decision in a refund action." Id.

18 Quite simply, if the issue were as clear as Respondents argue, the Court would never
19 have agreed to consider the matter in Edison and "clarify" the appropriate method of judicial
20 oversight. And, had the Edison decision not issued, the parties would still be litigating a de novo
21 action in District Court. This is because the District Court denied Respondents' motion to
22 dismiss on these grounds prior to our Supreme Court's decision in Edison, further demonstrating
23 the law before Edison was not so clear.

1 The Respondents first alleged that Case 2 should be dismissed for not being filed as a
2 petition for judicial review in a Motion for Partial Summary Judgment they filed on January 25,
3 2011 (attached as Ex. 2; see pp. 10-21). The District Court denied the portion of the
4 Department's motion seeking to dismiss Case 2. Order of April 5, 2011, Ex. 3. Only after the
5 **Edison** decision was issued, and the Court decided to reconsider the issue because of the **Edison**
6 decision (Minute Order of 5/27/2011, Ex. 4), was the de novo action dismissed. Petitioners
7 should not be prejudiced by the "resulting confusion" (**Edison**, 255 P.3d at 234) that the
8 Respondent Department of Taxation itself created.

9
10 In addition, the 2011 **Edison** decision specifically described Respondents' (the
11 Department's) position -- that an appeal from the Tax Commission must proceed by a PJR -- to
12 be a "new policy." 255 P.3d at 234 (emphasis added). Petitioner filed their de novo action in
13 January of 2008, which apparently was before the Department itself arrived at this "new policy"
14 (since it did not raise this as an affirmative defense to the initial complaint filed in Case 2). Prior
15 to the "new policy," the Respondent Department admitted "that there was no consistent position
16 taken regarding whether a taxpayer is entitled to a trial de novo or a petition for judicial review."

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18 **Id.**

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20 It is completely preposterous for Respondents to contend that Petitioners should have
21 known better in 2008, when Respondents themselves were still taking the very same position.
22 Certainly, Respondents do not seriously contend that the Petitioners should have had better
23 knowledge than the government itself about the procedural rules of seeking judicial relief from a
24 decision of the Commission. This fact eviscerates Respondents' reliance on the decisions in
25 **Campbell v. Department of Taxation**, 108 Nev. 215, 827 P.2d 833 (1992), and **Britton v. City**
26 **of North Las Vegas**, 106 Nev. 690, 799 P.2d 568 (1990). If those cases made the issue clear,
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1 Respondents would not have been taking the opposite position up until the time of Edison.

2 In addition, Britton, unlike Edison, did not deal with the proper procedure for appeals in
3 tax cases (and specifically in regard to the LET, which was enacted years **after** the statutory
4 amendments to **other** statutes, which served as the basis of the decision in Edison), but rather
5 application of the doctrine of administrative res judicata. Britton involved a collateral attack on
6 a decision of the North Las Vegas Civil Service Board, and not an appeal from an administrative
7 agency. The plaintiff there did not follow a statutory appeal procedure to the letter, unlike
8 Petitioners here. Instead, after the administrative decision, the plaintiff filed an “action for
9 wrongful termination and breach of fiduciary duty” in the District Court. 106 Nev. at 692, 799
10 P.2d at 569. And, although the Campbell court generally recognized the existence of the
11 doctrine of administrative res judicata, it declined to apply the doctrine to the facts of the case.
12 That is hardly the clarity in the caselaw that Respondents posit.
13

14 This is especially true when, even in 2003 (after Britton and Campbell), the Respondent
15 Department was still advising taxpayers that “the failure to conduct an evidentiary hearing at the
16 administrative level does not prejudice the taxpayer at the district court level.” Department
17 Letter of Nov. 17, 2003, Ex. 13 to Pet. App. In the end, Respondents are attempting to hold
18 Petitioners to a higher standard than they themselves followed, and are attempting to deprive
19 these Petitioners of their fundamental right to due process. Based on the then-existing state of
20 the law, as recognized in Edison, 255 P.3d at 233 (“our prior decisions, including Saveway v.
21 Cafferata, 104 Nev. 402, 760 P.2d 127 (1988), suggested that claimants receive a trial de novo .
22 . .”), Petitioner reasonably decided to save their discovery battles for the District Court action
23 that was sure to follow. Now that Petitioners have undertaken the time and expense of
24 conducting that discovery, all the while with the Respondents failing to raise the claim that the
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1 action should have been brought as a limited PJR and that discovery was therefore improper,
2 there exists “good reasons” for this Honorable Court, in its discretion, to remand this action to
3 the Tax Commission so that a full and complete record can be developed below prior to review
4 by Your Honor.
5

6 **2. A Fair Application of NRS 233B.133(2) Mitigates Against a Harsh**
7 **Retroactive Application of the Rule Announced in Edison.**

8 In a series of logical twists, Respondents argue that the rule announced in Edison is not
9 being retroactively applied here. Of course it is, but according to Respondents, because the
10 Edison decision “clarified” the meaning of statutes that were enacted prior to Petitioners filing
11 their de novo action in District Court, the decision is not being applied retroactively.
12

13 That is nothing short of nonsense. As explained above and in the decision itself, the
14 Nevada Supreme Court did not decide Edison (in order to clarify an issue that was, at the time,
15 admittedly unclear) until over three years **after** Petitioners filed their de novo action (recalling,
16 again, that the Court acknowledges in Edison that its prior precedent, and in particular Saveway,
17 appeared to be **to the contrary**, and that Saveway held that the filing of a PJR was subject to
18 dismissal as being an inappropriate avenue of judicial redress in these circumstances). Applying
19 a rule announced in a 2011 opinion to occurrences in 2008 (the ruling of the Commission and the
20 consequent filing of Case 2) is, by definition, a retroactive application.
21

22 Nevada courts have been sensitive to the harsh retroactive application of the law,
23 especially concerning procedural rules. For example, in Nevis v. Fidelity New York, 104 Nev.
24 576, 763 P.2d 345 (1988), our Supreme Court addressed the situation where, at the time a
25 complaint was filed, existing law provided that guarantors of certain loans did not receive
26 statutory “protection afforded obligors pursuant to NRS 40.451” Id. at 579 (citations
27 omitted). Subsequently, in First Interstate Bank v. Shields, 102 Nev. 616, 730 P.2d 429
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1 (1986), the court overruled certain precedent, finding that the protections of NRS 40.451 did
2 extend to guarantors. Nevis argued that since Fidelity failed to file their complaint within the
3 time required pursuant to Shields, the Court should dismiss Fidelity's complaint. Nevis, 104
4 Nev. at 579, 763 P.2d at 347. The Court refused, finding that "courts give **prospective** effect to
5 the overruling of a judicial precedent involving construction of a procedural statute." Id. (citing
6 20 Am.Jur.2d Courts § 233 (1965); 21 C.J.S. Court § 194 (1940)) (emphasis added).
7 "Therefore," the court wrote, "we decline to give Shields retroactive effect to the extent of
8 requiring compliance with the three month filing provision." Id.

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11 The same issue was presented in Vogt v. Dennett, 105 Nev. 303, 774 P.2d 1036 (1989),
12 where Shields had been handed down after the event triggering the filing deadline (a foreclosure
13 sale) but before plaintiff filed its complaint. 105 Nev. at 304, 774 P.2d at 1037. The Court
14 recognized that "Jenkins failed to initiate a deficiency action within three months as mandated by
15 a retroactive application of Shields. However, we reaffirm our holding in Nevis. We will not
16 give retroactive effect to our decision in Shields 'to the extent of requiring compliance with the
17 three month filing provision.'" 105 Nev. at 305, 774 P.2d at 1037.

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19 Respondents counter (Resp. Opp., p. 21-22) that in certain situations, the Courts will
20 allow the retroactive application of laws which deal with remedies and procedures and not
21 substantive rights. That is beside the point. The decision of whether or not the rule in Edison
22 would be applied retroactively here was made when the de novo original action (Case 2) was
23 dismissed. Consequently, retroactive application has already occurred here. The only question
24 now for this Department is how harsh that retroactive application will be. Will it deprive the
25 Petitioners of their due process rights to have this Honorable Court decide their constitutional
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1 claims on anything less than a full and complete record below? Petitioners assert that to do so
2 would be an extreme denial of their fundamental due process rights.

3 Finally, Petitioners would point out, again, Respondents' actions in not moving to
4 dismiss Case 2 (filed in 2008) until 2011, and in engaging in the discovery process of the
5 consolidated cases until deciding, three years into Case 2, to change course and contend that
6 Petitioners should have, instead, filed a PJR. By standing idly by and by not timely claiming that
7 Case 2 had been filed in an improper procedural posture, Respondents have allowed Petitioners
8 to incur substantial costs litigating the de novo original action, which has produced a veritable
9 treasure trove of documents that are directly relevant and material to the constitutional issues that
10 will ultimately be addressed by this Honorable Court. That alone is a "good reason" for granting
11 the Application. Allowing Petitioners to submit evidence **already obtained** through costly and
12 protracted litigation will not unreasonably cause Respondents to expend additional resources,
13 particularly in comparison to the time and costs already incurred by the Petitioners in litigating
14 Case 2 for three years and obtaining therein extensive relevant and material discovery that
15 would, by Respondents' position here, all be for naught.

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19 **3. Petitioners Have Met the "Good Reasons" Standard Articulated in**
20 **Garcia.**

21 Respondents correctly identify **Garcia v. Scolari's Food & Drugs**, 125 Nev. 48, 200
22 P.3d 514 (2009), as our Supreme Court's most direct attempt to define what is meant by the
23 phrase "good reasons" set forth in NRS 233B.131(2) (see **id.**, 200 P.3d at 516 ("[w]e take this
24 opportunity to provide guidance on the good reasons standard set forth in NRS 233B.131(2)"),
25 but misapply the decision to the circumstances at bar. There, the Court held that a party's
26 decision to change course after an adverse administrative ruling is not good cause. In the Court's
27 words, "good reasons" do not exist "when a party waits to submit evidence until learning how a
28

1 hearing examiner will rule or pursues one strategy at trial and then, after an adverse result, seeks
2 to pursue another strategy with additional evidence.” As Respondents themselves laboriously set
3 forth, that is not what happened in this case.

4
5 First, as set forth in Section II(A), *supra*, Petitioners are not seeking to present additional
6 evidence in order to explore alternate legal theories or an alternate factual account. See also
7 Resp. Opp. p. 11-12 (chart). Rather, Petitioners seek to present the additional material evidence
8 they painstakingly extracted from Respondents during discovery in the *de novo* original action to
9 buttress the same arguments they presented to the Commission.

10
11 In addition, the petitioner in **Garcia** deliberately decided not to present evidence that was
12 available to him at the time of the hearing. 200 P.3d at 516-517. Here, the evidence Petitioners
13 obtained during the course of discovery in this District Court was not available to them at the
14 Commission level. Moreover, while Respondents argue that “NRS 233B.123 allows for
15 discovery” (Resp. Opp. p. 32), that is not true. As our Supreme Court recently stated:

16
17 Generally there is no state or federal constitutional right in administrative
18 proceedings to prehearing discovery that would require disclosure of intended
19 witnesses. Furthermore, as discussed, the Nevada Rules of Civil Procedure do not
20 apply to administrative proceedings, and *Nevada’s Administrative Procedure Act*
21 **makes no provision for discovery.**

22 **Dutchess Business Services, Inc., v. Nevada State Bd. of Pharmacy**, 124 Nev. 701, 713, 191
23 P.3d 1159, 1167 (2008).

24 Instead, the amount of discovery permitted is governed by the regulations adopted by the
25 administrative agency. **Id.** And, where the agency “has not established any procedures allowing
26 for discovery, [] it is within its discretion to decline to do so.” 124 Nev. at 713-714, 191 P.3d
27 1167-1168.

28 The Commission’s rules for hearings are set forth at NAC 360.095 et seq. Respondents

1 cite no rules providing for the production of documents, answering of interrogatories, or for
2 depositions. **There are none.** Instead, NAC 360.135 sets forth the Tax Commission's Subpoena
3 power. However, there is no duces tecum provision that would require the witness to produce
4 documents. **Id.**

6 Thus, Petitioners would have had no ability to obtain, for example, the chart summarizing
7 the groups that pay the LET, which was obtained only upon order of the Discovery
8 Commissioner and further orders of Judges Togliatti and Gonzalez. See Discovery
9 Commissioner's Report and Recommendation, Ex. 4, p. 3 (requiring that the Respondents
10 provided "a list of businesses that paid Live Entertainment Taxes, identified only by category . . .
11 . The document should identify whether each business paid the 5% or the 10% Live
12 Entertainment Tax"). This is because the Respondents, which include the Tax Commission,
13 **opposed and objected to** the discovery requests in the District Court. Respondents, then, cannot
14 honestly argue that the new evidence that the Petitioners seek remand in order to now present to
15 the Commission was "available at the time of the hearing," like the evidence at issue in **Garcia**,
16 125 P.3d at 516. Plaintiff had no mechanism to compel that such evidence be produced below.

19 Therefore, it is abundantly clear that this is not a case where a petitioner cherry-picked
20 evidence to present to the Tax Commission, only to seek remand after an adverse decision in
21 order to present additional evidence that the petitioner had kept in its back pocket in reserve.
22 Petitioners fought hard to obtain the important material evidence it seeks to present (which it
23 could, **undeniably**, have easily presented to the District Court in Case 2 had the **Edison** case not
24 been decided as it was), and "good reasons" exist for allowing Petitioners to supplement the
25 record.
26

28 **4. Respondents' Rule 19 Argument is Without Merit.**

1 Consistent in their constant attempt to trip up Petitioners in hyper-technicalities,
2 Respondents assert that Rule 19 prevents a party from asking the same judge or another judge for
3 a “writ or order” denied by another judge, and claim that this rule applies here because the
4 Petitioners requested leave to supplement the record in the de novo original action, which, they
5 claim, was denied by Judge Gonzales. Petitioners’ request to supplement the record (which was
6 integrated in their response to the State’s motion to dismiss Case 2) was **not**, in fact, denied on
7 the merits by Judge Gonzales. That decision was, rather, passed on to Your Honor by her.

9 Respondents describe the following as an “emphatic denial”: “Mr. Shafer requested the
10 Court grant alternative relief and remand the case. COURT ORDERED, it was not inclined to
11 do that.” Minute Order of 8/23/2011, Ex. B to Resp. Opp. The language is hardly the rebuke
12 suggested by Respondents. And, more to the point, the Respondents fail to point out to this
13 Court the following language in the very same order: “The Court will make no comment on the
14 timeliness of the original filing and **will make no comment on the extent of the record any other**
15 **Judge may decide in making that.” Id.** The record to be utilized in this case is to be decided in
16 this case by Your Honor. Petitioners are not procedurally barred from seeking leave to present
17 additional evidence pursuant to NRS 233B.131(2).

20 **III. CONCLUSION.**

21 For the forgoing reasons and for those reasons set forth in Petitioner’s Application for
22 Leave to Present Additional Evidence to the Tax Commission, Petitioners respectfully request
23 this Honorable Court to immediately remand this matter to the Commission to allow Petitioners
24 to present the materials already obtained through discovery in Cases 1 and 2 (and to conduct any
25 necessary additional discovery). A contrary result would unjustly prejudice Petitioners due to
26 their reliance on the state of the law as it existed at the time they initially appeared before the
27
28

Commission.

DATED this 7th day of November, 2011

BY: /s/ WILLIAM H. BROWN
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th Day of November, 2011, the foregoing **REPLY IN SUPPORT OF APPLICATION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE TO THE NEVADA TAX COMMISSION, AND MEMORANDUM OF POINTS AND AUTHORITIES** was served on the party(ies) by faxing a copy and mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

William Chisel
Director
Nevada Department of Taxation
1550 College Parkway
Carson City, Nevada 89706
Facsimile (775) 684-2020
Representative for Respondents

Catherine Cortez Masto
Attorney General

1 David J. Pope
2 Sr. Deputy Attorney General
3 Blake A. Doerr
4 Deputy Attorney General
5 555 E. Washington Ave., Suite 3900
6 Las Vegas, NV 89101
7 Facsimile: (702) 486-3420
8 Attorneys for the Respondents

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/S/ ARLEEN VAINO
an employee of LAW OFFICES OF WILLIAM
H. BROWN, ESQ., LTD

INTG

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Attorneys for Nevada Department of Taxation

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
L.L.C., d/b/a Déjà vu Showgirls, LITTLE
DARLINGS OF LAS VEGAS, L.L.C., d/b/a
Little Darlings, 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, and D.I. FOOD &
BEVERAGE OF LAS VEGAS, L.L.C., d/b/a
Scores

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION,
NEVADA TAX COMMISSION, NEVADA
STATE BOARD OF EXAMINERS, and
MICHELLE JACOBS, in her official capacity
only,

Defendants.

Case No. A533273
Dept No. IX

**NEVADA DEPARTMENT OF
TAXATION'S RESPONSES TO
PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO
DEFENDANTS**

TO: Plaintiffs; and

TO: Shafer & Associates, P.C., attorney of record for Plaintiffs:

1 Defendants, NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION,
2 NEVADA STATE BOARD OF EXAMINERS and MICHELLE JACOBS by and through its
3 attorney Catherine Cortez Masto, Attorney General, and Blake Doerr, Deputy Attorney
4 General, hereby responds to Plaintiff's First Set of Interrogatories and states as follows:

5 It should be noted that Responding Party has not fully completed discovery in this
6 action and has not completed preparation for trial. All of the responses contained herein are
7 based only upon such information and documents which are presently available and
8 specifically known to Responding Party. As discovery proceeds, witnesses, facts and
9 evidence may be discovered which are not set forth herein, but which may be responsive to
10 an interrogatory. Therefore, the following responses are given without prejudice to
11 Responding Party's right to supplement the responses upon any subsequently discovered
12 facts or witnesses which it may later recall.

13 Responding Party further assumes no obligation to voluntarily supplement these
14 responses to reflect witnesses, facts and evidence following the filing of these responses
15 other than provided by Nevada Rule of Civil Procedure 26(e). In addition, because some
16 responses may have been ascertained by its attorneys and investigators, Responding Party
17 may not have personal knowledge of the information from which these responses are derived.

18 **GENERAL OBJECTIONS**

19 1. Responding Party objects to the instructions and directions that accompany the
20 Interrogatories to the extent that such instructions and directions tend to impose a discovery
21 obligation beyond that required by applicable rules of civil procedure, and Responding Party
22 refuses to comply with such instructions and directions to the extent that they attempt to
23 impose a discovery obligation beyond that required by applicable rules of civil procedure.

24 2. Responding Party objects to the instructions and directions that accompany the
25 Interrogatories to the extent that such instructions and directions call for a response that
26 involves information that compromises attorney work product and/or information that is
27 protected by the attorney/client privilege and/or statutes requiring confidentiality.

1 3. Responding Party objects to the Interrogatories to the extent that they utilize the
2 terms "all", "each", or "any" concerning various subjects or events on the grounds that the
3 Interrogatories are overly broad, unduly burdensome, onerous, and request information that is
4 not relevant or which is not likely to lead to the discovery of admissible evidence.

5 Without waiving any of the foregoing objections, and reserving the right to supplement
6 each and every one of its Responses as discovery continues, Responding Party responds as
7 follows:

8 **INTERROGATORY NUMBER 1**

9 For each separate tax year from 2003 to present, please identify each and every
10 person or business entity that paid the Live Entertainment Tax during that tax year; whether
11 the entity is subject to the Five Percent LET or the Ten Percent LET; and specify the amount
12 of Live Entertainment Tax paid for such year. In the event that a single entity is subject to
13 both the Five Percent LET and the Ten Percent LET or made payments to both the
14 Department and the Commission, identify each such payment separately.

15 **RESPONSE TO INTERROGATORY NUMBER 1**

16 This Responding Party hereby objects to this interrogatory on grounds including, but
17 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous,
18 improperly seeks attorney work product information, requests confidential and/or privileged
19 information pursuant to NRS 40.025 and NRS 368A.180, asks for information which is not
20 reasonably calculated to lead to the discovery of admissible evidence, and is overly
21 burdensome. Without waiving said objections, and while reserving same, and while reserving
22 the right to supplement or amend this response, this Responding Party asserts as follows:

23 As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to
24 Plaintiffs' First Request for Production, filed concurrently herewith. Discovery is continuing.

25 **INTERROGATORY NUMBER 2**

26 Identify each and every person or business entity subject that paid taxes under the
27 original version of the Live Entertainment Tax enacted in 2003 but due to any changes in the
28

1 Live Entertainment Tax, changes or adoption of Live Entertainment Tax Regulations, or due
2 to any Department or Commission policy, was not required to pay the Live Entertainment Tax
3 in any subsequent year. For each person or business entity so identified, also specify the
4 change(s) in law, regulation, or policy that resulted in the person or entity no longer being
5 subject to the Live Entertainment Tax.

6 **RESPONSE TO INTERROGATORY NUMBER 2**

7 This Responding Party hereby objects to this interrogatory on grounds including, but
8 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
9 for speculation, improperly seeks attorney work product information, requests information
10 which is confidential and/or privileged pursuant to NRS 49.025 and NRS 368A.180, asks for
11 information which is not reasonably calculated to lead to the discovery of admissible evidence,
12 and is overly burdensome as it would require expensive review of records. The Interrogatory
13 additionally seeks information that is obtainable from another more convenient, less
14 burdensome and less expensive source.

15 Without waiving said objections, and while reserving same, and while reserving the
16 right to supplement or amend this response, this Responding Party asserts as follows:

17 As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to
18 Plaintiffs' First Request for Production, filed concurrently herewith. Discovery is continuing.

19 **INTERROGATORY NUMBER 3**

20 Identify each and every person or business entity not subject to the original version of
21 the Live Entertainment Tax, but due to any change(s) in the changes or adoption of Live
22 Entertainment Tax Regulations, or due to any Department or Commission policy, became
23 subject to the Live Entertainment Tax in any subsequent year. For each person or business
24 entity so identified, also specify the change(s) in law, regulation, or policy that resulted in the
25 person or business entity becoming subject to the Live Entertainment Tax.

26 //

27 //

RESPONSE TO INTERROGATORY NUMBER 3

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and/or privileged pursuant to NRS 40.025 and NRS 368A.180, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of records. The Interrogatory additionally seeks information that is obtainable from another more convenient, less burdensome and less expensive source, and information already in the custody and control of the Plaintiffs.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to Plaintiffs' First Request for Production which contains discoverable information related to the LET tax, filed concurrently herewith. Discovery is continuing.

INTERROGATORY NUMBER 4

Identify the person or persons most knowledgeable of the introduction, drafting, consideration of, revising, adopting and /or amending the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 4

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the

1 right to supplement or amend this response, this Responding Party asserts as follows:

2 Dino DiCianno
3 Executive Director
4 Department of Taxation

5 As to the non-objectionable portion of this Interrogatory, see public access
6 Legislative History documents at:

7 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877>

8 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554> .

9 Discovery is continuing.

10 **INTERROGATORY NUMBER 5**

11 Identify the person or persons most knowledgeable of the introduction, drafting,
12 consideration of, revising, adopting and /or amending any and all regulations relating to, or
13 promulgated under, the Live Entertainment Tax.

14 **RESPONSE TO INTERROGATORY NUMBER 5**

15 This Responding Party hereby objects to this interrogatory on grounds including, but
16 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
17 for speculation, improperly seeks attorney work product information, requests information
18 which is not reasonably calculated to lead to the discovery of admissible evidence, and is
19 overly burdensome as it would require expensive review of public records which are
20 obtainable from another more convenient, less burdensome and less expensive source.

21 Without waiving said objections, and while reserving same, and while reserving the
22 right to supplement or amend this response, this Responding Party asserts as follows:

23 Dino DiCianno
24 Executive Director
25 Department of Taxation

26 As to the non-objectionable portion of this Interrogatory, See public access to
27 Legislative History documents at:

28 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

1 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

2 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

3 (AB 544).

4 See also regulation workshop recordings, attached to Responses to Plaintiffs' Request
5 for Production, Exhibit "AAA".

6 Discovery is continuing.

7 **INTERROGATORY NUMBER 6**

8 Identify the person or persons most knowledgeable of the persons and entities
9 who/which have paid the Live Entertainment Tax since the initial adoption of that statute.

10 **RESPONSE TO INTERROGATORY NUMBER 6**

11 This Responding Party hereby objects to this interrogatory on grounds including, but
12 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
13 for speculation, improperly seeks attorney work product information, requests information
14 which is confidential and / or privileged pursuant to NRS 40.025 and NRS 368A.180, asks for
15 information which is not reasonably calculated to lead to the discovery of admissible evidence,
16 and is overly burdensome as it would require expensive review of records. The Interrogatory
17 additionally seeks information that is obtainable from another more convenient, less
18 burdensome and less expensive source, and information already in the custody and control of
19 the Plaintiffs.

20 Without waiving said objections, and while reserving same, and while reserving the
21 right to supplement or amend this response, this Responding Party asserts as follows:

22 As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions
23 of NRS 40.025 and NRS 368A.180:

24 Michelle Jacobs
25 Tax Examiner II
26 Department of Taxation

27 Discovery is continuing.

INTERROGATORY NUMBER 7

Identify the person or persons most knowledgeable about the persons or business entities meant to be taxed by the Live Entertainment Tax.

RESPONSE TO INTERROGATORY NUMBER 7

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, and subject to the prohibitions of NRS 40.025 and NRS 368A.180: this Responding Party asserts as follows:

Dino DiCianno
Executive Director
Department of Taxation

As to the non-objectionable portion of this Interrogatory, entities who provide "live entertainment" is defined by NRS 368A.090. See Answer to Interrogatory 5. See all public access Legislative History documents at:

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

(AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 8

Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the definition of "live entertainment" set forth in NRS 368A.090.

1 Should you conclude that the person most knowledgeable differs depending on the legislative
2 act, list the person most knowledgeable regarding each legislative act.

3 **RESPONSE TO INTERROGATORY NUMBER 8**

4 This Responding Party hereby objects to this interrogatory on grounds including, but
5 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
6 for speculation, improperly seeks attorney work product information, requests information
7 which is not reasonably calculated to lead to the discovery of admissible evidence, and is
8 overly burdensome as it would require expensive review of public records which are
9 obtainable from another more convenient, less burdensome and less expensive source.

10 Without waiving said objections, and while reserving same, and while reserving the
11 right to supplement or amend this response, this Responding Party asserts as follows:

12 As to the non-objectionable portion of this Interrogatory, subject to the prohibitions of
13 NRS 40.025 and NRS 368A.180:

14 Michelle Jacobs
15 Tax Examiner II
16 Department of Taxation

17 See all public access Legislative History documents at:

18 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

19 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

20 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

21 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

22 (AB 544).

23 Discovery is continuing.

24 **INTERROGATORY NUMBER 9**

25 Identify the person or persons most knowledgeable of the purposes for any and all
26 legislative changes to the exceptions to the definition of "live entertainment" set forth in NRS
27 368A.090.
28

RESPONSE TO INTERROGATORY NUMBER 9

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

The definition for "live entertainment" is contained in NRS 368A.090. See all public access Legislative History documents at:

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

(AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 10

Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax set forth in NRS 368A.200. Should you conclude that the person most knowledgeable differs depending on the legislative act, list the person most knowledgeable regarding each legislative act.

//

//

RESPONSE TO INTERROGATORY NUMBER 10

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions of NRS 40.025 and NRS 368A.180:

Michelle Jacobs
Tax Examiner II
Department of Taxation

The entities who provide "live entertainment" are defined in NRS 368A.090. See all public access Legislative History documents at:

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

(AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 11

Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax or to the definition of "live entertainment" created by any regulation or policy of the Department. Do not duplicate responses to previous interrogatories. In the event that different persons are most knowledgeable regarding different changes, list such individuals separately together with any

changes with regard to which the person is most knowledgeable.

RESPONSE TO INTERROGATORY NUMBER 11

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows

As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions of NRS 40.025 and NRS 368A.180:

Michelle Jacobs
Tax Examiner II
Department of Taxation

The entities who provide "live entertainment" are defined in NRS 368A.090. See all public access Legislative History documents at:

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

(AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 12

Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax or to the definition of "live entertainment" created by any regulation or policy of the Commission. In the event

different persons are most knowledgeable regarding different changes, list such individuals separately, together with the changes with regard to which the person is most knowledgeable.

RESPONSE TO INTERROGATORY NUMBER 12

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

The entities who provide "live entertainment" are defined in NRS 368A.090. See all public access Legislative History documents at:

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

(AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 13

Identify the person or persons most knowledgeable regarding the steps by which the proposed "5% across the board" tax on live entertainment was modified to, instead, tax

1 certain live entertainment at the rate of 10%, as provided by NRS 368A.200(1).

2 **RESPONSE TO INTERROGATORY NUMBER 13**

3 This Responding Party hereby objects to this interrogatory on grounds including, but
4 not limited to, that the interrogatory is compound, duplicative, overly broad, vague and
5 ambiguous, calls for speculation, improperly seeks attorney work product information,
6 requests information which is not reasonably calculated to lead to the discovery of admissible
7 evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly
8 burdensome as it would require expensive review of public records which are obtainable from
9 another more convenient, less burdensome and less expensive source.

10 Without waiving said objections, and while reserving same, and while reserving the
11 right to supplement or amend this response, this Responding Party asserts as follows:

12 As to the non-objectionable portion of this Interrogatory:

13 Dino DiCianno
14 Executive Director
15 Department of Taxation

16 See all public access Legislative History documents at:

17 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

18 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

19 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

20 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

21 (AB 544).

22 Discovery is continuing.

23 **INTERROGATORY NUMBER 14**

24 Identify the person or persons most knowledgeable regarding the purpose(s) of
25 modifying the proposed "5% across the board" tax on live entertainment to, instead, tax
26 certain live entertainment at the rate of 10%, as provided by NRS 368A.200(1).

27 //

28 //

RESPONSE TO INTERROGATORY NUMBER 14

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory:

Dino DiCianno
Executive Director
Department of Taxation

See all public access Legislative History documents at:

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

(AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 15

Identify each and every person or business entity that became subject to the Live Entertainment Tax as a result of NRS 368A.200 being amended" (1) to change the seating or capacity or occupancy requirement (presently NRS 368A.200(5)(d) and (e) from 300 to 200: or (2) to change the language to refer to "maximum occupancy" rather than "maximum seating capacity."

RESPONSE TO INTERROGATORY NUMBER 15

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is confidential and privileged pursuant to NRS 49.025 and NRS 368A.180, asks for information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source, and information that is already in the custody and control of the Plaintiffs.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows:

As to the non-objectionable portion of this Interrogatory, See **Exhibit "B"**.

Discovery is continuing.

INTERROGATORY NUMBER 16

Identify the person or persons most knowledgeable regarding the purpose(s) of changing the maximum seating capacity/maximum occupancy specified by (present) NRS 368A.200(5)(d) and (e) from 300 to 200.

RESPONSE TO INTERROGATORY NUMBER 16

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

1 Without waiving said objections, and while reserving same, and while reserving the
2 right to supplement or amend this response, this Responding Party asserts as follows:

3 As to the non-objectable portion of this Interrogatory:

4 Dino DiCianno
5 Executive Director
6 Department of Taxation

7 See all public access Legislative History documents at:

8 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

9 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

10 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

11 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

12 (AB 544).

13 Discovery is continuing.

14 **INTERROGATORY NUMBER 17**

15 Identify the person or persons most knowledgeable regarding the effect(s) of changing
16 the maximum seating capacity/maximum occupancy specified by NRS 368A.200(5)(d) and (e)
17 from 300 to 200.

18 **RESPONSE TO INTERROGATORY NUMBER 17**

19 This Responding Party hereby objects to this interrogatory on grounds including, but
20 not limited to, that the interrogatory is compound, duplicative, overly broad, vague and
21 ambiguous, calls for speculation, improperly seeks attorney work product information,
22 requests information which is not reasonably calculated to lead to the discovery of admissible
23 evidence, presumes facts not in evidence, presents an incomplete hypothetical, asks for an
24 expert opinion, and is overly burdensome as it would require expensive review of public
25 records which are obtainable from another more convenient, less burdensome and less
26 expensive source.

1 Without waiving said objections, and while reserving same, and while reserving the
2 right to supplement or amend this response, this Responding Party asserts as follows:

3 As to the non-objectable portion of this Interrogatory:

4 Dino DiCianno
5 Executive Director
6 Department of Taxation

7 See all public access Legislative History documents at:

8 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

9 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

10 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

11 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>
(AB 544).

12 Discovery is continuing.

13 **INTERROGATORY NUMBER 18**

14 Identify the person or persons most knowledgeable regarding the purpose(s) of
15 changing the language of (presently) NRS 368A.200(5)(d) and (e) from referring to "maximum
16 seating capacity" to "maximum occupancy."

17 **RESPONSE TO INTERROGATORY NUMBER 18**

18 This Responding Party hereby objects to this interrogatory on grounds including, but
19 not limited to, that the interrogatory is compound, duplicative, overly broad, vague and
20 ambiguous, calls for speculation, improperly seeks attorney work product information,
21 requests information which is not reasonably calculated to lead to the discovery of admissible
22 evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly
23 burdensome as it would require expensive review of public records which are obtainable from
24 another more convenient, less burdensome and less expensive source.

25 Without waiving said objections, and while reserving same, and while reserving the
26 right to supplement or amend this response, this Responding Party asserts as follows:

1 As to the non-objectionable portion of this Interrogatory:

2 Dino DiCianno
3 Executive Director
4 Department of Taxation

5 See all public access Legislative History documents at:

6 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

7 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

8 (AB 544).

9 Discovery is continuing.

10 **INTERROGATORY NUMBER 19**

11 Identify any and all persons, business entities, or classes, who/which have requested
12 to be exempt from the Live Entertainment Tax.

13 **RESPONSE TO INTERROGATORY NUMBER 19**

14 This Responding Party hereby objects to this interrogatory on grounds including, but
15 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
16 for speculation, improperly seeks attorney work product information, requests information
17 which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for
18 information which is not reasonably calculated to lead to the discovery of admissible evidence,
19 and is overly burdensome as it would require expensive review of records. The Interrogatory
20 additionally seeks information that is obtainable from another more convenient, less
21 burdensome and less expensive source, and information which is already in the custody and
22 control of the Plaintiffs.

23 Without waiving said objections, and while reserving same, and while reserving the
24 right to supplement or amend this response, this Responding Party asserts as follows: The
25 information requested is confidential and non-discoverable pursuant to NRS 40.025 and NRS
26 368A.180.

27 Discovery is continuing.

1 **INTERROGATORY NUMBER 20**

2 For each business entity or class of business entities identified in the preceding
3 interrogatory, indicate whether such entity is currently subject to taxation via presently
4 effective version of the Live Entertainment Tax. If the business entity or class of business
5 entities is not subject to the Live Entertainment Tax, identify the change in the Live
6 Entertainment Tax, regulations, and/or administration responsible for the business entity or
7 class of business entities not being presently subject to taxation.

8 **RESPONSE TO INTERROGATORY NUMBER 20**

9 This Responding Party hereby objects to this interrogatory on grounds including, but
10 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
11 for speculation, improperly seeks attorney work product information, requests information
12 which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for
13 information which is not reasonably calculated to lead to the discovery of admissible evidence,
14 and is overly burdensome as it would require expensive review of records. The Interrogatory
15 additionally seeks information that is obtainable from another more convenient, less
16 burdensome and less expensive source, and information which is already in the possession of
17 Plaintiffs.

18 Without waiving said objections, and while reserving same, and while reserving the
19 right to supplement or amend this response, this Responding Party asserts as follows: See
20 NRS 368A.090. See also Exhibit "AAA" to Response to Plaintiffs' Requests for Production
21 and response to Interrogatory 19 above.

22 **INTERROGATORY NUMBER 21**

23 Identify each and every governmental interest meant to be served by the enactment or
24 operation of the Live Entertainment Tax.

25 **RESPONSE TO INTERROGATORY NUMBER 21**

26 This Responding Party hereby objects to this interrogatory on grounds including, but
27 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls

1 for speculation, improperly seeks attorney work product information, requests information
2 which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for
3 information which is not reasonably calculated to lead to the discovery of admissible evidence,
4 and is overly burdensome as it would require expensive review of records. The Interrogatory
5 additionally seeks information that is obtainable from another more convenient, less
6 burdensome and less expensive source.

7 Without waiving said objections, and while reserving same, and while reserving the
8 right to supplement or amend this response, this Responding Party asserts as follows:

9 As to the non-objectionable portion of this Interrogatory, the purpose of the Live
10 Entertainment Tax is to generate revenue for the state. See NRS Chapter 368A, NAC
11 Chapter 368A, see also all public access legislative history documents at:

12 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

13 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

14 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

15 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

16 (AB 544).

17 Discovery is continuing.

18 **INTERROGATORY NUMBER 22**

19 Identify each and every governmental interest meant to be served by the enactment of
20 each and every one of the exceptions and exemptions to the Live Entertainment Tax.

21 **RESPONSE TO INTERROGATORY NUMBER 22**

22 This Responding Party hereby objects to this interrogatory on grounds including, but
23 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
24 for speculation, improperly seeks attorney work product information, requests information
25 which is confidential and privileged pursuant to NRS 368A.180, asks for information which is
26 not reasonably calculated to lead to the discovery of admissible evidence, and is overly
27 burdensome as it would require expensive review of records. The Interrogatory additionally

1 seeks information that is obtainable from another more convenient, less burdensome and less
2 expensive source.

3 Without waiving said objections, and while reserving same, and while reserving the
4 right to supplement or amend this response, this Responding Party asserts as follows:

5 As to the non-objectionable portion of this Interrogatory, the purpose of the Live
6 Entertainment Tax is to generate revenue for the state. See NRS Chapter 368A, NAC
7 Chapter 368A, see a/so all public access legislative history documents at:

8 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

9 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

10 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

11 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

12 (AB 544).

13 Discovery is continuing.

14 **INTERROGATORY NUMBER 23**

15 Identify each and every person from the State of Nevada whose job responsibilities
16 include administering the collection and payment of the Live Entertainment Tax.

17 **RESPONSE TO INTERROGATORY NUMBER 23**

18 This Responding Party hereby objects to this interrogatory on grounds including, but
19 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
20 for speculation, improperly seeks attorney work product information, requests employee
21 information which is confidential and privileged, asks for information which is not reasonably
22 calculated to lead to the discovery of admissible evidence, and is overly burdensome as it
23 would require expensive review of records. The Interrogatory additionally seeks information
24 that is obtainable from another more convenient, less burdensome and less expensive source.

25 Without waiving said objections, and while reserving same, and while reserving the
26 right to supplement or amend this response, this Responding Party asserts as follows:

27 As to the non-objectionable portion of this Interrogatory, all employees of the
28

1 Department of Taxation may have some responsibility for the administration of the collection
2 and payment of the LET.

3 Discovery is continuing.

4 **INTERROGATORY NUMBER 24**

5 Identify all persons associated with the department, commission, or Board who hold or
6 act under the title "live entertainment tax examiner." Also, identify the person or persons
7 responsible for overseeing the activities of the live entertainment tax examiners.

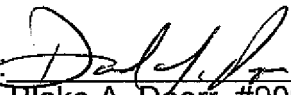
8 **RESPONSE TO INTERROGATORY NUMBER 24**

9 This Responding Party hereby objects to this interrogatory on grounds including, but
10 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
11 for speculation, improperly seeks attorney work product information, requests employee
12 information which is confidential and privileged, asks for information which is not reasonably
13 calculated to lead to the discovery of admissible evidence, and is overly burdensome as it
14 would require expensive review of records.

15 Without waiving said objections, and while reserving same, and while reserving the
16 right to supplement or amend this response, no such title exists in the Department of Taxation,
17 and all employees of the Department of Taxation may have some responsibility for the
18 administration of the collection and payment of the LET.

19 DATED THIS 14th day of August, 2009.

21 CATHERINE CORTEZ MASTO
22 Attorney General

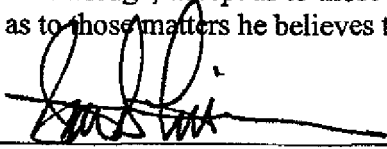
23 By: 
24 Blake A. Doerr, #9001
25 Deputy Attorney General
26 David J. Pope, #8617
27 Sr. Deputy Attorney General
28 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Nevada Department of Taxation

VERIFICATION

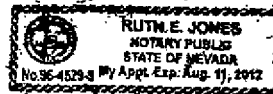
STATE OF NEVADA)
) SS
COUNTY OF CLARK)

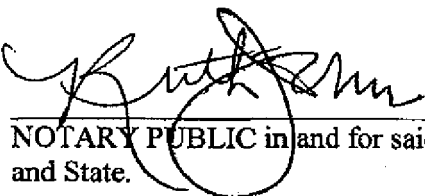
Dino DiCianno, Executive Director of the Department of Taxation, being first duly sworn, upon oath, deposes and says that he has read the foregoing and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated thereon upon information and belief; and as to those matters he believes them to be true.

Dated 8/13/09


Dino DiCianno, Executive Director

SUBSCRIBED AND SWORN to before me
this 14 day of August, 2009




NOTARY PUBLIC in and for said County
and State.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2009, the foregoing NEVADA DEPARTMENT OF TAXATION'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS was served on the foregoing party by Federal Express, addressed to:

Federal Express Airbill #8601 4135 5818

Bradley J. Shafer
SHAFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110
Fax: 517-886-6565

Dated this 14th day of August, 2009


An Employee of the State of Nevada

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

MPSJ
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DAVID J. POPE
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Attorneys for Nevada Department of Taxation

RECEIVED
JAN 28 2011

BY: AEP

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS,
L.L.C., d/b/a Déjà vu Showgirls, LITTLE
DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little
Darlings, 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, and D.I.
FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,
d/b/a Scores,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION,
NEVADA TAX COMMISSION, NEVADA
STATE BOARD OF EXAMINERS, and
MICHELLE JACOBS, in her official capacity
only,

Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

**NEVADA DEPARTMENT OF TAXATION'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON THE PLAINTIFFS'
CLAIMS FOR REFUND AND MOTION TO
DISMISS THE AS APPLIED CHALLENGE
TO THE LIVE ENTERTAINMENT TAX
AND THE CLAIMS FOR DAMAGES
PURSUANT TO 42 U.S.C. 1983**

Date: _____
Time: _____

1 K-KEL, INC., d/b/a *Spearmint Rhino*)
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a
5 *Crazy Horse Too Gentlemen's Club*; D.
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

11 NEVADA DEPARTMENT OF TAXATION;
12 NEVADA TAX COMMISSION; and NEVADA
13 STATE BOARD OF EXAMINERS,

14 Defendants.

Case No. 08A554970
Dept. No. XI

15 COMES NOW, Defendants State of Nevada, ex rel. Department of Taxation
16 (hereinafter "Department"), NEVADA TAX COMMISSION (hereinafter "NTC"), NEVADA
17 STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, by
18 and through their attorneys, Catherine Cortez Masto, Attorney General, and David J. Pope,
19 Senior Deputy Attorney General, Blake Doerr, Senior Deputy Attorney General and Vivienne
20 Rakowsky, Deputy Attorney General, and hereby moves this Court for Order granting this
21 MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR
22 REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE
23 ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C.
24 1983. This Motion is filed pursuant to NRCP Rule 12(b)(5) and 56 and is also based on all
25
26
27
28

1 pleadings and papers on file herein, the attached Memorandum of Points and Authorities and
2 any oral arguments the Court may allow at the time of the hearing on this matter.

3 DATED this 25th day of January, 2011.

4 Respectfully submitted:

5 CATHERINE CORTEZ MASTO
6 Attorney General

7 By: 

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

15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that the foregoing Motion for Partial Summary Judgment will
17 be heard before the above-entitled Court on the ____ day of _____, 2011 at
18 _____ .m. in Department ____ or as soon thereafter as counsel may be heard.

19 DATED this 25th day of January, 2011.

20 Respectfully submitted:

21 CATHERINE CORTEZ MASTO
22 Attorney General

23 By: 

24 DAVID J. POPE
25 Senior Deputy Attorney General
26 BLAKE A. DOERR
27 Senior Deputy Attorney General
28 VIVIENNE RAKOWSKY
Deputy Attorney General
Attorneys for Defendants

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs are the above-captioned exotic dancing establishments. Defendants are the various agencies of the State of Nevada which administer and collect the Live Entertainment Tax (hereinafter "LET") and Michelle Jacobs in her official capacity only. As background, there have been two Complaints (A533273 and A554970) filed in this matter. The two cases have been coordinated for discovery and scheduling purposes, but have not been consolidated.

On December 19, 2006, the eight Plaintiffs in Case A533273¹ (hereinafter "Case 1 Plaintiffs") filed a Complaint seeking as their remedies: (1) an injunction enjoining the Defendants from enforcing the provisions of the LET; (2) a refund of all LET payments that have been "involuntarily" made; (3) a declaration that the LET is unconstitutional; and, (4) an award for damages, costs and fees pursuant to 42 U.S.C. §1983. Before filing the Complaint in District Court, none of the Case 1 Plaintiffs had ever requested a refund from the Department of Taxation pursuant to NRS 368A.290 and therefore had not exhausted their administrative remedies as required by Chapter 233B of the NRS and Nevada case law.

After filing the complaint in Case 1, six of the Plaintiffs requested refunds from the Department (hereinafter "Case 2 Plaintiffs") and pursued their administrative remedies. In January 2007, the six Case 2 Plaintiffs² requested a refund of the LET they remitted for January, February, March and April 2004. The Department denied the refund requests. The six Case 2 Plaintiffs appealed the Department's denial of the refunds to the NTC. Following a hearing over which it presided, the NTC upheld the Department's denials of the refunds and issued its final written decision dated October 12, 2007. See NTC Decision attached hereto as Ex. "A".

¹ DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, 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, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores

² The six Case 2 Plaintiffs include: K-KEL, INC.; OLYMPUS GARDEN, INC.; SHAC, LLC; THE POWER COMPANY, INC.; D. WESTWOOD, INC.; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC. The other two Case 1 Plaintiffs, DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC and LITTLE DARLINGS OF LAS VEGAS, LLC, have not filed claims for a refund with the Department pursuant to NRS 368A.260.

1 On January 9, 2008, the Case 2 Plaintiffs filed a Complaint initiating Case A554970.
2 The Case 2 Plaintiffs allege in their Complaint that the LET, established by Chapter 368A of
3 the Nevada Revised Statutes (hereinafter "NRS"), is an impermissible state tax and they
4 request the refund of LET remitted for the tax periods at issue. The Case 2 Plaintiffs allege
5 that the LET is an unconstitutional infringement by the State of Nevada on constitutionally
6 protected expression. The Case 2 Plaintiffs seek as their remedy: (1) an injunction enjoining
7 the Defendants from enforcing the provisions of the LET; (2) a refund of all LET payments
8 which they remitted for January, February, March and April 2004; and (3) a declaration that
9 the LET is unconstitutional.

10 On or about January 28, 2009, the eight Class 1 Plaintiffs filed an Amended Complaint
11 in order to add an "as applied" cause of action to the facial challenge to the LET contained in
12 the initial Complaint.

13 On or about December 19, 2010, the Case 2 Plaintiffs' filed an Amended Complaint
14 enlarging the caption to include all eight Case 1 Plaintiffs without leave of the Court³ and
15 added an "as applied" cause of action in addition to the requested declaratory relief regarding
16 the facial challenge and claim for refund in the initial Complaint. The matrix below provides
17 details as to the entities and causes of action in both Complaints and Amended Complaints:
18
19
20
21
22
23
24 ...
25 ...
26 ...

27 ³ This may have been an inadvertent mistake on the part of the Plaintiffs, since two of the parties listed on the
28 Amended Complaint have never even asked for refunds (Little Darlings of Las Vegas, LLC and Déjà Vu
Showgirls of Las Vegas, LLC) and the parties listed in the Amended Complaint list only the original six Case 2
Plaintiffs. See Case 2 Amended Complaint, pp. 3-4, paras. 6-11.

	Déjà vu Showgirls of Las Vegas (Déjà Vu Showgirls)	Little Darlings of Las Vegas LLC (Little Darlings)	K-Kel, Inc. (Spearmint Rhino)	Olympus Garden, Inc. (Olympic Garden)	Shac, LLC (Sapphires)	The Power Company (Crazy Horse Too)	D. Westwood, Inc. (Treasures)	D.I. Food & Beverage of Las Vegas, LLC (Scores)
A533273 (Case 1) Complaint December 19, 2006 (facial challenge to LET)	X	X	X	X	X	X	X	X
Declaratory Relief	X	X	X	X	X	X	X	X
Injunction	X	X	X	X	X	X	X	X
42 U.S.C. § 1983	X	X	X	X	X	X	X	X
Amended Complaint January 28, 2009 A533273 (Case 1) (added as applied to the facial challenge of LET)	X	X	X	X	X	X	X	X
A554970 (Case 2) Complaint for Refund January 9, 2008			X	X	X	X	X	X
Declaratory Relief			X	X	X	X	X	X
Refund			X	X	X	X	X	X
Injunctive Relief			X	X	X	X	X	X
Amended Complaint A554970 (Case 2) December 19, 2010 (Added as applied to the facial challenge)	X	X	X	X	X	X	X	X
Parties who have exhausted administrative remedies			X	X	X	X	X	X
Parties who have not exhausted administrative remedies	X	X						

By order dated January 13, 2011, the District Court denied Plaintiffs' Motion for Preliminary Injunction. See Order, attached hereto as Ex. "B".

The refund issues raised by the Case 2 Plaintiffs in their Complaint were adjudicated through administrative proceedings and are the subject of a final decision issued by the NTC following a hearing over which it presided. See NTC Decision attached hereto as Ex. "A".

...

...

1 Although the NTC Decision is a final decision on the merits for purposes of judicial review
2 pursuant to NRS 360.245, the Case 2 Plaintiffs failed to file a petition for judicial review
3 pursuant to NRS 233B.130 but instead filed a complaint citing NRS 368A.290.

4 By filing a Complaint as opposed to a petition for judicial review, the Case 2 Plaintiffs
5 initiated a civil law suit against the Defendants whereby they seek another tribunal's
6 determination of the issues already determined by the agency regarding whether they are
7 entitled to a refund of the LET. In addition, the Case 2 Plaintiffs also failed to timely file a
8 petition for judicial review pursuant to NRS 233B.130.

9 The District Court has previously denied the injunction because there is no irreparable
10 harm. See Order, attached hereto as Ex. "B". With respect to the "as applied" claims in both
11 Amended Complaints, two of the Plaintiffs failed to exhaust their administrative remedies,
12 and, pursuant to NRS 233B.130, the six remaining Plaintiffs in Case 2 and all eight Plaintiffs
13 listed in Case 1 are only entitled to judicial review of an administrative agency final ruling.

14 As will be set forth below, damages pursuant to 42, U.S.C. §1983 are not recoverable
15 because none of the Defendants are "persons." Therefore, the remaining requests for relief
16 are the same for both the eight Case 1 Plaintiffs and the six Case 2 Plaintiffs: (1) a request
17 for refund;⁴ and, (2) a request for a declaration that the LET is unconstitutional. As stated
18 above, the refund issue has already been decided through the administrative process and is
19 the subject of a final decision on the merits by the NTC.

20 Accordingly, the Defendants are moving for the following relief: (1) that the "as applied"
21 remedies in the Amended Complaints in both Case 2 and Case 1 be dismissed because,
22 pursuant to NRS 368A.290 and NRS 233B.130, the Plaintiffs' only remedy is a petition for
23 judicial review governed by the standard set forth in NRS 233B.135 and the Plaintiffs failed to
24 file a petition for judicial review within 30 days of the final decision of the NTC; (2) that the
25 refund claim made by the six plaintiffs in Case 2 be dismissed by application of administrative
26 res judicata; (3) that Déjà Vu Showgirls of Las Vegas, LLC dba Déjà vu Showgirls and Little

27
28 ⁴ Déjà vu Showgirls of Las Vegas, LLC and Little Darlings of Las Vegas, LLC never requested a refund
pursuant to NRS 368A.260 and are therefore barred from seeking refunds for the time periods at issue.

1 Darlings of Las Vegas, LLC dba Little Darlings be dismissed from the Amended Complaint in
2 Case 2 because of their failure to exhaust administrative remedies; and, (4) that the damages
3 claim under 42 U.S.C. §1983 be dismissed because none of the Defendants are "persons"
4 for purposes of 42 U.S.C. §1983.

5 Therefore, because the injunction issue has already been decided, after all the
6 improper claims are dismissed, the only possible remaining claim is a claim for a declaration
7 that the LET is facially unconstitutional.

8 II. ARGUMENT

9 A. STANDARD OF REVIEW

10 With the exception of the facial challenge to the LET, the Plaintiffs have failed to state
11 a claim upon which relief can be granted. NRCP 12(b)(5). With respect to the Plaintiffs'
12 causes of action regarding the "as applied" claims and its claim for damages pursuant to 42
13 U.S.C. §1983, the standard of review which applies is NRCP 12(b)(5).

14 NRCP Rule 12(b), which states in relevant part, "every defense . . . to a claim for relief
15 in any pleading . . . shall be asserted in the responsive pleading thereto if one is required,
16 except that the following defenses may at the option of the pleader be made by motion . . .
17 (5) failure to state a claim upon which relief can be granted . . ."

18 When reviewing an order granting a motion to dismiss, the court considers whether the
19 challenged pleading sets forth allegations sufficient to establish the elements of a right to
20 relief. *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 278, 21 P.3d 16, 19 (2001). Dismissal is
21 appropriate where it appears beyond a doubt that the plaintiff could prove no set of facts
22 which, if accepted by the trier of fact, would entitle him or her to relief. *Simpson v. Mars*, 113
23 Nev. 188, 190, 929 P.2d 966, 967 (1997); *Buzz Stew, LLC v. City of N. Las Vegas*, __ Nev.
24 __, 181 P.3d 670, 672 (Adv.Op. 21, April 17, 2008). The pleadings must be liberally
25 construed, and all factual allegations in the complaint accepted as true. *Blackjack Bonding v.*
26 *City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). The
27 Plaintiffs' "as applied" claims and its claim for damages pursuant to 42 U.S.C. §1983 should
28 be dismissed because the Plaintiffs failed to state a claim upon which relief can be granted.

1 With respect to the refund claims, because the Complaints have been Answered, and
2 because the Plaintiffs have taken part in the administrative process which is a part of this
3 record, pursuant to NRCP 12(b)(5) the standard of review for the refund causes of action is
4 as a Motion for Partial Summary Judgment. NRCP 12(b); NRCP 56.

5 Summary judgment is the pre-trial procedure which allows adjudication of legal issues
6 which are not dependant upon the determination of material factual issues. Pursuant to
7 NRCP 56(c)'s express language, the Court must enter an order of summary judgment in favor
8 of the moving party when there is no issue of material fact, and the moving party is entitled to
9 judgment as a matter of law. A genuine issue of material fact exists only where the evidence
10 is such that a reasonable jury could return a verdict for the non-moving party. *Posadas v.*
11 *City of Reno*, 109 Nev. 448, 851 P.2d 438 (1993).

12 The burden of establishing the non-existence of a genuine issue of material fact is on
13 the moving party. *Pacific Pools v. McClains Concrete*, 101 Nev. 557, 559, 706 P.2d 849, 851
14 (1985). However, this burden is discharged when the moving party demonstrates that there
15 is an "absence of evidence supporting one or more of the prima facie elements of the
16 non-moving party's case." *NGA v. Rains*, 113 Nev. 1151, 1156, 946 P.2d 163, 167 (1997),
17 citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986). The evidence presented must be
18 admissible, and the opposing party is "not entitled to build a case on the gossamer threads of
19 whimsey, speculation and conjecture." *Id.* at 1031, quoting *Collins v. Union Fed. Sav. &*
20 *Loan*, 99 Nev. 284, 302, 662 P.2d 610 (1983).

21 By arguing that they need discovery, Plaintiffs have brought a need for factual
22 determinations into the cases. As will be set forth below, constitutional challenges involving
23 factual determinations constitute "as applied" challenges which require the exhaustion of
24 administrative remedies pursuant to Nevada law. *Malecon Tobacco, LLC v. Department of*
25 *Taxation*, 118 Nev. 837, 841, 59 P.3d 474 (2002). Because Déjà vu of Las Vegas and Little
26 Darlings never exhausted their administrative remedies, they are not entitled to pursue an "as
27 applied" challenge. The six Case 2 Plaintiffs who did request refunds and appealed the
28 denials of their refund requests to the NTC and obtained a final decision from the NTC

1 affirming those denials abandoned their statutorily provided means of judicial review when
2 they failed to file a timely petition for judicial review pursuant to NRS 233B.130. Thus, none
3 of the Plaintiffs are entitled to an "as applied" challenge. Moreover, Case 2 must be
4 dismissed by application of administrative res judicata. All that possibly remains is the Case
5 1 claim for a declaration that the LET is facially unconstitutional.

6 **B. A PETITION FOR JUDICIAL REVIEW WAS THE PROPER MEANS OF**
7 **BRINGING CASE 2 BEFORE THIS COURT**

8 Plaintiffs have chosen to file this particular action as a civil complaint, rather than a
9 judicial review pursuant to NRS 233B.130. To the best of the Defendants' knowledge and
10 belief, Plaintiffs did not file a petition for judicial review of the NTC's decision.⁵

11 Pursuant to the Nevada Rules of Civil Procedure a complaint requires that an answer
12 be filed and ultimately that a trial on the merits is held, absent summary judgment. The
13 foregoing procedure is inappropriate to the appeal of a state agency decision. NRS
14 233B.130 et. seq. With the adoption of the Administrative Procedures Act in 1965, aka
15 Chapter 233B of the NRS, the Legislature stated its intention that the provisions in such
16 chapter "are the exclusive means of *judicial review of, or judicial action concerning*, a final
17 decision in a contested case involving an agency to which this chapter applies." NRS
18 233B.130(6) (emphasis added).

19 The provision under which Plaintiffs chose to file suit, NRS 368A.290, was first
20 adopted in 2003 and is similar to NRS 372.680 which was revised in 1999. NRS 368A.290
21 states:

22 1. Within 90 days after a final decision upon a claim filed
23 pursuant to this chapter is rendered by:

24 (a) The Commission, the claimant may bring an action against
25 the Board on the grounds set forth in the claim.

26 (b) The Nevada Tax Commission, the claimant may bring an
27 action against the Department on the grounds set forth in the
claim.

2. An action brought pursuant to subsection 1 must be brought in
a court of competent jurisdiction in Carson City, the county of this

28 ⁵ Pursuant to NRS 233B.130(5) a person filing a petition for judicial review has 45 days to serve the petition on the agency and every party. No such petition has been served to date and the 45 days from the last date to file a petition has passed.

1 State where the claimant resides or maintains his or her principal
2 place of business or a county in which any relevant proceedings
3 were conducted by the Board or the Department, for the recovery
4 of the whole or any part of the amount with respect to which the
5 claim has been disallowed.

3. Failure to bring an action within the time specified constitutes
a waiver of any demand against the State on account of alleged
overpayments. [Emphasis added.]

Following the revision, NRS 372.680 provides:

1. Within 90 days after a final decision upon a claim filed
pursuant to this chapter is rendered by the Nevada Tax
Commission, the claimant may bring an action against the
Department on the grounds set forth in the claim in a court of
competent jurisdiction in Carson City, the county of this State
where the claimant resides or maintains his principle place of
business or a county in which any relevant proceedings were
conducted by the Department, for the recovery of the whole or any
part of the amount with respect to which the claim has been
disallowed.

2. Failure to bring an action within the time specified constitutes
a waiver of any demand against the State on account of alleged
overpayments. [Emphasis added.]

NRS 372.680 speaks specifically to filing a claim for refund in district court after a "final
decision" by the NTC. *Id.* Prior to 1999, a taxpayer could go straight to district court after the
denial of the claim by the Department without going through an administrative hearing
procedure. The change to a decision by the NTC ensured that there would be an
administrative hearing. NRS 372.680 does not provide authority for a trial de novo and
neither does NRS 368A.290.

The Nevada Supreme Court in *Hansen-Neiderhauser v. Nevada State Tax Comm'n*,
81 Nev. 307, 402 P.2d 480 (1965), discusses NRS 372.680 prior to the passage of the
Administrative Procedures Act. Clearly a civil remedy for claims of overpayment existed prior
to the enactment of NRS Chapter 233B. In the legislative intent section of NRS Chapter
233B it states that "provisions of this chapter are intended to supplement statutes applicable
to specific agencies." NRS 233B.020(2). If ambiguity exists regarding the remedy available
to a taxpayer seeking a refund that is aggrieved by a final decision by the NTC it is
appropriate to look to the legislative history for clarification. See *Chanos v. Nevada Tax
Comm'n*, ___ Nev. ___, 181 P.3d 675, 680-681 (2008).

...

1 A review of the legislative history from the 1999 changes to NRS 372.680 clears up
2 any ambiguity about the remedy available. In a memorandum dated May 7, 1999 to
3 Assemblyman Bernie Anderson, Chairman, Assembly Committee on Judiciary from Norm
4 Azevedo, Senior Deputy Attorney General regarding *Senate Bill (S.B.) 362* and the changes
5 to NRS 372.680 it states:

6 With the exception of Section 13 of S.B. 362, the remaining
7 sections delineated above address the applicable procedures to
8 follow in a claim for refund. Prior to S.B. 362, refund claims had
9 not been subject to the requirements of chapter 233B of the
10 Nevada Revised Statutes. Historically, if a taxpayer filed a claim
11 for refund with the Nevada Department of Taxation, which was
12 denied by the Nevada Department of Taxation, the taxpayer was
13 required to file an action in district court in order to contest the
14 denial. The language of S.B. 362 now changes this procedural
15 route. In the event that S.B. 362 becomes law, a taxpayer whose
16 claim for refund is denied by the Department to (sic) Taxation will
17 proceed initially to an administrative hearing officer for an
18 administrative trial. In the event the taxpayer is aggrieved by the
19 decision of the administrative hearing officer, the taxpayer may
20 appeal the hearing officer's decision to the Nevada Tax
21 Commission for an administrative appellate review. In the event
22 the taxpayer is still aggrieved after a Tax Commission decision, the
23 taxpayer may file a petition with a district court in a judicial review
24 proceeding. It is this filing of a petition for judicial review which is
25 the subject of the venue provisions in S.B. 362. Thus, S.B. 362
26 contemplates a change from past practice where refund claims
upon passage of S.B. 362 will now be subject to the requirements
of Chapter 233B of the Nevada Revised Statutes.

18 See Ex. "C" (NDT 049). Mr. Azevedo's explanation is reiterated by other documents from the
19 legislative record. Mr. Azevedo provided testimony to the Senate Committee on Taxation on
20 March 23, 1999, which was recorded as follows:

21 [T]his particular provision was addressed in NRS chapter 232B
22 [sic] and he did not see a problem with it being brought to other
23 courts in the state. He explained the purpose of this bill and what
24 it would achieve. He said the amendments clarified the language
25 with great specificity so that in almost every instance the sequence
26 would be hearing officer, the tax commission, and, if it went to a
court, it would be pursuant to NRS chapter 233B in the form of a
petition for judicial review. He said NRS chapter 233B would
address most sales- and use-tax statutes that go to the
commission.

27 See Exhibit D (NDT 055). The Bill Explanation provided as Exhibit G to the Assembly
28 Committee on Taxation on May 6, 1999 states further that change to NRS 372.680 "[p]rovides

1 that an action for judicial review of a claim for refund of sales tax follows a decision of the tax
2 commission, not the department of taxation, and that such action may be brought in Clark
3 County⁶ as well as Carson City." See Ex. "E", Sect. 33 (NDT 061).

4 A July 1990 publication for the State Bar of Nevada sets forth the basis for applying
5 judicial review to final administrative decisions. It states:

6 Judicial review is designed to expedite the passage of an
7 administrative case through the judicial system. It is also meant to
8 minimize the intrusion of courts into administrative functions, such
9 as fact-finding, while relieving district courts of the burden and
expense of trying an administrative case as if the case had been
filed as an original matter in district court.

10 INTER ALIA, July 1990, The Basics of Nevada Administrative Law, p. 8. The article goes on
11 to discuss the reasons why trial de novo is disfavored in administrative cases and why cases
12 involving trial de novo have been reversed by the Nevada Supreme Court:

13 Litigants who have successfully convinced a district court to
14 dispense with a review of the administrative record and hold a trial
de novo have repeatedly had their original efforts reversed by the
15 Nevada Supreme Court. Those reversals are entirely salutary.
Trial de novo evades an administrative body's 'judgment based
16 upon its specialized experience and knowledge.' It is also a
particularly direct intrusion on an agency's fact-finding function.

17 Trial de novo further destroys the effectiveness of an
18 administrative body and the administrative process by relegating
an administrative hearing to 'a meaningless, formal, preliminary,
19 which places 'upon the courts the full administrative burden of
factual determination.' The waste of administrative and judicial
20 resources inherent in a trial de novo is obvious. The only time a
trial de novo should occur is in the rare instances where it is
21 specifically provided for by statute.

22 *Id.* (citations omitted). The article cites NRS 607.215 as an example of a specific statute that
23 provides for trial de novo. NRS 607.215(3) states, "[u]pon a petition for judicial review, the
24 court may order trial de novo." There is no applicable statute in the case at hand that
25 specifically authorizes a trial de novo. Similar to NRS 372.680, the language in NRS
26 368A.290 states that a claimant "may bring an action." NRS 368A.290 contains no mention
27

28 ⁶ Clark County was later dropped from the language. As adopted the venue language in NRS 372.680 mirrored
the venue language in NRS 233B.130.

1 of a right to trial de novo and falls short of granting the court jurisdiction to order a trial de
2 novo.

3 One of the cases cited in the article, *Nevada Tax Comm'n v. Hicks*, 73 Nev. 115, 310
4 P.2d 852 (1957), discusses the policy against a trial de novo after an agency decision. The
5 full quote from the *Hicks* case, parts of which were included in the citation above, is as
6 follows:

7 It should be apparent that if trial de novo is permitted here it would
8 completely destroy the effectiveness of the tax commission as an
9 expert investigative board. The most perfunctory showing could
10 be made before the board by a licensee with knowledge that the
11 matter would ultimately be decided by the courts upon full
evidentiary consideration. Trial de novo, in effect, could relegate
the commission hearing to a meaningless, formal, preliminary and
place upon the courts the full administrative burden of factual
determination.

12 *Id.* at 123, 856; see also *Las Vegas Valley Water Dist. v. Curtis Park Manor Water Users*
13 *Ass'n*, 98 Nev. 275, 646 P.2d 549 (1982). Though the *Hicks* case dealt with a gaming
14 licensee, the reasoning applies equally to the case at hand should the same argument be
15 made with regard to NRS 368A.290. Allowing Case 2 to proceed as a trial de novo would
16 render meaningless the expertise of the NTC, as well as the record that was before it.

17 Accordingly, based on the relevant statutes and the doctrine of judicial economy, it is
18 clear that Case 2 should have proceeded as a petition for judicial review.⁷ Inexplicably, rather
19 than filing a petition for judicial review after exhausting their administrative remedies, the
20 original six Case 2 Plaintiffs filed a civil complaint seeking a new civil court proceeding. The
21 original six Case 2 Plaintiffs exercised their right to the administrative process, received an
22 unfavorable decision from the Department, received an unfavorable decision from the NTC,
23 accumulated an administrative record, and failed to timely serve a petition for judicial review
24 on any of the Defendants. Because the final decision of the NTC was not the subject of a
25 ...

26
27 ⁷ See Order to Proceed as Petition for Judicial Review, filed in the First Judicial District Court, Case No. 09 OC
28 00016 1B attached hereto as Ex. "F" (stating that the proceedings in a tax refund case that had been presented to
a hearing officer and the Commission are controlled by NRS 233B.130(6). Further stating that the plaintiff was
"not entitled to a second evidentiary hearing in district court, but is entitled to judicial review . . .". This order has
been stayed pending further review).

1 timely petition for judicial review filed with the District Court, the decision of the NTC is now
2 final and preclusive.

3 **1. CHANGES TO NRS 233B.130 AND NRS 372.680 REFLECT**
4 **LEGISLATIVE INTENT THAT THIS COURT'S JURISDICTION IS**
5 **LIMITED TO JUDICIAL REVIEW**

6 Prior to 1989, Chapter 233B of the NRS specifically provided that a trial de novo was
7 available, if provided for by an agency's statutes outside of NRS Chapter 233B. At the time
8 NRS 233B.130(1) read in pertinent part:

9 Any party aggrieved by a final decision in a contested case is
10 entitled to judicial review thereof under this chapter. Where
11 appeal is provided within an agency, only the decision at the
12 highest level is reviewable unless otherwise provided by statutes.
13 This chapter does not limit utilization of trial de novo to review a
14 final decision where provided by statute, but this chapter provides
15 an alternative means of review in those cases.

16 The act of May 30, 1989, ch. 716, §6, *Assembly Bill 884, Before the Committee on*
17 *Government Affairs*, 1989 Nev. Stat. 3. The 1989 legislature removed this language and
18 replaced it with the current language in NRS 233B.130(6) which states that the provisions of
19 NRS Chapter 233B are "the exclusive means of judicial review of, or judicial action
20 concerning, a final decision in a contested case involving an agency to which [the] chapter
21 applies." The legislature specifically removed the authorization to use a trial de novo and
22 replaced it with language stating that the exclusive means for a court to exercise jurisdiction
23 over a final decision of an agency is by way of judicial review. In testimony before the
24 Assembly, Mr. Richard Campbell, Chairman of the state bar's Administrative Law Committee,
25 explained the reasoning for the changes made by AB 884. The minutes state:

26 He indicated one problem with administrative law is that each
27 agency has its own judicial review provision but it is incomplete
28 and contains no provision for procedures before the courts. He
also pointed out it is not clear whether NRS 233 (sic) or the
agency's law applies thereby creating general confusion among
practitioners and the courts. He indicated he spoke with several
judges who urged the Administrative Law Committee to clarify
such procedures . . .

Minutes of the Nevada State Legislature, Assembly Committee on Government Affairs, page
7, June 6, 1989. Mr. Campbell explained the importance of allowing administrative agencies

1 to exercise their expertise in a given area without interference by the courts. The minutes
2 further provide:

3 Mr. McGaughey referred to page 2, line 28, 'The court shall not
4 substitute its judgment for that of the agency as to the weight of
5 evidence on a question of fact.' He asked Mr. Campbell to explain
6 that statement. Mr. Campbell replied the Administrative Law
Committee does not want the courts to substitute their expertise
for the expertise of the administrative agency. Mr. Sourwine
mentioned that this language exists in present law.

7 Mr. Campbell explained the court is not required to affirm the
8 decision of an agency. Mr. Sourwine said AB 884 allows the court
9 to modify or reverse an agency decision if it is clearly erroneous in
10 view of reliable evidence on the whole record. Since the court
11 does not hear the testimony of witnesses, the court is not in a
position to judge credibility. Therefore, in reviewing records of an
administrative agency, the court merely looks for evidence in the
record that supports the agency's decision. At that point, the court
defers to the agency's expertise in the particular area.

12 *Id.* at 8.

13 Standing alone, NRS 372.680 fits the description from the legislative history cited
14 above of an agency provision that is incomplete and does not specify the nature of the
15 procedure in court. The statute was changed to read that an action would follow a decision of
16 the NTC, not a decision of the Department. NRS 368A.290. The change ensured that
17 requests for refund would fall within the purview of a contested case before an administrative
18 body. The statutory change in 1999 denotes an effort on the part of the legislature to clarify
19 the relationship between NRS 372.680 and NRS Chapter 233B.

20 The following legislative changes in this area demonstrate the legislative intent that all
21 final decisions by the NTC be subject to judicial review:

22 1989

23 The legislature removes language permitting original actions when a statute authorizes
24 such an action and replaces it with the language in NRS Chapter 233B.130(6): "The
25 provisions of this chapter are the exclusive means of *judicial review of, or judicial action*
26 *concerning, a final decision* in a contested case involving an agency to which this chapter
27 applies." (emphasis added).

28 ...

1997

The legislature adds the language in NRS 360.245(5) that states, "A decision of the Nevada Tax Commission is a *final decision* for the purpose of judicial review." (emphasis added).

1999

Prior to 1999, NRS 372.680 permitted an action for a claim for refund to be filed once a refund claim had been filed with the Department without an administrative proceeding. The legislature changed the language and it now reads in pertinent part: "Within 90 days after a *final decision* upon a claim filed pursuant to this chapter is rendered by the *Nevada Tax Commission*, the claimant may bring an *action* against the Department on the grounds set forth in the claim" NRS 372.680 (emphasis added). "Thus, [the legislation] contemplates a change from past practice where *refund claims* upon passage of [the legislation] will now be subject to the requirements of Chapter 233B of the Nevada Revised Statutes." Memorandum dated May 7, 1999 to Assemblyman Bernie Anderson, Chairman, Assembly Committee on Judiciary from Norm Azevedo, Sr. Deputy Attorney General (emphasis added).

The Legislative history of NRS 372.680 is telling of the Legislatures' intent when enacting NRS 368A.290 because by using the same language that was used in NRS 372.680 the Legislature intended that NRS 368A.290 have the same meaning as NRS 372.680. *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 575, 580-581, 97 P.3d 1132, 1135-1136 (2004) (stating, "[w]hen a legislature adopts language that has a particular [] meaning or history, rules of statutory construction also indicate that a court may presume that the legislature intended the language to have meaning consistent with previous interpretations of the language). Thus, the "action" to be pursued through NRS 368A.290 is a petition for judicial review.

...

...

...

2. THE LEGISLATURE HAS STATED THAT THROUGH HARMONIZATION OF NRS 372.680 AND CHAPTER 233B OF THE NRS ITS INTENT WAS THAT THE ACTION AVAILABLE TO A TAXPAYER THROUGH NRS 372.680 IS A JUDICIAL REVIEW PURSUANT TO 233B.130.

In its amicus brief filed in Case #55228 currently pending before the Nevada Supreme Court, the Nevada Legislature stated its intent with regard to NRS 372.680. Nevada Legislature's Amicus Curiae Brief attached hereto as Ex. "G". The Legislature explains that by harmonizing the statutes its intent is clear from the plain language. It's further explained that the Legislature intended that the action provided for by NRS 372.680 is a judicial review pursuant to NRS 233B.130. As previously established, NRS 368A.290 has the same meaning as NRS 372.680 and therefore the action provided for by NRS 368A.290 is a judicial review pursuant to NRS 233B.130. Plaintiffs have failed to timely file a petition for judicial review pursuant to NRS 233B.130.

3. FAILURE TO FILE A TIMELY PETITION FOR JUDICIAL REVIEW DEPRIVES THIS COURT OF JURISDICTION TO HEAR THIS MATTER

NRS 233B.130 states in pertinent part:

1. Any party who is:
 - (a) Identified as a party of record by an agency in an administrative proceeding; and
 - (b) Aggrieved by a final decision in a contested case, is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy.
 2. Petitions for judicial review must:
 - (a) Name as respondents the agency and all parties of record to the administrative proceeding;
 - (b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county where the agency proceeding occurred; and
 - (c) Be filed within 30 days after service of the final decision of the agency.
- Cross-petitions for judicial review must be filed within 10 days after service of a petition for judicial review.

The final decision by the NTC was dated October 12, 2007. Thirty days from the date of service would have been on or about November 11, 2007. The Case 2 Plaintiffs filed their complaint on January 9, 2008 and even if the complaint was deemed to be a petition for judicial review it was still undeniably filed after the 30 day period for filing a petition for judicial review. NRS 233B.130(2)(c). The sole means of this court taking action in this administrative case or reviewing the final decision by the NTC was by way of a petition for judicial review. NRS 233B.130(6). No petition for judicial review was filed. The failure to file a petition for judicial review in a timely manner is jurisdictional. *Kame v. Employment Sec. Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 67 (1989). The Nevada Supreme Court in *Kame* wrote:

When a party seeks judicial review of an administrative decision, strict compliance with the statutory requirements for such review is a precondition to jurisdiction by the court of judicial review. . . Noncompliance with the requirements is grounds for dismissal of the appeal...Thus, the time period for filing a petition for judicial review of an administrative decision is mandatory and jurisdictional...In the past, this court has upheld the dismissal of appeals for failure to timely commence them.

Id. at 25, 68 (citations omitted).

Judicial review was the only means for the Case 2 Plaintiffs to access this court for action on the claims for refund heard by the NTC. Instead, the Case 2 Plaintiffs filed a civil complaint which should be dismissed.

C. CASE 2 IS BARRED BY THE DOCTRINE OF ADMINISTRATIVE RES JUDICATA

Nevada has adopted a general rule of administrative res judicata. *Britton v. City of N. Las Vegas*, 106 Nev. 690, 799 P.2d 568 (1990). The Nevada Supreme Court in *Britton* identifies three inquiries that are pertinent to the application of administrative res judicata. *Id.* at 692-693; 569-570. The inquiries are "(1) whether the issue decided in the prior adjudication was identical to the issue presented in the action in question; (2) whether there was a final judgment on the merits; and (3) whether the party against whom the judgment is asserted was a party, or in privity with a party to the prior adjudication." *Id.*

...

1 If the factors from *Britton* are applied to the facts alleged in the Complaint, it is clear
2 administrative res judicata applies. The first factor is whether the issue decided in the prior
3 adjudication was identical to the issue presented in the action in question. The issues
4 decided in the previous action are outlined in the NTC's Decision. This court, in reviewing the
5 action of the NTC, is limited to the record that was before the NTC. NRS 233B.135(1)(b).
6 Since the court is so limited, the issues decided by the NTC are identical to the issues that
7 are properly before this court.

8 The second factor is whether there was a final decision on the merits. Pursuant to
9 NRS 360.245(5), decisions of the NTC are considered final decisions for purposes of judicial
10 review. Moreover, because no petition for judicial review has been filed and the date for filing
11 one has passed, the decision by the NTC is final.

12 The final factor is whether the party against whom the judgment is asserted was a
13 party, or in privity with a party, to the prior adjudication. The NTC's Decision in the
14 administrative proceeding below was against the Case 2 Plaintiffs. The judgment is being
15 asserted against the Case 2 Plaintiffs in the case at hand.

16 The Court further addressed the doctrine of administrative res judicata in a case that,
17 like the present case, related to a request for refund of taxes. *Campbell v. Department of*
18 *Taxation*, 108 Nev. 215, 827 P.2d 833 (1992). The facts in *Campbell* were similar in many
19 ways to the current case. Like the current case there had been an unsuccessful appeal
20 before the NTC. *Campbell* at 216, 834. The taxpayer in *Campbell* also failed to file a petition
21 for judicial review and instead filed a separate action pursuant to NRS 372.680. The district
22 court judge granted summary judgment in favor of the Department on the grounds that "all of
23 the elements necessary to apply the doctrine of res judicata to the decision of the
24 administrative tribunal . . . exist in this case." *Campbell* at 218, 835 (quoting the district court
25 decision). A significant difference between *Campbell* and the current case is that in *Campbell*
26 the taxpayer did not pay the taxes until after he had been through the administrative
27 procedure, whereas in the current case the Case 2 Plaintiffs remitted the taxes prior to going
28 . . .

1 through the administrative procedure. See NTC Decision attached hereto as Ex. "A"; see also
2 Case 2 Amended Complaint, p. 8, paras. 33 and 34.

3 The Nevada Supreme Court, while reaffirming the doctrine of administrative res
4 judicata, concluded that there were unique circumstances involved in *Campbell* that justified a
5 different result than granting summary judgment.⁸ The Court remanded the case for judicial
6 review after making clear that "pursuant to *Britton*, the Campbells do not have a right to a
7 second evidentiary hearing." *Campbell* at 219, 836 (emphasis added).

8 Because the Case 2 Plaintiffs' failed to file a petition for judicial review and because
9 there does not exist any of the circumstances that were unique to the *Campbell* case, the
10 Case 2 Plaintiffs' Complaint should be dismissed pursuant to the doctrine of administrative
11 res judicata.

12 1. CASE 2 IS BARRED BY THE DOCTRINE OF CLAIM PRECLUSION

13 The Court in *Five Star Capital Corp. v. Ruby*, __ Nev. __, 194 P.3d 709, 711 (2008)
14 does not specifically discuss administrative res judicata, but does discuss in depth the term
15 res judicata and breaks down the difference between claim preclusion and issue preclusion.
16 The *Five Star* Court wrote:

17 In addressing claim preclusion the *Tarkanian* court stated that the
18 doctrine 'is triggered when a judgment is entered. A valid and final
19 judgment on a claim precludes a second action on that claim or
20 any part of it.' Further, the court recognized that the claim
preclusion doctrine 'embraces all grounds of recovery that were
asserted in a suit, as well as those that could have been asserted,
and thus has a broader reach' than the issue preclusion doctrine.

21 *Id.* at 711. The Court then set forth the test for claim preclusion as follows:

22 We begin by setting forth the three-part test for determining
23 whether claim preclusion should apply: (1) the parties or their
24 privies are the same, (2) the final judgment is valid, and (3) the
subsequent action is based on the same claims or any part of
25 them that were or could have been brought in the first case.
These three factors in varying language, are used by the majority

26 ...

27 ⁸ Those unique circumstances included payment of the taxes under protest in reliance on instructions from the
28 Department, which limited their subsequent remedies. At the time the statute allowed an action to be filed after
the initial denial of a refund by the Department. As noted above in 1999 the statute was amended to require
denial by the Tax Commission prior to filing an action for judicial review in district court.

1 of the state and federal courts. This test maintains the well-
2 established principle that claim preclusion applies to all grounds of
3 recovery that were or could have been brought in the first case.

4 *Id.* at 713.

5 Applying those factors to the current case it is clear that the parties, the six Case 2
6 Plaintiffs and the Department, are the same in the administrative proceeding below and in the
7 Complaint. As argued above, the judgment by the NTC is now final.

8 The third factor is whether the subsequent action is based on the same claims or any
9 part of them that were or could have been brought in the first case. NRS 233B.130 states
10 that a party may file for judicial review if they are "[a]ggrieved by a final decision in a
11 contested case." NRS 233B.130(1)(b). The court in an action for judicial review is limited to
12 the record before the agency. NRS 233B.135(1)(b). NRS 368A.290(1) states a taxpayer may
13 file an action "after a final decision upon a claim filed pursuant to this chapter is rendered by .
14 . . [t]he Nevada Tax Commission, the claimant may bring an action against the Department on
15 the grounds set forth in the claim." So, pursuant to NRS 233B.130, NRS 233B.135 and NRS
16 368.290, the Case 2 Plaintiffs may not bring any claims that have not been actually decided
17 below by the NTC. All the factors are met and this matter should be dismissed based on the
18 doctrine of claim preclusion.

19 **2. CASE 2 IS BARRED BY THE DOCTRINE OF ISSUE PRECLUSION**

20 The *Five Star* case also addressed the doctrine of issue preclusion. The Court
21 indicated the following factors were necessary for the application of issue preclusion:

- 22 (1) The issue decided in the prior litigation must be identical to the
23 issue presented in the current action;
- 24 (2) The initial ruling must have been on the merits and have
25 become final; ...
- (3) The party against whom the judgment is asserted must have
been a party or in privity with a party to the prior litigation and;
- (4) The issue was actually and necessarily litigated.

26 *Five Star* at 713.

27 The NTC, in its final decision, affirmed the Department's denial of the refund claims
28 filed by the six Case 2 Plaintiffs. See NTC's Decision attached hereto as Ex. "A". In their
Amended Complaint, the six Case 2 Plaintiffs state that they filed requests for refund

pursuant to NRS 368A.260 alleging that the LET is unconstitutional, that the requests for refund were denied by the Department, and that the NTC affirmed the denials of the requested refunds. Case 2 Amended Complaint, pp. 8-9, paras. 34-38. The Case 2 Plaintiffs essentially request a judicial determination that the LET is unconstitutional and that they are entitled to a refund. Amended Complaint, pp. 16 -17, paras. A-E. The issues raised by the Case 2 Plaintiffs in their Amended Complaint were raised and adjudicated in the administrative proceedings and the hearing presided over by the NTC. See NTC's Decision attached hereto as Ex. "A". Because the Case 2 Plaintiffs' issues raised in the Amended Complaint were raised by the claims for refund filed by the Case 2 Plaintiffs and adjudicated by the NTC, they were actually and necessarily litigated in the administrative proceedings below. The NTC's decision is final and the Case 2 Plaintiffs should not be permitted to re-litigate matters that have been adjudicated and finally decided.

D. THE CASE 1 CLAIM FOR DAMAGES PURSUANT TO 42 U.S.C. 1983 MUST BE DISMISSED.

The Case 1 claim for damages pursuant to 42 U.S.C. 1983 must be dismissed because none of the Defendants are "persons" for purposes of the statute. Section 1983 reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C.A. § 1983

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated; and, (2) that the

1 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487
2 U.S. 42, 48 (1988). The State, its agencies, and its officials acting in their official capacities,
3 are not "persons" within the meaning of § 1983. *Will v. Michigan Dept. of State Police*, 491
4 U.S. 58, 71, 109 S.Ct. 2304, 2312 (1989).

5 The Department, the NTC, the State Board of Examiners and Michelle Jacobs, in her
6 official capacity only, were sued under Section 1983 for allegedly enforcing an
7 unconstitutional tax statute. However, none of the parties named as Defendants are
8 "persons" within the meaning of Section 1983.

9 E. THE ONLY REMAINING ISSUE IS THE "FACIAL CHALLENGE"
10 REGARDING THE CONSTITUTIONALITY OF THE LET.

11 The six Case 2 Plaintiffs exhausted their administrative remedies but failed to pursue a
12 petition for judicial review. Because they failed to timely file a petition for judicial review, the
13 Case 2 Plaintiffs allowed the NTC's decision to become final and lost the ability to have this
14 court review the NTC's decision which affirmed the Department's denial of the refund claims.
15 In addition, by abandoning the statutory right to judicial review, the Case 2 Plaintiffs lost the
16 ability to pursue an "as applied" challenge regarding the constitutionality of the LET. See
17 *Malecon Tobacco, LLC, et al. v. Department of Taxation*, 118 Nev. 837, 841, 59 P.3d 474
18 (2002) (holding, "we conclude that the Taxpayers must exhaust their administrative remedies
19 before filing a complaint in the district court. Since they did not exhaust their administrative
20 remedies, the district court properly dismissed the complaint for lack of subject matter
21 jurisdiction."); see also *Public Serv. Comm'n of Nev. v. Eighth Judicial Dist. Court of the State*
22 *of Nev., et al.*, 107 Nev. 680, 684-685, 818 P.2 396, 399 (1991) (providing, "[i]t is well-settled
23 that courts will not entertain a declaratory judgment action if there is pending, at the time of
24 the commencement of the action for declaratory relief, another action or proceeding to which
25 the same persons are parties and in which the same issues may be adjudicated." (citation
26 omitted)). In the *Public Serv. Comm'n* case, the Nevada Supreme Court further stated:

27 Further, a court will refuse to consider a complaint for declaratory
28 relief if a special statutory remedy has been provided. (citation
omitted). A separate action for declaratory judgment is not an

appropriate method of testing defenses in a pending action, [citation omitted], nor is it a substitute for statutory avenues of judicial and appellate review. We conclude, therefore, that the district court lacks jurisdiction to entertain the utilities' complaint for declaratory and injunctive relief.

107 Nev. at 685.

The complaint filed by the Case 1 Plaintiffs was amended to include an "as applied" challenge. However, the Case 1 Plaintiffs did not exhaust their administrative remedies before filing the complaint and therefore, according to Nevada law, have no right to pursue an "as applied" constitutional challenge. See *Malecon Tobacco, LLC*, 118 Nev. 841 (holding that when an "as applied" constitutional challenge involves a factual evaluation exhaustion of administrative remedies is required). The Case 1 Plaintiffs have persistently argued for discovery and for more and more discovery and, in doing so, are establishing the need for a factual evaluation which triggers the exhaustion of administrative remedies requirement. *Id.* Consequently, the "as applied" challenge in Case 1 must be dismissed because the Case 1 Plaintiffs did not exhaust their administrative remedies before filing their Complaint in this court. *Id.* (requiring exhaustion of administrative remedies before the filing of a complaint).

In addition, as previously set forth, the claim for damages pursuant to 42 U.S.C. 1983 must be dismissed.

Between the two cases, the only possible remaining claim is the claim for declaratory relief regarding the "facial challenge" to the constitutionality of the LET. In *Malecon Tobacco, LLC* case, the Nevada Supreme Court indicated that a "facial challenge" to the constitutionality of a statute is an exception to the exhaustion of administrative remedies requirement. 118 Nev. at 841 (explaining that a "facial challenge" will not involve a factual evaluation); see also *Public Serv. Comm'n*, 107 Nev. at 684 (stating, "courts will not entertain a declaratory judgment action if there is pending, at the time of the commencement of the action for declaratory relief, another action or proceeding to which the same persons are parties and in which the same issues may be adjudicated" (citation omitted)). Thus, if the court does not dismiss Case 2 for failure to timely file a judicial review or through application of the principle of res judicata, it must at least dismiss the Case 2 claim for declaratory relief

1 because the Case 1 claim for declaratory relief was pending at the time that Case 2 was
2 commenced seeking declaratory relief. *Public Serv. Comm'n*, 107 Nev. at 684.

3 By filing an original civil action, the Case 2 Plaintiffs are asking this court to preside
4 over the re-litigation of issues that were the subject of administrative proceedings before the
5 Department and the NTC. It would be a prodigious waste of judicial resources to start anew
6 in a case that already has an administrative record and final decision. For the reasons stated
7 above, the Amended Complaints in both Case 1 and Case 2 should be dismissed which
8 means that the "as applied" challenge will be dismissed.

9 Moreover, the Case 2 Plaintiffs had an adequate legal remedy available through an
10 NRS 233B.130 petition for judicial review whereby this court could have reviewed the final
11 decision of the NTC for violations of constitutional or statutory provisions, acting in excess of
12 its authority, unlawful procedure or other error of law. By failing to file a petition for judicial
13 review within the statutory time limit under NRS 233B.130(2)(c), the Case 2 Plaintiffs
14 abandoned their rights to review and allowed the NTC's decision to become final and Case 2
15 must be dismissed.

16 Based on the doctrine of administrative res judicata, claim preclusion and issue
17 preclusion, the Case 2 Plaintiffs are barred from re-litigating the refund issues decided by the
18 Department and affirmed by the NTC in its final decision.

19 As set forth above, a party must exhaust administrative remedies in order to pursue an
20 "as applied" challenge to the constitutionality of a statute. Only the original six Case 2
21 Plaintiffs exhausted their administrative remedies. The dismissal of Case 2 is the dismissal
22 of the "as applied" challenge. There can be no "as applied" challenge because none of the
23 Case 1 Plaintiffs exhausted their administrative remedies before filing the complaint.
24 *Malecon Tobacco, LLC*, 118 Nev. 837, 841 (2002).

25 In addition, the Case 1 claim for damages pursuant to 42 U.S.C. 1983 must be
26 dismissed because the Plaintiffs have failed to state a claim in which relief can be granted.

27 ...

28 ...

1 Because the Case 1 Plaintiffs filed the Complaint prior to exhausting their
2 administrative remedies, the only possible remaining issue from both cases is the Case 1
3 claim for declaratory relief on the facial challenge.

4 **CONCLUSION**

5 Based on the foregoing, the Department respectfully requests that this Honorable
6 Court Order the following with respect to cases A533273 and A554790:

- 7 1. The Plaintiffs' claims for refunds are dismissed;
8 2. The Plaintiffs' "as applied" challenges to the LET are dismissed;
9 3. The Plaintiffs' claims for damages pursuant to 42 U.S.C. §1983 are dismissed;

10 and

11 Respectfully submitted this 25th day of January, 2011.

12 Respectfully submitted:

13 CATHERINE CORTEZ MASTO
14 Attorney General

15 By: 

16 DAVID J. POPE
17 Senior Deputy Attorney General
18 BLAKE A. DOERR
19 Senior Deputy Attorney General
20 VIVIENNE RAKOWSKY
21 Deputy Attorney General
22 Attorneys for Defendants
23
24
25
26
27
28

CERTIFICATE OF MAILING

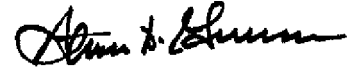
I, hereby certify that on the 25TH day of January, 2011, I served the foregoing **NEVADA DEPARTMENT OF TAXATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. 1983**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
The William H. Brown Law Office, Ltd.
330 S. Third St., Ste. 860
Las Vegas, NV 89101

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

/s/ TRACI PLOTNICK
An employee of Office of Attorney General

1 **ORDR**
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 3 Attorney General
 4 DAVID J. POPE
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 20 Attorneys for Nevada Department of Taxation



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

22 NEVADA DEPARTMENT OF TAXATION,)
 23 NEVADA TAX COMMISSION, NEVADA)
 24 STATE BOARD OF EXAMINERS, and)
 25 MICHELLE JACOBS, in her official capacity)
 26 only,)

Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

ORDER

...

...

...

04-01-1121-0000-0000

1 K-KEL, INC., d/b/a *Spearmint Rhino*)
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a
5 *Crazy Horse Too Gentlemen's Club*; D.
WESTWOOD, INC., d/b/a *Treasures*; and D.I.)
6 FOOD & BEVERAGE OF LAS VEGAS, LLC,
d/b/a *Scores*;

Plaintiffs,

v.

8 NEVADA DEPARTMENT OF TAXATION;
9 NEVADA TAX COMMISSION; and NEVADA
STATE BOARD OF EXAMINERS,

Defendants.

Case No. 08A554970
Dept. No. XI

11 Defendants' Motion for Partial Summary Judgment on the Plaintiffs' Claims for Refund
12 and Motion to Dismiss the as Applied Challenge to the Live Entertainment Tax and the Claims
13 for Damages Pursuant to 42 U.S.C. 1983 came on for hearing on March 15, 2011;

14 David J. Pope, Senior Deputy Attorney General, Blake A. Doerr, Senior Deputy
15 Attorney General, and Vivienne Rakowsky, Deputy Attorney General appeared on behalf of
16 the Defendants; William J. Brown, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the
17 Plaintiffs;

18 The Court having considered the papers and pleadings as well as the oral argument
19 hereby orders:

20 Defendants' Motion for Partial Summary Judgment on the Plaintiffs' Claims for Refund
21 and Motion to Dismiss the as Applied Challenge to the Live Entertainment Tax and the Claims
22 for Damages Pursuant to 42 U.S.C. 1983 is GRANTED IN PART and DENIED IN PART.

23 With regard to all of Plaintiffs' claims asserted under 42 U.S.C. 1983, Defendants'
24 motion to dismiss is GRANTED and all claims asserted under 42 U.S.C. 1983 are hereby
25 DISMISSED;

26 With regard to Defendants' motion to dismiss and/or for partial summary judgment on
27 the basis that Case 1 should be limited to a facial challenge because none of the Case 1
28 Plaintiffs exhausted administrative remedies before commencing Case 1 and therefore Case

1 1 should not contain an "as applied" challenge, Defendants' motion is GRANTED IN PART
2 AND DENIED IN PART as the claim for declaratory relief in Case 1 is now consolidated with
3 the claim for declaratory relief in Case 2 (these claims for declaratory relief are not the claims
4 for declaratory relief asserted under 42 U.S.C. 1983, as all claims asserted under 42 U.S.C.
5 1983 have been dismissed as previously indicated in this order);

6 With regard to the remainder of Defendants' motion to dismiss and/or for partial
7 summary judgment, Defendant's motion is DENIED WITHOUT PREJUDICE.

8 IT IS SO ORDERED.

9 DATED this 5th day of April, 2011.

10
11
12 
DISTRICT COURT JUDGE 

13 Respectfully submitted:

14 CATHERINE CORTEZ MASTO
15 Attorney General

16 By: 

17 David J. Pope
18 Senior Deputy Attorney General
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Attorney General's Office
555 E. Washington, Suite 3000
Las Vegas, NV 89101

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[Location : District Court Civil/Criminal](#) [Help](#)
REGISTER OF ACTIONS**CASE No. 06A533273**
**Little Darlings Of Las Vegas LLC, K-Kel Inc, et al vs Nevada Dept
Of Taxation, Olympus Garden Inc, et al**
§
§
§
§
§
§
Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**
PARTY INFORMATION**Lead Attorneys****Defendant Jacobs, Michelle****Blake A. Doerr***Retained*

702-486-3416(W)

Defendant Nevada Dept Of Taxation**Blake A. Doerr***Retained*

702-486-3416(W)

Defendant Nevada State Board Of Examiners**Blake A. Doerr***Retained*

702-486-3416(W)

Defendant Nevada Tax Commission**Blake A. Doerr***Retained*

702-486-3416(W)

**Doing Crazy Horse Too Gentlemen's Club
Business As**
Dominic P. Gentile*Retained*

7023860066(W)

**Doing Deja Vu Showgirls
Business As**
William H. Brown*Retained*

702-474-4222(W)

**Doing Little Darlings
Business As**
Dominic P. Gentile*Retained*

7023860066(W)

Doing Scores**Dominic P. Gentile****Appellants' Appendix****Page 1773****SUPP.ROA01634**

Business As*Retained*

7023860066(W)

Doing Business As **Spearmint Rhino Gentlemen's Club****~~Dominic P. Gentile~~***Retained*

7023860066(W)

Doing Business As **Treasures****~~Dominic P. Gentile~~***Retained*

7023860066(W)

Plaintiff **D I Food And Beverage Of Las Vegas LLC****William H. Brown***Retained*

702-474-4222(W)

Plaintiff **D Westwood Inc****William H. Brown***Retained*

702-474-4222(W)

Plaintiff **Deja Vu Showgirls Of Las Vegas LLC****William H. Brown***Retained*

702-474-4222(W)

Plaintiff **K-Kel Inc****William H. Brown***Retained*

702-474-4222(W)

Plaintiff **Little Darlings Of Las Vegas LLC****William H. Brown***Retained*

702-474-4222(W)

Plaintiff **Olympus Garden Inc****William H. Brown***Retained*

702-474-4222(W)

Plaintiff **Power Company Inc****William H. Brown***Retained*

702-474-4222(W)

Plaintiff **Shac LLC**
Doing Business As **Sapphire****William H. Brown***Retained*

702-474-4222(W)

Appellants' Appendix**Page 1774****SUPP.ROA01635**

EVENTS & ORDERS OF THE COURT

05/27/2011 **Motion to Reconsider** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)

05/27/2011, 06/24/2011

Pltf's Motion to Reconsider and Clarify Order

Minutes

05/27/2011 3:00 AM

- Given the supplemental filing by the AG's office, counsel for plaintiff DIRECTED to respond within ten days. Matter continued to 6/17/11 chambers calendar. CONTINUED TO: 6/17/11 (CHAMBERS)

06/17/2011 3:00 AM

06/24/2011 3:00 AM

- A533273 and A554970 The Court, having reviewed Motion for Reconsideration and the related briefing and being fully informed, GRANTS the motion IN PART. The Order is to be amended to reflect dismissal only of damages claims. Counsel for Plaintiff is directed to submit a Proposed Order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order. Based upon the supplemental briefing the Court is inclined to reconsider the prior motion to dismiss related to the petition for judicial review issue based upon the recent Nv Sup Ct decision in Southern California Edison v. First Judicial District Court, 127 Nev Adv. Op. 22 (May 26, 2011). Counsel for the State to renotice the motion so an appropriate record can be made. CLERKS NOTE: A copy of this minute order also placed in A554970. A copy of this minute order placed in Regional Justice Center attorney folders for William Brown, Esq. (TURCO & DRASKOVICH) and for Blake Doerr, Esq. and Vivienne Rakowsky, Esq. (DEPUTY ATTORNEY GENERAL, 555 E. Washington Ave., #3900, Las Vegas, NV 89101) (DS 7/1/11).

[Return to Register of Actions](#)

COURTESY
COPY

DCRR

WILLIAM H. BROWN, ESQ.

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Facsimile: (517) 886-6565

Co-Counsel for Plaintiffs

**Admitted Pro Hac Vice*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DEJA VU SHOWGIRLS OF LAS VEGAS,
L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE
DARLINGS OF LAS VEGAS, L.L.C., d/b/a
Little Darlings, 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*, and D.I. FOOD &
BEVERAGE OF LAS VEGAS, LLC, d/b/a
Scores,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION,
NEVADA TAX COMMISSION, NEVADA
STATE BOARD OF EXAMINERS, and
MICHELLE JACOBS, in her Official Capacity
Only,

Defendants.

Case No.: A533273
Dept. No.: IX

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

RECORDED
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DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: November 13, 2009
Hearing Time: 9:30 a.m.

Attorney for Plaintiff: William H. Brown, Esq. of SULLIVAN BROWN; and Bradley J. Shafer, Esq., of SHAFER & ASSOCIATES, P.C. (michigan counsel)

Attorney for Defendant: Blake A. Doerr, ~~Deputy Attorney General~~,
Vivienne Rakowsky, Esq., ~~Deputy Attorney General~~, and
David J. Pope, ~~Sr. Deputy Attorney General~~, of
THE OFFICE OF THE ATTORNEY GENERAL

I.

FINDINGS

After review of the pleadings submitted regarding Plaintiffs' Motion to Compel Discovery of Defendants, and the arguments presented before me during the November 13, 2009, hearing, I find that the Defendants may not be compelled to produce confidential taxpayer information but must produce certain documents pursuant to my recommendations below.

II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Plaintiff's Motion to Compel Answers to the Interrogatories and to produce un-redacted documents requested by the Plaintiffs be granted in part and denied in part.

IT IS FURTHER RECOMMENDED that within ten (10) days of the entry of the Court's order, the Nevada Department of Taxation shall provide a document that contains (for each tax year from 2003 until the present) a list of businesses that paid Live Entertainment Taxes, identified only by category, and the amount of Live Entertainment Tax each category of business paid. The categories should include, for purposes of illustration only: one time or annual events; sporting events; nightclubs; promoters; performing arts centers; raceways; and gentlemen's clubs. The document should identify whether each business paid the 5% or the 10% Live Entertainment Tax.

1 IT IS FURTHER RECOMMENDED that within ten (10) days of the entry of this Court's
2 order, the Nevada Department of Taxation shall provide a document (for each tax year from
3 2003 until the present) identifying which percentage of the total Live Entertainment Tax
4 collected by the Department of Taxation for that year was paid by gentlemen's clubs
5 presenting adult entertainment. The document shall provide separate percentages for

6 gentlemen's clubs paying the 5% and 10% Live Entertainment Tax. *of equal to by*
the parties as this was NOT part of the Recommendations at

7 IT IS FURTHER RECOMMENDED that should any of the Plaintiffs wish to allow the
8 Defendants to divulge any of their privileged and confidential taxpayer information, they must
9 provide a written release to the Department which permits such disclosure.

10 IT IS FURTHER RECOMMENDED that no sanctions will be imposed in regard to
11 Plaintiffs' motion, and the parties shall bear their own costs.

12 ~~IT IS FURTHER RECOMMENDED that should Defendants comply with this Report and~~
13 ~~Recommendation, the Court should not strike any portion of their Opposition to Plaintiffs'~~
14 ~~Motion for Preliminary Injunction.~~ *BD*

15 ~~IT IS FURTHER RECOMMENDED that the Court should not strike any portion of~~
16 ~~Plaintiffs' Motion to Compel.~~ *BD*

17 IT IS FURTHER RECOMMENDED that the remainder of Plaintiffs' Motion to Compel
18 should be denied. *Defendants' Counter motion to Strike was withdrawn. BD*

19 The Discovery Commissioner, having met with counsel for the parties, having
20 discussed the issues noted above and having reviewed any materials proposed in support
21 thereof, hereby submits the above recommendations.

22 DATED this 22 day of February, 2010.

23
24 *BD*
25 DISCOVERY COMMISSIONER

26
27
28 Appellants' Appendix

SUPP. ROA 1839

However, the percentage of the LET tax paid by Adult entertainment Page 1778 must be disclosed. If this information is either 5% or 10% for this information must be disclosed. BD

Submitted by:
SULLIVAN BROWN



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Facsimile: (702) 336-9371
Counsel for Plaintiffs

Approved as to form and content by:
OFFICE OF THE ATTORNEY GENERAL


Blake A. Doerr, Deputy Attorney General

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

Pursuant to E.D.C.R. 2.34(f), an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the Clerk of the Court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office.

A copy of the foregoing Discovery Commissioner's Report was:

X Mailed to the Plaintiffs/Defendants at the following address on the 23 day of Feb., 2010:

~~Blake A. Doerr, Esq.
Vivienne Rakowsky, Esq.
David J. Pope, Esq.
Office of the Attorney General
Deputy Attorney General
555 East Washington Ave., Ste. 3900
Las Vegas, NV 89135~~

~~WILLIAM H. BROWN, ESQ.
SULLIVAN BROWN
330 South Third Street, Ste. 860
Las Vegas, NV 89101~~

~~Bradley J. Shafer
SHAFFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110~~

X Placed in the folder of Plaintiff's & Defendant's counsel in the Clerk's office on the 23 day of Feb., 2010.

STEVEN D. GRIERSON

By: Jennifer Lott
Deputy Clerk

Case Name: Deja Vu Showgirls of Las Vegas, LLC, et al. v. Nevada Department of Taxation, et al.

Case Number: A533273

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

- The parties having waived the right to object thereto,
- No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),
- Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

- IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.
- IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner (attached hereto).
- IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for _____, 2010, at ____:____ a.m.

DATED this ____ day of _____, 2010.

DISTRICT COURT JUDGE

1 CASE NO. A648894
2 DEPT. NO. 30
3 DOCKET U

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 * * * * *

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

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APPEARANCES:

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For the Respondents:

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* * * * *

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.

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MS. RAKOWSKY: Thank you.

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

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

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

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

(Thereupon, the deposition
concluded at Time)

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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


CLERK OF THE COURT

NEOJ
CATHERINE CORTEZ MASTO
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DISTRICT COURT

CLARK COUNTY, NEVADA

K-KEL, INC., d/b/a Spearmint Rhino
Gentlemen's Club; OLYMPUS GARDEN,
INC., d/b/a Olympic Garden; SHAC, L.L.C.,
d/b/a Sapphire; 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

...

...

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

DATED this 2nd day of February, 2012.

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: /S/ VIVIENNE RAKOWSKY
DAVID J. POPE
Senior Deputy Attorney General
BLAKE A. DOERR
Senior Deputy Attorney General
VIVIENNE RAKOWSKY
Deputy Attorney General
Attorneys for Defendants

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:

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Las Vegas, NV 89148

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Attorneys for Shac LLC, dba Sapphire (only)

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

EXHIBIT “A”

Appellants' Appendix
SUPP.ROA01660

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 _____
11 DISTRICT COURT JUDGE
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EXHIBIT A

EXHIBIT A



KENNY C. GUINN
Governor

BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK
Executive Director

DEPARTMENT OF TAXATION

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Phone: (702) 486-2300

Fax: (702) 486-3377

MEMORANDUM

Date: March 14, 2005

To: Chuck Chinnock

From: Marian Henderson

CC: Lynne Knack

Subject: Request for analysis of revenue impact from making changes in the LET

A request was made to analyze the fiscal impact of making changes to the Live Entertainment Tax (LET). Two scenarios were to be explored. A summary of the analysis of the scenarios is as follows:

- 1) Eliminate the 300 seats threshold: This change would cause the inclusion of many of the smaller venues which are now exempt from the tax. Businesses that would now be subject to the tax would specifically include bars, nightclubs and gentlemen's clubs with a seating capacity of fewer than 300 patrons. The fiscal impact is difficult to estimate, as not all bars and nightclubs provide live entertainment, nor do they charge a cover charge for admission. We also are not able to determine whether the live entertainment is provided on a regular, periodic or one time basis. Approximately 150 businesses which fall under the 300 seat threshold responded to our initial request for information which was sent to all potential taxpayers, including approximately 20 gentlemen's clubs. Since the gentlemen's clubs remit a much higher per-capita dollar amount of tax, two separate financial analyses were conducted. Using the seating capacities and per-capita tax collected by the existing taxpayers, we estimate that approximately \$1,614,600 in tax annually may be generated by the bars and nightclubs. In addition, using the same per-capita analysis of the existing gentlemen's clubs which currently have a seating capacity of fewer than 300 patrons, we estimate that an additional \$4,197,900 may be generated. The estimated total additional revenue from lowering the seating threshold is approximately \$5,812,500. This would be an increase of approximately 56% over the current revenue received.
- 2) Eliminate the 300 seats threshold and the 10% tax on food, beverage and merchandise: Approximately two-thirds of the existing tax which is collected is from the 10% tax on food, beverage and merchandise. For the first seven months of fiscal year 2005, \$2,053,788 in tax was collected on food, beverage and merchandise of the total tax paid of \$3,128,041. By eliminating this tax, approximately \$3,520,800 would be lost annually. Using the same per-capita figures from the first example, the estimated additional revenue from bars and nightclubs which seat fewer than 300 patrons would be approximately \$603,900. The estimated additional revenue from gentlemen's clubs would be approximately \$3,470,840. The net estimated total additional revenue from eliminating the seating threshold and the 10% tax on food, beverage and merchandise is approximately \$553,900, or an increase of about 4% over the current revenue being received.

The following is a breakdown from calendar year 2004 of Live Entertainment Tax revenue which was received from all taxpayers:

- [REDACTED] from one time or annual events
- [REDACTED] from sporting events
- [REDACTED] from nightclubs
- [REDACTED] from promoters
- [REDACTED] from performing arts centers
- [REDACTED] from raceways
- [REDACTED] from gentlemen's clubs
- Total tax received \$8,913,795

For the first seven months of fiscal year 2005, \$4,306,370 has been collected to date. The economic forum projection for this fiscal year is \$8,700,000.

EXHIBIT B

EXHIBIT B

LIVE ENTERTAINMENT TAX NUMBER OF PAYMENTS

Month	<7500 Seats	>7500 Seats	Total
January 2004	15	9	24
February 2004	17	11	28
March 2004	16	7	23
April 2004	15	7	22
May 2004	18	6	24
June 2004	24	5	29
July 2004	14	4	18
August 2004	17	5	22
TOTAL	136	54	190

LIVE ENTERTAINMENT TAX PAYMENTS

Month	<7500 Seats	>7500 Seats	Total
January 2004	461,252	136,995	598,247
February 2004	583,850	83,592	667,442
March 2004	596,305	301,431	897,736
April 2004	538,718	264,224	802,942
May 2004	605,196	309,735	914,931
June 2004	443,083	21,487	464,569
July 2004			-
August 2004			-
TOTAL	3,228,404	1,117,464	4,345,868

EXHIBIT C

EXHIBIT C

**NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX UPDATE REQUEST**

PERMIT NO.
REPLY BY: December 19, 2003

Please return this form in the
Enclosed envelope to:
Nevada Department of Taxation
1550 E. College Parkway Ste 115
Carson City, NV 89706

The 2003 Legislature ended their special session approving SB8, sections 64 to 100, which require enactment of a tax on admissions and cover charges to businesses providing live entertainment. This tax will be administered by two state agencies, the Gaming Control Board for licensed gaming establishments and the Department of Taxation for all other taxpayers. The Live Entertainment Tax (LET) is effective January 1, 2004. It is a two tiered tax, with a 10% tax rate applicable to admission charges and cover charges, as well as to sales of food, refreshments, and merchandise (in addition to sales tax) for live entertainment occurring in facilities with maximum seating capacity of at least 300 and less than 7,500; and a 5% tax rate on admission charges and cover charges only for live entertainment occurring in facilities with maximum seating capacity of 7,500 or more. A return with detailed instructions for filing the Live Entertainment Tax will be sent in early February 2004 to the mailing address indicated.

At this time, the Department of Taxation will not be able to accommodate electronic filing. **Do not** combine the payment of the Live Entertainment Tax with your payment of Sales/Use taxes. There is no registration fee for Live Entertainment Tax.

To assist the Department of Taxation in administering the Live Entertainment Tax and registering those taxpayers that are not licensed gaming establishments providing live entertainment, please provide the following information. If this notice was incorrectly sent to you, please forward it to the appropriate person for completion.

Maximum Seating Capacity is the maximum occupancy of the live entertainment facility as determined by the State Fire Marshal, or local governmental agency that has the authority to determine maximum occupancy of the facility. (Please check appropriate box and fill in "maximum occupancy" information):

1. _____ Maximum occupancy is less than 300 patrons. Maximum Occupancy: _____. Please indicate how maximum occupancy was determined, State Fire Marshal, or local governmental agency _____.
(DOES NOT REQUIRE LIVE ENTERTAINMENT TAX REGISTRATION).

2. _____ Maximum occupancy is 300 to 7,499 - 10% tax rate applicable to all admissions and cover charges, merchandise, food and refreshments sold during live entertainment status. Maximum Occupancy _____. Please indicate how maximum occupancy determined, State Fire Marshal, or local governmental agency _____.

3. _____ Maximum occupancy is 7,500 or more -5% tax rate applicable to admissions and cover charges only. Maximum Occupancy _____. Please indicate how maximum occupancy determined, State Fire Marshal, or local governmental agency _____.

4. _____ Already licensed for Live Entertainment Tax with Nevada Gaming Control Board. Please provide Live Entertainment Tax Gaming License No. _____.

Location of business records for audit purposes.

Address _____

City _____ State _____ Zip _____

Owners/Officers _____ Owners/Officers _____

Owners/Officers _____ Owners/Officers _____

Federal Identification Number (Please enter without dashes) _____

State Business License Number-if different from permit no. above (Please enter without dashes)

Email Address _____

Signature _____ Date _____

Please Print Name and Title _____ Phone Number(____) _____

LIVE ENTERTAINMENT TAX UPDATE REQUEST**REPLY BY: December 19, 2003**

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At this time, the Department of Taxation will not be able to accommodate electronic filing. Do not combine the payment of the Live Entertainment Tax with your payment of Sales/Use taxes. There is no registration fee for Live Entertainment Tax.

To assist the Department of Taxation in administering the Live Entertainment Tax and registering those taxpayers that are not licensed gaming establishments providing live entertainment, please provide the following information. If this notice was incorrectly sent to you, please forward it to the appropriate person for completion.

Maximum Occupancy of the live entertainment facility as determined by the State Fire Marshal or local governmental agency that has the authority to determine maximum occupancy of the facility. (Please check appropriate box and fill in "maximum occupancy" information):

1. ☐ Maximum occupancy is less than 300 patrons. Please indicate how maximum occupancy determined, State Fire Marshal, or local governmental agency_____
(DOES NOT REQUIRE LIVE ENTERTAINMENT TAX REGISTRATION).
2. ☐ 300 to 7,499 patrons-10% tax rate applicable to all admissions and cover charges, merchandise, food and refreshments sold during live entertainment status. Please indicate how maximum occupancy determined, State Fire Marshal or local governmental agency_____.
3. ☐ 7,500 or more patrons-5% tax rate applicable to admissions and cover charges only. Please indicate how maximum occupancy determined, State Fire Marshal or local governmental agency_____.
4. ☐ Already licensed for Live Entertainment Tax with Nevada Gaming Control Board.
Please provide Live Entertainment Tax Gaming License No._____.

Business records for audit purposes:

Address _____ City _____ Zip _____

Owners/Officers _____ Owners/Officers _____

Owners/Officers _____ Owners/Officers _____

Federal Identification Number (please enter without dashes) _____

State Business License Number-if different from permit no. above (please enter without dashes) _____

e mail address _____

Signature _____ Date _____

Please Print Name and Title _____ Phone Number(____) _____



EXHIBIT D

EXHIBIT D



KENNY C. GUINN
Governor

BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK
Executive Director

DEPARTMENT OF TAXATION

1550 E. College Parkway
Suite 115

Carson City, Nevada 89706-7937

Phone: (775) 687-4820 • Fax: (775) 687-8302

In-State Toll Free: 800-992-0900

Web Site: <http://tax.state.nv.us>

Clark County Office Building
Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300
Fax: (702) 486-2373

RENO OFFICE

4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 688-1285
Fax: (775) 688-1303

ATTENTION!

ALL CITY AND COUNTY BUSINESS LICENSE DIVISIONS, PARKS AND RECREATION DIVISION, CONVENTION AUTHORITIES AND OTHER TAX EXEMPT NON-PROFIT ORGANIZATIONS

The Department of Taxation would appreciate your assistance in administering the LIVE ENTERTAINMENT TAX, EFFECTIVE JANUARY 1, 2004.

The 2003 Legislature ended their special session approving SB8, sections 64 to 100, which requires that this tax be assessed on admissions and cover charges at certain events which provide live entertainment. This tax will be administered by two state agencies, the Gaming Control Board for licensed gaming establishments and the Department of Taxation for all other taxpayers. The tax is two tiered, with a 10% tax rate applicable to admissions/cover charges, sales of food, refreshments, and merchandise at facilities with maximum seating capacity of at least 300 and less than 7,500; and a 5% tax rate on admissions and cover charges (only) at facilities with maximum seating capacity of 7,500 or more. Maximum seating capacity is defined as the maximum occupancy of the live entertainment facility as determined by the State Fire Marshal, or local governmental agency that has the authority to determine maximum occupancy of the facility. If maximum occupancy has not been determined, it can be designated by required permits or the actual seating capacity of the facility as determined by the Department. It should be noted that this tax is in addition to the sales tax. Live entertainment events exempt from the tax are as follows:

- Events where the proceeds from the admissions/cover charges (sales of merchandise, food and refreshment if applicable) go entirely to a nonprofit organization.
- Events where the proceeds from the admissions/cover charges are donated to a nonprofit organization by another person who is not a nonprofit organization, even if the contract (for the event) allows a person other than the nonprofit organization to sell goods and services at the event
- Boxing contests or exhibitions which can be defined as "unarmed combat" pursuant to NRS 467.0107.

Businesses and individuals who may be subject to this tax will need to register with the Department of Taxation. Likely applicants include those who are renting or leasing facilities such as arenas, parks, theatres, amphitheatres, convention and event centers, stadiums, outdoor areas etc. and/or those who obtain permits and licenses from you for events featuring live entertainment. Please provide such individuals with a copy of the attached registration forms and information sheet. To print additional copies and information visit the Department's website at: [HTTP://TAX.STATE.NV.US](http://TAX.STATE.NV.US)

News Release
January 7, 2003
Contact: Dino DiCianno
(775) 687-6670

LIVE ENTERTAINMENT TAX NOW IN EFFECT

The Live Entertainment Tax passed by the Special Session of the 2003 legislature became effective on New Years Day, January 1, 2004. This tax is being administered by two State agencies, Gaming Control Board and Nevada Department of Taxation, depending on where the taxable live entertainment takes place, within a licensed gaming establishment or at a place outside a licensed gaming establishment. The tax rate is two tiered depending on the maximum seating capacity of the facility where the live entertainment takes place. If the seating capacity is 300 to 7,499 the live entertainment tax is applicable at a rate of 10 % on the admission or cover charges and all food, refreshment and merchandise sold at the event. If the maximum seating capacity is 7,500 or more, the applicable tax rate is 5% and applies to the admission or cover charges only.

Seating capacity will be defined by the maximum occupancy of the facility determined by the State Fire Marshal or other local government agency. If the seating capacity has not been pre-determined for the facility or event, the maximum occupancy will be designated when permits for the facility or event are obtained. If seating capacity cannot be determined by these methods, the higher tax rate of 10% applies, unless it can be proven otherwise.

Taxpayers responsible for registering with the Department of Taxation and remitting this tax are the owners and operators of non-gaming facilities where live entertainment takes place. If the event takes place on public land or at a public facility, the taxpayer would be considered the person responsible for collecting the taxable receipts.

Exemptions from the Live Entertainment Tax include any events that are provided by or entirely for the benefit of a non-profit religious, charitable, fraternal or other tax exempt organizations qualifying under 26 USC 501(c); boxing events sanctioned under NRS 467; any provided at a non-gaming establishment with seating capacity of less than 300; any provided at a gaming establishment licensed for less than 51 slots and/or less than 6 table games with a seating capacity of less than 300; any live entertainment provided at a trade show; music performed by strolling musicians; and live entertainment provided free in a common area of a shopping mall.

Additional information and tax returns may be obtained by visiting the Department's web site at <http://tax.state.nv.us>, or by contacting one of the Department of Taxation's local offices.

LIVE ENTERTAINMENT TAX

The live entertainment tax passed by the Special Session of the 2003 legislature becomes effective on New Years Day, January 1, 2004. This tax is being administered by two state agencies, Gaming Control Board and Nevada Department of Taxation, depending on where the taxable live entertainment takes place, within a licensed gaming establishment or at a place outside a licensed gaming establishment. The tax rate is two tiered depending on the maximum seating capacity of the facility where the live entertainment takes place. If the seating capacity is 300 to 7,499 the live entertainment tax is applicable at a rate of 10 % on the admission or cover charges and all food, refreshment and merchandise sold at the event. If the maximum seating capacity is 7,500 or more, the applicable tax rate is 5% and applies to the admission or cover charges only.

Seating capacity will be defined by the maximum occupancy of the facility determined by the State Fire Marshal or other local government agency. If the seating capacity has not been pre-determined for the facility or event, the maximum occupancy will be designated at the time permits for the facility or event are obtained. If seating capacity cannot be determined by these methods, the higher tax rate of 10% applies, unless it can be proven otherwise.

Taxpayers who are responsible for registering with the Department of Taxation and remitting this tax are the owners and operators of non-gaming facilities where live entertainment takes place if the event takes place on public land or at a public facility the taxpayer would be considered the person responsible for collecting the taxable receipts.

Exemptions from the Live Entertainment Tax include any events that are provided for the benefit of a non-profit religious, charitable, fraternal or other tax exempt organizations; boxing events sanctioned under NRS 467; any provided at a non-gaming establishment with seating capacity of less than 300; any provided at a gaming establishment licensed for less than 51 slots and less than 6 table games with a seating capacity of less than 300; any live entertainment provided at a trade show; music performed by a strolling musician; and live entertainment provided free in a common area of a shopping mall.

LIVE ENTERTAINMENT TAX GENERAL INFORMATION SHEET

Senate Bill 8 sections 64 to 100 have enacted a live entertainment tax on admission charges and will be administered by two state agencies, the Gaming Control Board and the Department of Taxation.

Live entertainment taking place in a licensed gaming establishment will be administered and collected by the State Gaming Control Board, herein after referred to as the "Board." A licensed gaming establishment is defined per NRS 463.0169 meaning any premises licensed pursuant to the provisions of chapter 463 where gaming is done. This means any live entertainment venues taking place on the property (curb to curb) of a licensed gaming establishment, whether indoor or outdoor, or whether the event is sponsored by the licensed gaming establishment or another promoter. The Board will implement their portion of the live entertainment tax commencing September 1, 2003 with the first tax returns due on October 24, 2003. The monthly returns will be due on the 24th of each month for taxes collected in the preceding month.

All other live entertainment taking place outside a licensed gaming establishment will be administered and collected by the Department of Taxation, herein after referred to as the "Department." The Department will implement their portion of this tax commencing January 1, 2004 with the first tax returns due on February 29, 2004. The monthly returns will be due on the last day of the calendar month for taxes collected in the preceding month. Taxpayers who are responsible for collecting and remitting this tax to the Department are the owner and operators of the facility where the live entertainment is provided. If the event is held on public land or at a publicly owned facility, the person collecting the taxable receipts will be responsible for remitting the tax.

The rate of the tax is two tiered. There is a 10% tax rate for live entertainment provided at a facility with a seating capacity of less than 7,500. The 10% tax applies to the admissions charge and any amounts paid for food, refreshments and merchandise purchased at the facility. There is a 5% tax rate for live entertainment provided at a facility with a seating capacity of at least 7,500. The 5% tax rate applies to the admission charge only. Any merchandise sold outside the facility is not subject to the tax unless the purchase of the merchandise entitles the purchaser admission to the event. Any ticket for live entertainment must state that the tax is included in the price of the ticket or tax is due from the taxpayer on the face amount of the ticket. Any charges for gratuities which are paid directly or indirectly to employees of the facility, or service charges including those for use of credit or debit cards which are collected by someone other than the taxpayer are not taxable.

Live entertainment not subject to this tax is any that the state is prohibited from taxing under the U. S. Constitution or Nevada State Constitution; any that is provided for the benefit of a non-profit religious, charitable, fraternal or other organization qualifying as

LIVE ENTERTAINMENT TAX

Senate Bill 8, sections 64 to 100, requires enactment of a tax on admissions and cover charges to businesses providing live entertainment. This tax will be administered by two state agencies, the Gaming Control Board and the Department of Taxation. For a comprehensive overview of this tax see the Department of Taxation's emergency regulation for live entertainment tax on our web-site under Services, Meetings and Workshops, Workshops on Proposed Regulations.

All live entertainment taking place outside a licensed gaming establishment will be administered and collected by the Department of Taxation. The Live Entertainment Tax is effective January 1, 2004 with the first monthly tax returns due on February 29, 2004. If you are required to be registered with the Department of Taxation for collecting and reporting live entertainment tax, please contact your district office of the Department of Taxation as soon as possible. There is no registration fee for Live Entertainment Tax. Taxpayers who are responsible for collecting and remitting this tax are the owners and operators of the facility where the live entertainment is provided. If the event is held on public land or at a publicly owned facility, the person collecting the taxable receipts will be responsible for remitting the tax.

The tax rate is two tiered. A 10% tax rate for live entertainment provided at a facility with a seating capacity of at least 300 and less than 7,500 applies to the admissions charge plus any amounts paid for food, refreshments and merchandise sold during the live entertainment event (in addition to applicable sales tax). A 5% tax rate for live entertainment provided at a facility with a seating capacity of 7,500 or more applies to the admission charges only. Any ticket for live entertainment must state that the tax is included in the price of the ticket. If not so stated, the tax will be calculated as an addition to the face amount on the ticket and will be due from the taxpayer based on that calculation.

Live entertainment not subject to this tax is any that the state is prohibited from taxing under the U. S. Constitution or Nevada State Constitution; any that is provided for the benefit of a non-profit religious, charitable, fraternal or other organization qualifying as tax-exempt pursuant to 26 U.S.C. 501 (c); any boxing contest or exhibition governed by provisions of NRS 467; any that is provided at a non-gaming establishment with seating capacity of less than 300, any provided at a licensed gaming establishment licensed for less than 51 slots and less than 6 table games as defined above with a seating capacity of less than 300; any live entertainment provided at a trade show; music performed by a musician moving throughout the audience if no other form of live entertainment is provided; and entertainment that is provided in a common area such as a shopping mall.

Seating capacity will be defined by maximum occupancy of the facility determined by the State Fire Marshall or other local governmental agency. If the seating capacity has not been pre-determined for the facility, the maximum occupancy will be designated at the time occupancy permits for the facility are obtained. If seating capacity cannot be

determined by these methods, the higher tax rate of 10% applies, unless it can be proven otherwise by the taxpayer.



KENNY C. GUINN
Governor

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Fax: (702) 488-2373

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 688-1295
Fax: (775) 688-1303

ATTENTION!

ALL CITY AND COUNTY BUSINESS LICENSE DIVISIONS, PARKS AND RECREATION DIVISION, CONVENTION AUTHORITIES AND OTHER TAX EXEMPT NON-PROFIT ORGANIZATIONS

**The Department of Taxation would appreciate your assistance in administering the
LIVE ENTERTAINMENT TAX, EFFECTIVE JANUARY 1, 2004.**

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- Events where the proceeds from the admissions/cover charges (sales of merchandise, food and refreshment if applicable) go entirely to a nonprofit organization.
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**Businesses and individuals who may be subject to this tax will need to register with the Department of Taxation. Likely applicants include those who are renting or leasing facilities such as arenas, parks, theatres, amphitheatres, convention and event centers, stadiums, outdoor areas etc. and/or those who obtain permits and licenses from you for events featuring live entertainment. Please provide such individuals with a copy of the attached registration forms and information sheet. To print additional copies and information visit the Department's website at:
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News Release
January 7, 2003
Contact: Dino DiCianno
(775) 687-6670

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EXHIBIT E

EXHIBIT E

LET UPDATES--SOUTHERN NEVADA

7/19/2004

LET #	BUSINESS NAME	ADDRESS	PERMIT #	NOTES
[REDACTED]	[REDACTED]	[REDACTED] Las Vegas, NV	[REDACTED]	Staff field visit left registration info-->300, add to active LET list.
[REDACTED]	[REDACTED]	[REDACTED] LV	[REDACTED]	Staff field visit found no such business--remove from active LET list
[REDACTED]	[REDACTED]	[REDACTED] LV	[REDACTED]	Staff field visit found business has been closed for some time. Remove from active LET list.
[REDACTED]	[REDACTED]	[REDACTED] LV	[REDACTED]	Staff field visit found [REDACTED] Remove from active LET list.
[REDACTED]	[REDACTED]	[REDACTED] LV	[REDACTED]	Staff field visit found business closed shortly after 9/11. Remove from active LET list
[REDACTED]	[REDACTED]	[REDACTED] LV	[REDACTED]	Staff field visit found [REDACTED] Please move to Gaming list and refer to GAMING.
[REDACTED]	[REDACTED]	[REDACTED] LV	[REDACTED]	Staff visit to provide LET info. Please add to active LET >300 and assign LET #
[REDACTED]	[REDACTED]	[REDACTED] NLV	[REDACTED]	Staff visit found facility <300. Remove from active LET list.
[REDACTED]	[REDACTED]	[REDACTED] Las Vegas,	[REDACTED]	Per staff followup, they are responsible party until final sale [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] NV	[REDACTED]	Please add to active LET >300 and assign LET #
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	LET info mailed to T/P [REDACTED] (>300) Add to active LET and assign LET #.

TBA = To be Assigned

EXHIBIT F

EXHIBIT F

Live Entertainment Tax Seating Capacity of 300 to 7400					
Period	# of LET Accounts	Total Admission Charges	Total Food Drink & Merchandise	Total Taxable Amount	Total Tax Reported 10% rate
Jan-04	199	1,155,844.82	3,456,675.41	4,612,520.23	461,252.02
Feb-04	151	1,408,008.33	4,348,609.16	5,756,617.49	575,661.75
Mar-04	128	1,814,059.06	4,212,743.85	6,026,802.91	602,680.29
Apr-04	118	1,133,609.11	4,253,568.28	5,387,177.39	538,717.86
May-04	120	1,656,832.83	4,395,134.50	6,051,967.33	605,196.73
Jun-04	117	1,064,727.42	3,453,988.41	4,518,715.83	451,871.58
Jul-04	107	2,323,980.96	3,800,347.87	6,126,638.83	612,633.55
Aug-04	119	2,102,785.04	3,151,998.10	5,254,803.14	525,480.31
Sep-04	114	717,959.38	649,553.74	1,367,513.12	136,751.31
Oct-04	116	1,721,429.73	4,037,909.33	5,759,339.06	575,998.64
Nov-04	115	1,561,624.52	3,219,273.38	4,780,897.90	478,160.59
Dec-04	116	1,754,999.05	2,580,863.53	4,335,862.58	433,920.01
Totals		18,415,860.25	41,560,665.56	59,978,855.81	5,998,324.65

EXHIBIT G

EXHIBIT G

LET #	Business Name	ADMISSION AMOUNT	FOOD & MERCHANDISE SOLD	TOTAL TAXABLE AMOUNT
		122,247.00	-	122,247.00
		3,979.00	-	3,979.00
		17,906.00	0.00	17,906.00
		2,880.00	0.00	2,880.00
		21,195.00	0.00	21,195.00
		573,411.00		573,411.00
		18,752.15		18,752.15
		15,730.00	474,695.40	490,425.40
		12,647.00	487,823.10	500,470.10
		13,265.00	492,517.80	505,782.80
		15,233.00	529,719.50	544,952.50
		14,183.00	496,151.00	510,334.00
		9,650.00	432,180.40	441,830.40
		31,767.83	185,423.08	217,190.91
		22,994.02	137,942.44	160,936.46
		29,733.94	189,873.76	219,607.70
		20,730.36	185,488.13	206,218.49
		19,380.22	128,412.56	147,792.78
		55,712.97	237,968.51	293,681.48
		154,572.15	10,946.31	165,518.46
		281,180.79	32,054.43	313,235.22
		160,563.46	15,815.07	176,378.53
		3,929.00	2,425.00	6,354.00
		3,110.00	1,705.00	4,815.00
		2,020.00	3,256.00	5,276.00
		3,519.00	6,736.00	10,255.00
		2,605.00	3,993.00	6,598.00
		1,525.00	2,207.00	3,732.00
		55,017.28	6,195.75	61,213.03
		21,035.47	0.00	21,035.47
		113,068.19	13,934.47	127,002.66
		268,150.00	509,562.34	777,712.34
		268,927.27	537,602.76	806,530.03
		295,909.09	621,480.21	917,389.30
		284,827.27	676,508.66	961,335.93
		276,972.73	587,636.18	864,608.91
		187,918.18	440,145.30	628,063.48
		6,196.00	0.00	6,196.00
		207,209.00	0.00	207,209.00
		6,728.16	-	6,728.16
		3,015.00		3,015.00
		6,810.50	0.00	6,810.50
			-	-
		6,400.00		6,400.00
		-	2,324.00	2,324.00
		-	1,717.30	1,717.30
				0.00
		29,984.50	-	29,984.50
		8,595.50	0.00	8,595.50

[REDACTED]	294,979.00	356,704.00	651,683.00
[REDACTED]	280,635.00	354,837.00	635,472.00
[REDACTED]	274,574.00	381,417.00	655,991.00
[REDACTED]	210,777.00	315,830.00	526,607.00
[REDACTED]	266,128.00	383,843.00	649,971.00
[REDACTED]	213,553.00	323,205.00	536,758.00
[REDACTED]	4,554.00	-	4,554.00
[REDACTED]	5,052.45	0.00	5,052.45
[REDACTED]	22,066.10	0.00	22,066.10
[REDACTED]	25,729.20	0.00	25,729.20
[REDACTED]	62,957.50	483,947.44	546,904.94
[REDACTED]	60,312.20	506,700.98	567,013.18
[REDACTED]	69,264.00	607,146.81	676,410.81
[REDACTED]	71,224.50	603,296.71	674,521.21
[REDACTED]	64,830.50	524,124.64	588,955.14
[REDACTED]	51,015.50	54,226.51	105,242.01
[REDACTED]	-	60,848.66	60,848.66
[REDACTED]	149,952.44	3,977.29	153,929.73
[REDACTED]	121,536.20	10,708.69	132,244.89
[REDACTED]	30,736.00	860,049.00	890,785.00
[REDACTED]	31,553.00	975,302.00	1,006,855.00
[REDACTED]	46,207.00	1,094,385.00	1,140,592.00
[REDACTED]	52,618.00	1,263,807.00	1,316,425.00
[REDACTED]	50,578.50	1,143,570.00	1,194,148.50
[REDACTED]	44,047.00	992,920.93	1,036,967.93
[REDACTED]	11,290.91	120,180.43	131,471.34
[REDACTED]	9,718.18	100,886.38	110,604.56
[REDACTED]	9,609.09	100,901.70	110,510.79
[REDACTED]	10,845.45	101,585.53	112,430.98
[REDACTED]	10,900.00	99,421.49	110,321.49
[REDACTED]	4,364.65	-	4,364.65
[REDACTED]	788.00	0.00	788.00
[REDACTED]	29,858.00	0.00	29,858.00
[REDACTED]	8,488.18	0.00	8,488.18
[REDACTED]	56,941.00	7,183.00	64,124.00
[REDACTED]	151,190.00	291,602.85	442,792.85
[REDACTED]	156,400.00	321,523.95	477,923.95
[REDACTED]	85,113.00	178,248.68	263,361.68
[REDACTED]	564,924.00	113,318.30	678,242.30
[REDACTED]	402,722.00	37,429.99	440,151.99
[REDACTED]	660,903.86	71,802.80	732,706.66
[REDACTED]	412,863.44	78,262.98	491,126.42
[REDACTED]	520,125.73	52,227.02	572,352.75
[REDACTED]	565,690.33	39,758.59	605,448.92
[REDACTED]	883,728.37	68,260.34	951,988.71
[REDACTED]			-
[REDACTED]			-
[REDACTED]			-

TOTAL

10,742,530.31	20,537,882.15	31,280,412.46
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Average taxable sales per business =	\$ 1,203,092.79
Average taxable sales per tax return =	\$ 332,770.35
Average taxable sales per month =	\$ 4,468,630.35

Average admission charge per business=	\$ 413,174.24
Average admission charge per tax return=	\$ 114,282.24
Average admission charge per month=	\$ 1,534,647.19
Ave per capita on admission charge only=	20.13

Average food/drinks per business=	\$ 789,918.54
Average food/drinks per tax return=	\$ 218,488.11
Average food/drinks per month=	\$ 2,933,983.16

Average per capita tax paid=	\$ 623.27
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Number of businesses under 300 seats=	150
Number of men's clubs under 300 seats=	22
Ave tax reported per men's club =	\$ 578,224.22
Per capita tax per men's club=	1,049.49
Per capita X 20 clubs X 200 seats each=	\$ 4,197,958.60

\$3,000,000

Ave per capita X new bus. X 100 seats ea=	941,850.00
Annualized new bus=	1,614,600.00

TAX	Total taxable per Business
12,224.70	
397.90	
1,790.60	
288.00	
2,119.50	168,207.00
57,341.10	573,411.00
1,875.22	18,752.15
49,042.54	
50,047.01	
50,578.28	
54,495.25	
51,033.40	
44,183.04	2,993,795.20
21,719.09	
16,093.65	
21,960.77	
20,621.85	
14,779.28	
29,368.15	1,245,427.82
16,551.85	
31,323.52	
17,637.85	655,132.21
635.40	
481.50	
527.60	
1,025.50	
659.80	
373.20	37,030.00
6,121.30	
2,103.55	
12,700.27	209,251.16
77,771.23	
80,653.00	
91,738.93	
96,133.59	
86,460.89	
62,806.35	4,955,639.99
619.60	6,196.00
20,720.90	207,209.00
672.82	
301.50	
681.05	16,553.66
-	
640.00	6,400.00
232.40	
171.73	
0.00	4,041.30
2,998.45	
859.55	38,580.00

65,168.30	
63,547.20	
65,599.10	
52,660.70	
64,997.10	
53,675.80	3,656,482.00
455.40	
505.25	
2,206.61	
2,572.92	57,401.75
54,690.49	
56,701.32	
67,641.08	
67,452.12	
58,895.51	
10,524.20	3,159,047.29
6,084.87	60,848.66
15,392.97	
13,224.49	286,174.62
89,078.50	
100,685.50	
114,059.20	
131,642.50	
119,414.85	
103,696.79	6,585,773.43
13,147.13	
11,060.46	
11,051.08	
11,243.10	
11,032.15	575,339.16
436.47	
78.80	
2,985.80	
848.82	43,498.83
6,412.40	64,124.00
44,279.29	
47,792.40	
26,336.17	1,184,078.48
67,824.23	
44,015.20	
73,270.67	
49,112.64	
57,235.28	
60,544.89	
95,198.87	4,472,017.75
0.00	
0.00	
0.00	

3,128,041.25	31,280,412.46
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Sales per capita Average		Gentlemen's clubs - Admissions only	All venues - adr
\$	1.52	189.46	17.99
\$	1.54	2,512.23	
\$	1.68	1,640.73	61.84
\$	2.13	542.29	56.79
\$	5.26	256.00	15.76
\$	7.36	65.54	
\$	7.58		
\$	8.58	867.71 "=Average"	4.78
\$	9.58		
\$	11.33		
\$	15.30		
\$	31.75		104.56
\$	41.97		
\$	47.29		
\$	50.39		20.13
\$	65.37		
\$	81.62		
\$	89.50		
\$	138.07		
\$	138.31		
\$	138.43		
\$	140.71		
\$	164.54	\$ 62.79	
\$	287.10		
\$	304.10		
\$	331.14		
\$	424.32		
\$	446.89		
\$	451.87		
\$	560.82		
\$	571.63		
\$	604.28		
\$	676.75		
\$	694.02		
\$	698.61		
\$	781.29		
\$	810.02		
\$	841.36		
\$	891.68		
\$	963.60		
\$	966.30		
\$	996.93	\$ 647.51	
\$	1,007.86		
\$	1,037.16		
\$	1,038.01		

\$	1,141.73	
\$	1,151.23	
\$	1,174.81	
\$	1,187.28	
\$	1,195.34	
\$	1,197.97	
\$	1,234.46	
\$	1,257.58	
\$	1,279.23	
\$	1,280.21	
\$	1,317.74	
\$	1,372.40	
\$	1,403.22	
\$	1,456.17	
\$	1,525.93	
\$	1,635.29	
\$	1,729.85	
\$	1,937.84	
\$	2,093.45	
\$	2,719.97	\$ 1,407.60
\$	623.27	

EXHIBIT H

EXHIBIT H



KENNY C. GUINN
Governor

BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK
Executive Director

DEPARTMENT OF TAXATION

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MEMORANDUM

Date: March 18, 2005
To: Chuck Chinnock
From: Marian Henderson
CC: Lynne Knack
Subject: Live Entertainment Tax (LET) breakdown by venue

In response to your request for additional information on the types of businesses that would be included if the 300 seat threshold were reduced or eliminated, the businesses break down by the following categories. The list is not exhaustive, and does not include approximately 100 businesses which are not required to be registered with the Department due to their seating capacity or failure to provide live entertainment at this time.

* indicates exempt entities

CATEGORY	NAME OF BUSINESS/EVENT	CATEGORY	NAME OF BUSINESS/EVENT
ANNUAL EVENTS	[REDACTED]	PROMOTERS	[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
SPORTING EVENTS	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
NIGHTCLUBS/BARS	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]

	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]*		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
RACEWAYS	[REDACTED]	GENTLEMEN'S CLUBS	[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
BROTHELS	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]
HOTELS	[REDACTED]		[REDACTED]
	[REDACTED]		[REDACTED]

Page 1837
DV000036

EXHIBIT I

EXHIBIT I

1

Total	LET Reported
\$ 447,654.97	\$ 447,654.97
\$ 452,703.81	\$ 452,703.81
\$ 581,322.43	\$ 581,322.43
\$ 470,643.46	\$ 470,643.46
\$ 505,291.95	\$ 505,291.95
\$ 393,590.65	\$ 393,590.65
\$ 456,724.68	\$ 456,724.68
\$ 410,486.69	\$ 410,486.69
\$ 424,961.86	\$ 424,961.86
\$ 425,963.66	\$ 425,963.66
\$ 359,787.62	\$ 359,787.62
\$ 274,886.18	\$ 274,886.18
\$ 5,204,017.96	\$ 5,204,017.96

Total seating capacity

2284

EXHIBIT J

EXHIBIT J

LET--SOUTHERN ACCOUNTS SUMMARIZED

LET #	BUSINESS NAME	LOC.	GAMING	EXEMPT N/A	SUBJECT TO LET <300 >300-7499 7500+	NOTES
1	[REDACTED]	LV	1			per request for information
2	[REDACTED]	LV		1		per [REDACTED] participatory sport
3	[REDACTED]	LV		1		per [REDACTED] weddings/parties no admission
4	[REDACTED]	LV		1		per [REDACTED] party planning only, no admission
5	[REDACTED]	HEN	1			[REDACTED]-closed.
6	[REDACTED]	LV			1	per request for information
7	[REDACTED]	LV		1		per [REDACTED] participatory tournaments only
8	[REDACTED]	HEN		1		per [REDACTED], catering/parties only no admit
9	[REDACTED]	LV				
10	[REDACTED]	LV		1		per [REDACTED], no admissions ever charge
11	[REDACTED]	LV		1		OT event [REDACTED]
12	[REDACTED]	LV		1		field visit to verify
13	[REDACTED]	LV		1		web-based business only
14	[REDACTED]	LV		1		per [REDACTED] insurance provider-[REDACTED]
15	[REDACTED]	LV		1		per [REDACTED], catering weddings/parties only <300
16	[REDACTED]	LV		1		
17	[REDACTED]	LV		1		out of business, revoked with SOS
18	[REDACTED]	LV		1		per [REDACTED] tournaments participatory no adm
19	[REDACTED]	LV		1		under construction per [REDACTED]
20	[REDACTED]	LV	1			[REDACTED]
21	[REDACTED]	HEN	1			slots in restaurant per [REDACTED]
22	[REDACTED]	LV		1		non-profit 501c3
23	[REDACTED]	LV	1			
24	[REDACTED]	LV				NEED FIELD VISIT VERIFICATION
25	[REDACTED]	LV		1		NEED FIELD VISIT TO CHECK SCHEDULES
26	[REDACTED]	LV	1			per staff field visit
27	[REDACTED]	LV			1	In compliance
28	[REDACTED]	LV		1		
29	[REDACTED]	LV		1		
30	[REDACTED]	LV		1		NEED FIELD VISIT VERIFICATION
31	[REDACTED]	LV				NEED FIELD VISIT VERIFICATION
32	[REDACTED]	LV				NEED FIELD VISIT VERIFICATION

Southern LET Summarized

1

LET #	BUSINESS NAME	LOC.	GAMING	EXEMPT N/A	SUBJECT TO LET <300 >300-7499 7500+	NOTES
33	[REDACTED]	LV				per Wayne McCoy field visit
34	[REDACTED]	LV				field visit verified by Pat Wildmon
35	[REDACTED]	LV		1		all events non-profit, tax exempt
36	[REDACTED]	LV				per [REDACTED] depends on size of venue for ever
37	[REDACTED]	LV		1	1	per [REDACTED] telemarketing fundraiser group only
38	[REDACTED]	LV				in compliance
39	[REDACTED]	LV			1	in compliance, field visit verified by Pat Wildmon
40	[REDACTED]	LV	1			per returned survey and conversation w/owner
41	[REDACTED]	LV				CANT FIND INFO ON BUSINESS
42	[REDACTED]	LV		1		no info, phone, signature on request, says final, 1
43	[REDACTED]	LV		1		per [REDACTED] field visit
44	[REDACTED]	LV			1	per LV field visit/Pat Wildmon
45	[REDACTED]	LV		1		out of business per LV field visit/Pat Wildmon
46	[REDACTED]	LV		1		no admission ever charged
47	[REDACTED]	LV		1		non-profit, solicit sponsorships
48	[REDACTED]	LV	1			promoter-[REDACTED]
49	[REDACTED]	LV		1		lounge max cap. 75--no live, only piped in music
50	[REDACTED]	LV		1		banquets only per [REDACTED] no admissions
51	[REDACTED]	LV				can't verify, NEED FIELD VISIT
52	[REDACTED]	LV		1		not in business per LV field visit/Pat Wildmon
53	[REDACTED]	LV		1		participatory
54	[REDACTED]	LV	1			gaming per Tony Zeppieri & web, [REDACTED]
55	[REDACTED]	LV			1	per [REDACTED] not big enough
56	[REDACTED]	LV	1			Per [REDACTED] promoter venues in casinos
57	[REDACTED]	LV				per [REDACTED] banquets only--no admissions
58	[REDACTED]	LV		1		returned mail, no ACES, no listings, can't locate
59	[REDACTED]	LV		1		per [REDACTED] weddings/parties--no admissions
60	[REDACTED]	HEN		1		non-profit, no admission ever charged
61	[REDACTED]	HEN		1		per [REDACTED] no adm ever charged, have il
62	[REDACTED]	LV		1		out of business, phone out of service
63	[REDACTED]	LV				
64	[REDACTED]	LV		1		
65	[REDACTED]	LV			1	no live entertainment
66	[REDACTED]	LV		1		phones NIS [REDACTED]--IN COMPLIANCE

Southern LET Summarized

	LET #	BUSINESS NAME	LOC.	GAMING	EXEMPT N/A	SUBJECT TO LET <300 >300-7499 7500+	NOTES
67	[REDACTED]	[REDACTED]	LV		1	1	mail order business
68	[REDACTED]	[REDACTED]	LV				in compliance
69	[REDACTED]	[REDACTED]	LV				can't verify, NEED FIELD VERIFICATION
70	[REDACTED]	[REDACTED]	LV		1		venues always <300, work with non-profits only
71	[REDACTED]	[REDACTED]	LV		1		per [REDACTED] weddings/parties only--no admissions
72	[REDACTED]	[REDACTED]	LV		1	1	per Tony Zeppien field visit
73	[REDACTED]	[REDACTED]	LV				called club and verified gaming
74	[REDACTED]	[REDACTED]	LV	1			per Tony Zeppien field visit
75	[REDACTED]	[REDACTED]	LV		1		[REDACTED]-3/31/03 close out per ACES
76	[REDACTED]	[REDACTED]	LV				per [REDACTED], no adm charge, not active nc
77	[REDACTED]	[REDACTED]	LV		1		participatory only, [REDACTED] seat restaurant
78	[REDACTED]	[REDACTED]	LV		1		[REDACTED], participatory sport
79	[REDACTED]	[REDACTED]	LV		1		seating capacity, non-profit
80	[REDACTED]	[REDACTED]	LV		1		no entertainment [REDACTED]-business conv only
81	[REDACTED]	[REDACTED]	LV		1		in compliance
82	[REDACTED]	[REDACTED]	LV			1	per [REDACTED], public course, no adm
83	[REDACTED]	[REDACTED]	LV		1		501c3, do not own a facility, per [REDACTED]
84	[REDACTED]	[REDACTED]	LV		1		per [REDACTED] weddings/parties only no adr
85	[REDACTED]	[REDACTED]	LV		1		returned mail, phone NIS, [REDACTED]
86	[REDACTED]	[REDACTED]	LV				per Patt Taylor field visit
87	[REDACTED]	[REDACTED]	LV		1		2/29/04 close out per ACES
88	[REDACTED]	[REDACTED]	LV				nightclub [REDACTED]
89	[REDACTED]	[REDACTED]	LV	1			per Pat Wildmon field visit
90	[REDACTED]	[REDACTED]	LV			1	per [REDACTED] are promoters and need LET info
91	[REDACTED]	[REDACTED]	LV		1		per [REDACTED] weddings/parties only--no adm.
92	[REDACTED]	[REDACTED]	LV				
93	[REDACTED]	[REDACTED]	LV				
94	[REDACTED]	[REDACTED]	LV		1		
95	[REDACTED]	[REDACTED]	LV		1		[REDACTED] show promoter
96	[REDACTED]	[REDACTED]	LV		1		per SOS, non-profit corp revoked, no other info
97	[REDACTED]	[REDACTED]	LV				per staff field visit and website
98	[REDACTED]	[REDACTED]	LV	1			per [REDACTED] seating [REDACTED] max, no adm eve
99	[REDACTED]	[REDACTED]	LV		1		can't verify, no ACES, bus address [REDACTED]
100	[REDACTED]	[REDACTED]	LV		1		per response to [REDACTED] can't verify by phone
01	[REDACTED]	[REDACTED]	LV			1	non-profit [REDACTED] in compliance
02	[REDACTED]	[REDACTED]	LV				

Southern LET Summarized

3

	LET #	BUSINESS NAME	LOC.	GAMING	EXEMPT N/A	SUBJECT TO LET <300 >300-7499 7500+	NOTES
103			NLV				FIELD CHECK OCCUPANCY--PHONE NIS
104			LV	1			per staff field visit, [REDACTED]
105			LV		1		per [REDACTED] motion pictures, films
106			LV		1		per [REDACTED] wedding/private banquets only, no adm
107			LV	1			paying LET [REDACTED]
108			LV		1		OOB, revoked with SOS, no acct activity
109			NLV		1		OOB, all phones NIS, request returned OOB
110			LV		1		[REDACTED]--exempt by statute
111			LV	1			per Tony Zeppien field visit
112			LV		1		per Pat Willmon field visit
113			LV		1		per Tony Zeppien field survey
114			LV		1		[REDACTED] weddings/parties only--no admissions
115			LV				
116			LV		1		cannot locate, no web listings [REDACTED]
117			LV		1		per [REDACTED] no live entertain, max occ [REDACTED]
118			LV		1		can't locate, phone NIS, request form returned me
119			LV		1		per [REDACTED] weddings/parties only--no adm
120			LV			1	In compliance
121			LV				
122			LV	1			Owned by [REDACTED]
123			LV			1	In compliance
124			LV				FIELD VISIT VERIFICATION
125			LV		1		Closed--verified in ACES [REDACTED]
126			LV		1		per [REDACTED] no admission charges for anythr
127			LV		1		per [REDACTED] banquets only, never admission
128			LV		1		per [REDACTED] president, non-profit, IRS letter sendi
129			LV			1	In compliance
130			LV		1		per [REDACTED] president, non-profit
131			LV	1			staff field visit
132			LV		1		rted mail, mail box center, can't locate
133			LV			1	In compliance
134			LV			1	In compliance
135			LV		1		per [REDACTED] weddings/parties only--no admissions
136			LV		1		non-profit [REDACTED] (entertainers)

Southern LET Summarized

4

LET #	BUSINESS NAME	LOC.	GAMING	EXEMPT N/A	SUBJECT TO LET <300	>300-7499	7500+	NOTES
137	[REDACTED]	LV			1			seating for [REDACTED] max, very small place
138	[REDACTED]	LV	1					staff field visit
139	[REDACTED]	LV	1					paying LET, [REDACTED]
140	[REDACTED]	LV	1					survey and called
141	[REDACTED]	HEN			1			Out of business, revoked w/SOS
142	[REDACTED]	LV						per [REDACTED] weddings/parties only, no adm.
143	[REDACTED]	LV			1			In compliance
144	[REDACTED]	LV			1			Out of business, per field visit Mary Rustenholz
145	[REDACTED]	HEN			1			per [REDACTED], no adm for tournaments or restaur.
146	[REDACTED]	LV				1		request back as >300, but no 0 returns filed
147	[REDACTED]	LV				1		In compliance
148	[REDACTED]	LV					1	In compliance
149	[REDACTED]	LV			1			participatory sport
150	[REDACTED]	LV						participatory sport
151	[REDACTED]	LV	1					located within [REDACTED]
152	[REDACTED]	LV			1			participatory sport
153	[REDACTED]	HEN	1					per [REDACTED] nightclub closed <300
154	[REDACTED]	LV						no info available, field check address?
155	[REDACTED]	LV			1			participatory sport
156	[REDACTED]	LV						per [REDACTED] entertainers/producers N/A
157	[REDACTED]	LV			1			singer/entertainer
158	[REDACTED]	LV			1			dancers
159	[REDACTED]	LV			1			dancer
160	[REDACTED]	LV			1			dancer
161	[REDACTED]	LV			1			dancer
162	[REDACTED]	LV			1			dancers
163	[REDACTED]	LV			1			dancers
164	[REDACTED]	LV			1			dancers
165	[REDACTED]	LV			1			dancers
166	[REDACTED]	LV			1			dancers
167	[REDACTED]	LV			1			dancers
168	[REDACTED]	LV			1			dancers
169	[REDACTED]	LV			1			dancers

Southern LET Summarized

LET #	BUSINESS NAME	LOC.	GAMING	EXEMPT N/A	SUBJECT TO LET <300	7500+	NOTES
170	[REDACTED]	LV			1		[REDACTED] keep on list, may be applicable in future
171	[REDACTED]	LV		1			can't verify, probably dancer, [REDACTED]
172	[REDACTED]	LV		1			per [REDACTED] entertainer
173	[REDACTED]	LV		1			per [REDACTED] musicians
174	[REDACTED]	LV		1			per [REDACTED] not promoter--is a manager, no door 1
175	[REDACTED]	LV			1		per [REDACTED] promoters, depends on size of show
176	[REDACTED]	LV			1		In compliance
177	[REDACTED]	LV					
178	[REDACTED]	LV		1			can't verify phone, [REDACTED] probably dancer
179	[REDACTED]	LV			1		per application
180	[REDACTED]	LV					
181	[REDACTED]	LV			1		In compliance
182	[REDACTED]	LV	1				corrected to pay Gaming
183	[REDACTED]	LV					
184	[REDACTED]	LV					
185	[REDACTED]	LV				1	in compliance
VERIFIED			25	99	12	22	3
TOTAL GAMING			25				
TOTAL EXEMPT N/A				99			
TOTAL EXEMPT <300				12			
SUBJECT TO LET >300				21			
SUBJECT TO LET 7500+				3			
UNDER RESEARCH							
TOTAL			23				
			183				

Southern LET Summarized

EXHIBIT K

EXHIBIT K



JIM GIBBONS
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

DEPARTMENT OF TAXATION

Web Site: <http://tax.state.nv.us>

1550 College Parkway, Suite 115
Carson City, Nevada 89708-7937
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555 E. Washington Avenue
Las Vegas, Nevada, 89101
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RENO OFFICE
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Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 688-1295
Fax: (775) 688-1303

HENDERSON OFFICE
2550 Paseo Verde Parkway Suite 180
Henderson, Nevada 89074
Phone: (702) 488-2300
Fax: (702) 488-3377

[REDACTED] 2007

Dear [REDACTED]

Re: Live Entertainment Tax

I am in receipt of your letter dated [REDACTED] 2007, requesting a determination of maximum occupancy for Live Entertainment Tax in regards to [REDACTED] rents from [REDACTED]

Nevada Revised Statutes (NRS) Chapter 368A.200(5)(d) states that Live Entertainment Tax does not apply to "live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum occupancy of less than 200 persons."

You stated that [REDACTED] has a maximum seating capacity of [REDACTED] people [REDACTED]. The Department finds that [REDACTED] is under the maximum occupancy of 200 people; therefore the [REDACTED] is not required to file Live Entertainment Tax.

Please note that this exemption is only for [REDACTED] located in [REDACTED] when the maximum occupancy is [REDACTED] people. If any changes occur, contact the Department as you may be required to file Live Entertainment Tax.

If you have further questions, please contact me at 775-684-2130.

Sincerely,

Michelle Jacobs, Tax Examiner II
Compliance Division



JIM GIBBONS
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

DEPARTMENT OF TAXATION

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Fax: (702) 486-3377

[REDACTED], 2008

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

TID: [REDACTED]
Live Entertainment Tax

Dear [REDACTED]

Re: [REDACTED]

The following is provided in response to your letter dated [REDACTED] 2007 and our telephone conversation on [REDACTED] 2008 regarding [REDACTED]. In our telephone conversation you stated that the live entertainment to be provided will be musical groups, for all patrons to enjoy and the stage will be located [REDACTED]. Male patrons pay [REDACTED] and there is [REDACTED] or children.

In your letter you referenced Nevada Revised Statutes (NRS) 368A.097 and 368A.200(5)(j), requesting [REDACTED] be exempt from Live Entertainment Tax. NRS 368A.097 defines "Shopping Mall" to include any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises. Furthermore, NRS 368A.200 (5)(j) allows for an exemption of the Live entertainment tax that is provided in the common area of a shopping mall. The Department finds that [REDACTED] falls within the above NRS exemption; therefore [REDACTED] is not subject to the Live Entertainment Tax.

Please note that the conclusions reached in this letter are limited [REDACTED] regarding this particular factual circumstance. No further reliance should be placed on this response for any other transaction or factual scenarios except those described herein. Finally, you are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this letter is based may subject similar future transactions or the entities described herein to a different treatment than expressed in this correspondence.

If you have further questions, please contact me at 775-684-2130.

Sincerely,

Michelle Jacobs, Tax Examiner II
Compliance Division



KENNY C. GUINN
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

STATE OF NEVADA DEPARTMENT OF TAXATION

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2005

Re: Live Entertainment Tax Returns and Remittance.

Dear Taxpayer:

The Department has conducted a review of the live entertainment tax returns for the periods of admission charges shown on those returns have been adjusted. What is of concern to us is the reported gross taxable have been taken as a deduction from the total admission charges reported to the Department. In other words, the Please be aware that the current Nevada Revised Statutes and Tax Commission Regulations on the Live Entertainment Tax do not allow for the deduction from the gross admission charges.

We respectfully request that you review all of the aforementioned returns and adjust them accordingly (if applicable) by removing the deduction. remit the amended returns along with any liability owing the State of Nevada to the Department of Taxation on or before. If we do not either receive the amended returns along with monies owing, or hear from you by that date; we will have no choice but to calculate an estimated revenue deficiency for those periods on the establishment.

Should you have any questions concerning this matter, please do not hesitate to contact any of the District Offices of the Department of Taxation.

Sincerely,

Dino DiCianno,
Executive Director

CC: Jerrie Smith, Tax Manager - Carson City Office
Paulina Oliver, Tax Manager - Las Vegas Office
Cathy Chambers - Tax Manager - Reno Office



KENNY C. GUINN
Governor
BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission
CHARLES E. CHINNOCK
Executive Director

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[REDACTED] 2003

Las Vegas, NV [REDACTED]

Re: Live Entertainment Tax

Dear [REDACTED]

In response to recent inquiry regarding the applicability of the Live Entertainment Tax to your [REDACTED] I offer the following.

Pursuant to Section 12 (parts 1-2) of the Temporary Regulation LCB File No. R212-03 adopted by the Nevada Tax Commission on November 25, 2003; the admission charges [REDACTED] described in your letter would be tax exempt. You stated that the net proceeds from [REDACTED] will go directly to [REDACTED] which is a 501(c) 3 nonprofit organization. Section 12 of the temporary regulation states:

1. For the purposes of paragraph (b) of subsection 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), live entertainment is provided by or entirely for the benefit of a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than the nonprofit organization as long as the person retains not more of the proceeds than is necessary to cover the direct, supportable costs of hosting, promoting or sponsoring the event at which the live entertainment is provided.
2. Subject to the provisions of subsection 1, a nonprofit organization providing live entertainment, or a person providing live entertainment entirely for the benefit of a nonprofit organization, incurs no liability for the excise tax on entertainment if the nonprofit organization or person contracts for goods or services with a person other than a nonprofit organization, even if the proceeds from the sales of food, refreshments or merchandise do not become the property of the nonprofit organization.

Since the net proceeds from [REDACTED] will become the property of [REDACTED] they would not be subject to the [REDACTED] Live Entertainment Tax applicable to admission charges for Live Entertainment at facilities with [REDACTED] seating capacity of [REDACTED]

Thank you for your inquiry.

Sincerely,

Dino Di Cianno, Deputy Executive Director-Compliance Division

From: Cathy Chambers
Sent: Friday, [REDACTED], 2003 2:54 PM
To: [REDACTED]
Cc: 'LHartzell@gcb.state.nv.us'; DINO DICIANNO
Subject: RE: GCB conclusion on [REDACTED] LET liability for outside concerts.

Dear [REDACTED]

I have evaluated your information and Gaming Control Board's research; and I believe the outdoor concerts described below promoted by [REDACTED] at the outdoor area common to shops in a shopping mall are exempted from the imposition of the Live Entertainment Tax by the Department of Taxation. Subsection 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, states that the tax imposed by this subsection does not apply to: (j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located with the mall.

Temporary regulation LCB File No. R212-03 adopted by the Nevada Tax Commission on November 25, 2003 Section 11 part 5 defines a "shopping mall" to include any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises.

I have interpreted your statement that [REDACTED] outdoor entertainment on a periodic basis. On these scheduled days, the entertainer/band performs on an area of property not owned or leased by [REDACTED] to mean that you do not charge patrons an admission for listening to and viewing this entertainment. Rather they are provided as free, open air venues with food and beverage sales available from a cart maintained on [REDACTED] property, and may also be seen and heard from an outdoor restaurant in [REDACTED]

If this is correct, and the patrons who listen and view the live entertainment from this common area are not required to pay an admission charge, or required to purchase any food, refreshments or merchandise, to enter the premises where the live entertainment is being performed, the tax would not be applicable.

If I have not interpreted your information correctly, please let me know and we can discuss this further.

Thank you.

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]]
Sent: Wednesday, [REDACTED], 2003 2:24 PM
To: Cathy Chambers
Cc: 'LHartzell@gcb.state.nv.us'
Subject: GCB conclusion on [REDACTED] LET liability for outside concerts.

Dear Ms. Chambers,

At your convenience, I would welcome your opinion on [REDACTED] liability for entertainment tax for outdoor concerts it promotes on property it does not own/lease, in the outdoor area common to shops in a shopping mall. Many relevant details are mentioned in the correspondence below. If you would like any further information that would help guide your opinion, please feel free to call or e-mail.

Kind Regards,

[REDACTED]
Tel: [REDACTED] Fax: [REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Monday, [REDACTED] 2003 6:49 PM
To: [REDACTED]
Subject: RE: GCB conclusion on [REDACTED] LET liability for outside concerts. Did we ever pursue this issue with the Tax & License Division? Please advise of the result. Thanks.

Phone: [REDACTED]

Beeper: [REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, [REDACTED] 2003 4:40 PM
To: [REDACTED]
Subject: GCB conclusion on [REDACTED] LET liability for outside concerts. Good news!

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, [REDACTED] 2003 4:38 PM
To: 'Lynda Hartzell, Audit Division, Gaming Control Board'
Subject: RE: Is [REDACTED] liable for LET on F&B sales related to an outdoor concert on property adjacent to, but not owned by [REDACTED] Thank you both for your time and effort.

Kind Regards,

Tel: [REDACTED] Fax: [REDACTED]

-----Original Message-----

From: Lynda Hartzell, Audit Division, Gaming Control Board
[mailto:[REDACTED]]
Sent: Tuesday, [REDACTED] 2003 3:53 PM
To: [REDACTED]
Cc: DiCianno@tax.state.nv.us; cchamber@tax.state.nv.us; ggalle@gcb.state.nv.us
Subject: RE: Is [REDACTED] liable for LET on F&B sales related to an outdoor concert on property adjacent to, but not owned by [REDACTED] After reviewing the documentation you provided, including the aerial photos, [REDACTED] and I concurred that [REDACTED] would not be liable for remitting the live entertainment tax to the Gaming Control Board for these events. We take the position that the entertainment is not offered on the premises of a licensed gaming establishment.

Although entertainment not occurring on the premises of a licensed gaming establishment is properly a matter addressed by the Nevada Department of Taxation, we believe that the exception for entertainment offered in the common area of a shopping mall applies in this case. If you wish to get an opinion from the Department of Taxation, you may wish to call Dino DiCianno or Cathy Chambers. Both of these individuals are located in Northern Nevada, but I recommend them because they are both heavily involved in the adoption of LET regulations. Dino can be reached at 775-687-6670 and Cathy at 775-688-1750.

Thank you for your patience in awaiting a response.

Lynda Hartzell

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]]
Sent: Wednesday, [REDACTED] 2003 4:44 PM
To: 'lhartzell@gcb.state.nv.us'

Cc: [REDACTED]
Subject: Is [REDACTED] liable for LET on F&B sales related to an outdoor concert on property adjacent to, but not owned by [REDACTED] Lynda. As a follow up to our discussion today, please comment on the extent of [REDACTED] liability for Live Entertainment Tax.

[REDACTED] outdoor entertainment on a periodic basis. On these scheduled days, the entertainer/band performs on an area of property not owned or leased by [REDACTED]. The area is adjacent to property owned or leased by [REDACTED] provides an outdoor beverage cart to facilitate beverage sales during the event; this cart is on [REDACTED] leased property. Food may be sold outside on [REDACTED] leased property on some occasions. A restaurant in [REDACTED] has an outdoor (fenced) patio area, from which the outdoor entertainment can be seen and heard. The concert occurs on property that is a part of the mall property, and is an open air venue.

Do you find this description consistent with:

"Outdoor facilities such as water parks, pools, theme parks or patios where entertainment does not take place in a tent or similar structure" or

"Common area of a shopping mall (not a facility within a mall)" or some other interpretation?

I note that the amended version of Regulation 13.025(7) states, "Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility within the mall" as an exemption from LET. Regards,

Tel: [REDACTED] Fax: [REDACTED]

From: Cathy Chambers

Sent: Friday, [REDACTED] 2003 2:54 PM

To: [REDACTED]

Cc: 'LHartzell@gcb.state.nv.us'; DINO DICIANNO

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Tel: [REDACTED] Fax: [REDACTED]

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Phone: [REDACTED]

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Tel: [REDACTED] Fax: [REDACTED]

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[mailto:LHartzell@gcb.state.nv.us]

Sent: Tuesday, [REDACTED] 2003 3:53 PM

To: [REDACTED]

Cc: DiCianno@tax.state.nv.us; cchamber@tax.state.nv.us; ggalle@gcb.state.nv.us

Subject: RE: Is [REDACTED] liable for LET on F&B sales related to an outdoor concert on property adjacent to, but not owned by [REDACTED]. After reviewing the documentation you provided, including the aerial photos, [REDACTED] and I concurred that [REDACTED] would not be liable for remitting the live entertainment tax to the Gaming Control Board for these events. We take the position that the entertainment is not offered on the premises of a licensed gaming establishment.

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Lynda Hartzell

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Cc: [REDACTED]

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Tel: [REDACTED]

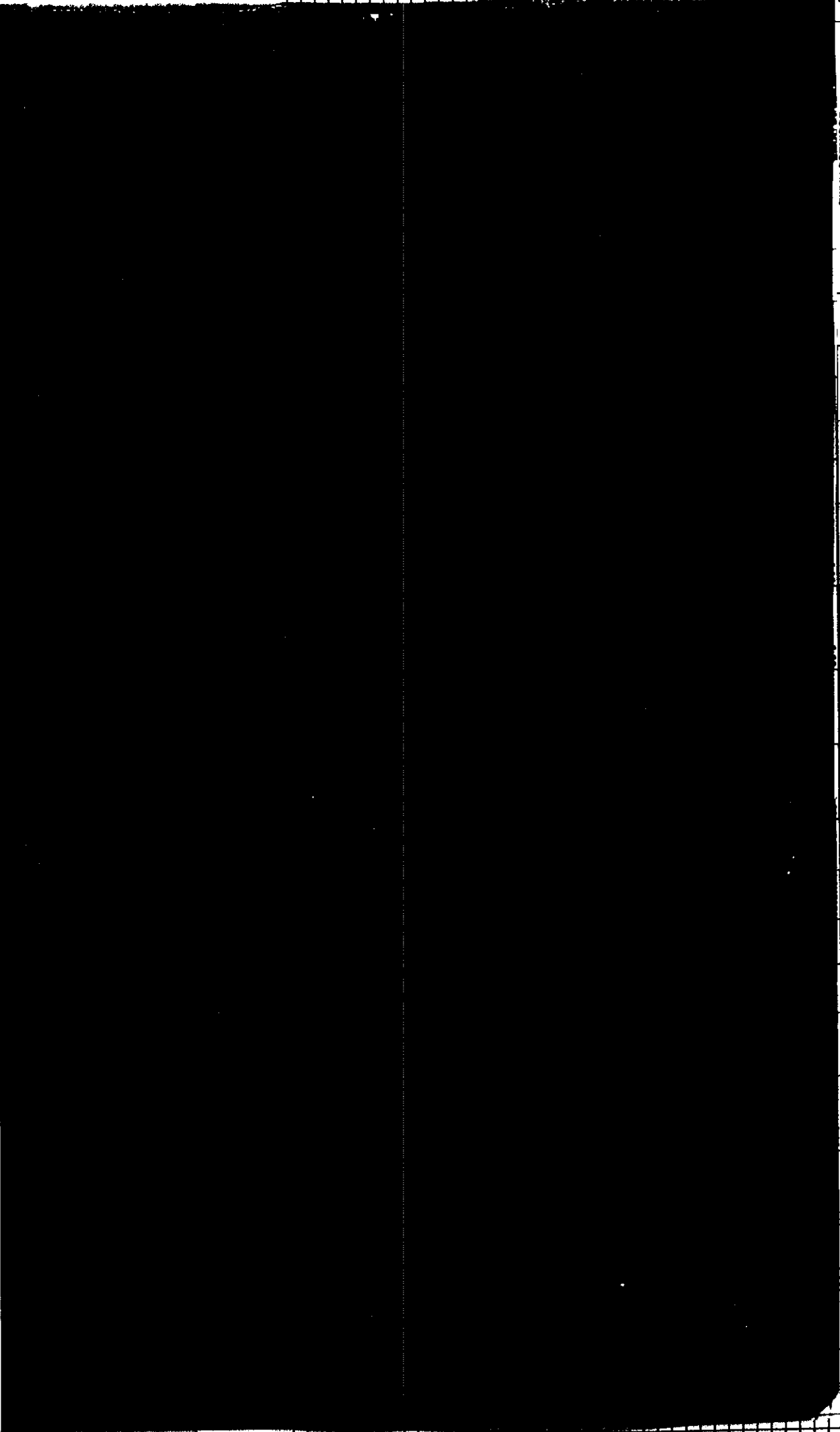
Fax: [REDACTED]

EXHIBIT L

EXHIBIT L

LIVE ENTERTAINMENT TAX
JUNE 2004 RECEIPTS
FISCAL YEAR 2004

L E T	BUSINESS NAME	Port Date	Admission	Food & Merch	Taxable	Calculated	Admission	Calculated	Penalty	Interest	Debits	Credits	Prior	Amount	Amount	Short	Deposit
			Amnt 200-7499	Sold 200-7499	Amnt 200-7499	tax 10% 200-7499	Amnt 7500	tax 5% 7500	10%	1%			Liabilities	Due	Paid	or Over	#



LIVE ENTERTAINMENT TAX
JUNE 2004 RECEIPTS
FISCAL YEAR 2004

LINE	POST DATE	ADMISSION AMT	FOOD & MERCH SOLD	TAXABLE AMT	CALCULATED TAX 10%	ADMISSION AMT	CALCULATED TAX 5%	PENALTY 10%	INTEREST 1%	DEBITS	CREDITS	PRIOR LIABILITIES	AMOUNT DUE	AMOUNT PAID	SHORT OR OVER	DEPOSIT \$
TOTAL AMOUNT		1,458,864.70	3,488,089.39	4,946,954.09	494,695.41	35,609.26	17,924.77	0.00	0.00	0.00	16,139.15	513,828.98	513,828.98	46,100.81	52,067.93	
TOTAL AMOUNT YEAR TO DATE												513,828.98	4,523,924.07	4,345,987.83	178,057.24	

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BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Debit/Credit	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit #
		200-7498	200-7498	200-7498	200-7498	7500	7500								

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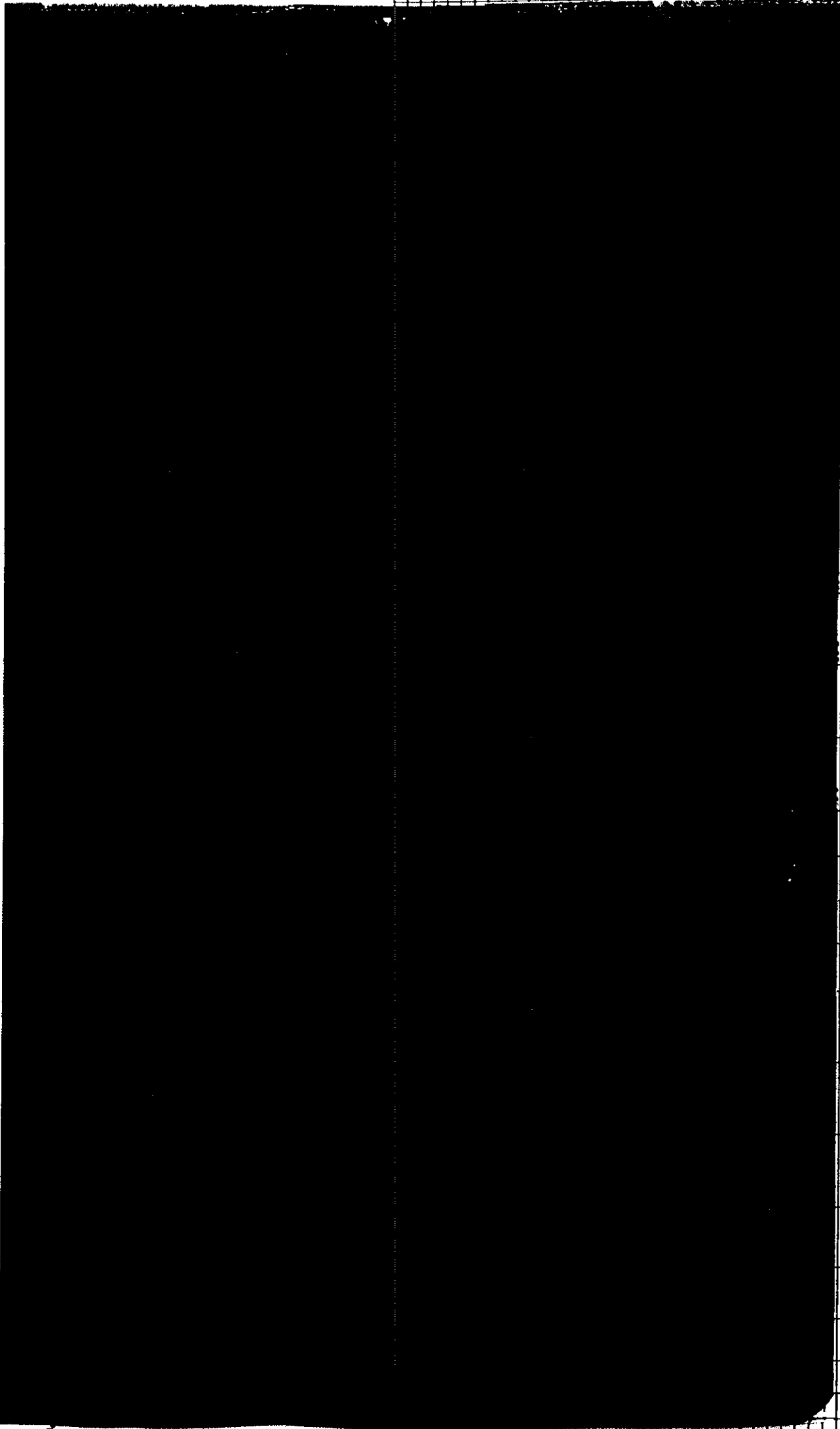
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BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 6%	Penalty 10%	Interest 1%	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit #
[REDACTED]	200-7499	200-7499	200-7499	200-7499	200-7499	7500	7500							
TOTAL AMOUNT:		1,558,192.63	4,231,697.47	5,787,890.10	578,789.01	4,108,217.82	208,410.90	1,461	0.19	0.00	0.00	792,189.63	743,662.13	48,327.50
TOTAL AMOUNT YEAR TO DATE					2,181,488.23		1,011,220.24				4,010,111.24	3,064,658.73	129,251.51	

Appellants' Appendix
Page 1

LIVE ENTERTAINMENT TAX
APRIL 2004 RECEIPTS
FISCAL YEAR 2004

LET	BUSINESS NAME	Post Date	Admission Amt	Food & Merc Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty/Interest 10%	1%	Debit(s)	Credit(s)	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit \$
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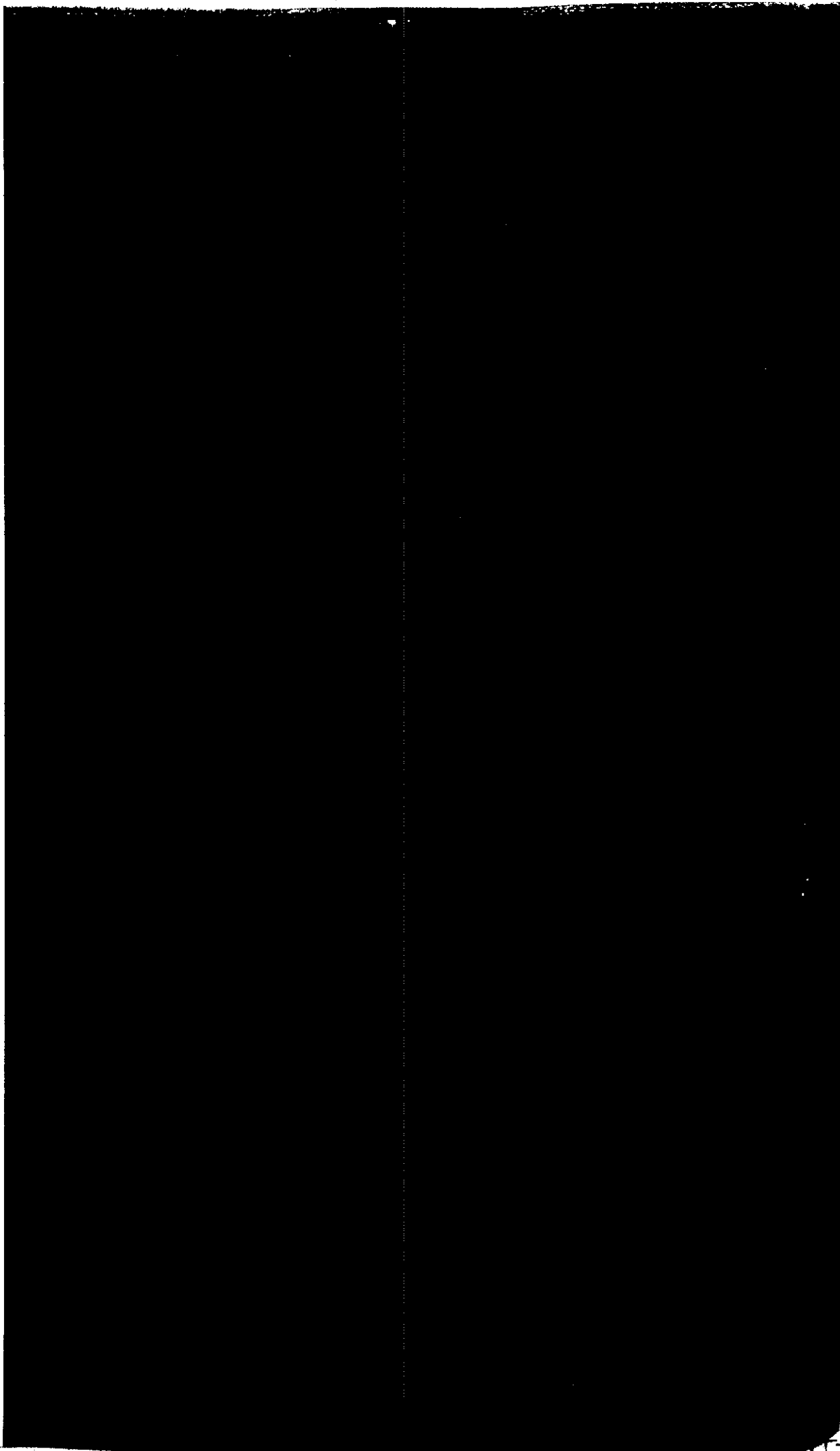


LIVE ENTERTAINMENT TAX
APRIL 2004 RECEIPTS
FISCAL YEAR 2004

LET	Post Date	Admission Amt	Food & Merc Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 8%	Penalty 10%	Interest 1%	Debit/Credit	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit #
BUSINESS NAME															
		200-7489	200-7489	200-7489	200-7489	7500	7500								
TOTAL AMOUNT		1,131,136.73	3,879,783.23	5,010,918.96	501,091.90	7,142,330.86	357,116.56	0.00	0.00	0.00	1,080,428.42	974,316.83	973,014.77	1,302.16	
TOTAL AMOUNT YEAR TO DATE					1,802,677.22		802,808.34					3,217,921.61	3,140,987.80	76,924.01	

LIVE ENTERTAINMENT TAX MARCH 2004 RECEIPTS
FISCAL YEAR 2004

ET	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Debit/Credit	Prior Liabilities Due	Amount Paid	Short of Over	Deposit
BUSINESS NAME		200-7499	200-7499	200-7499	200-7499	7500	7500							

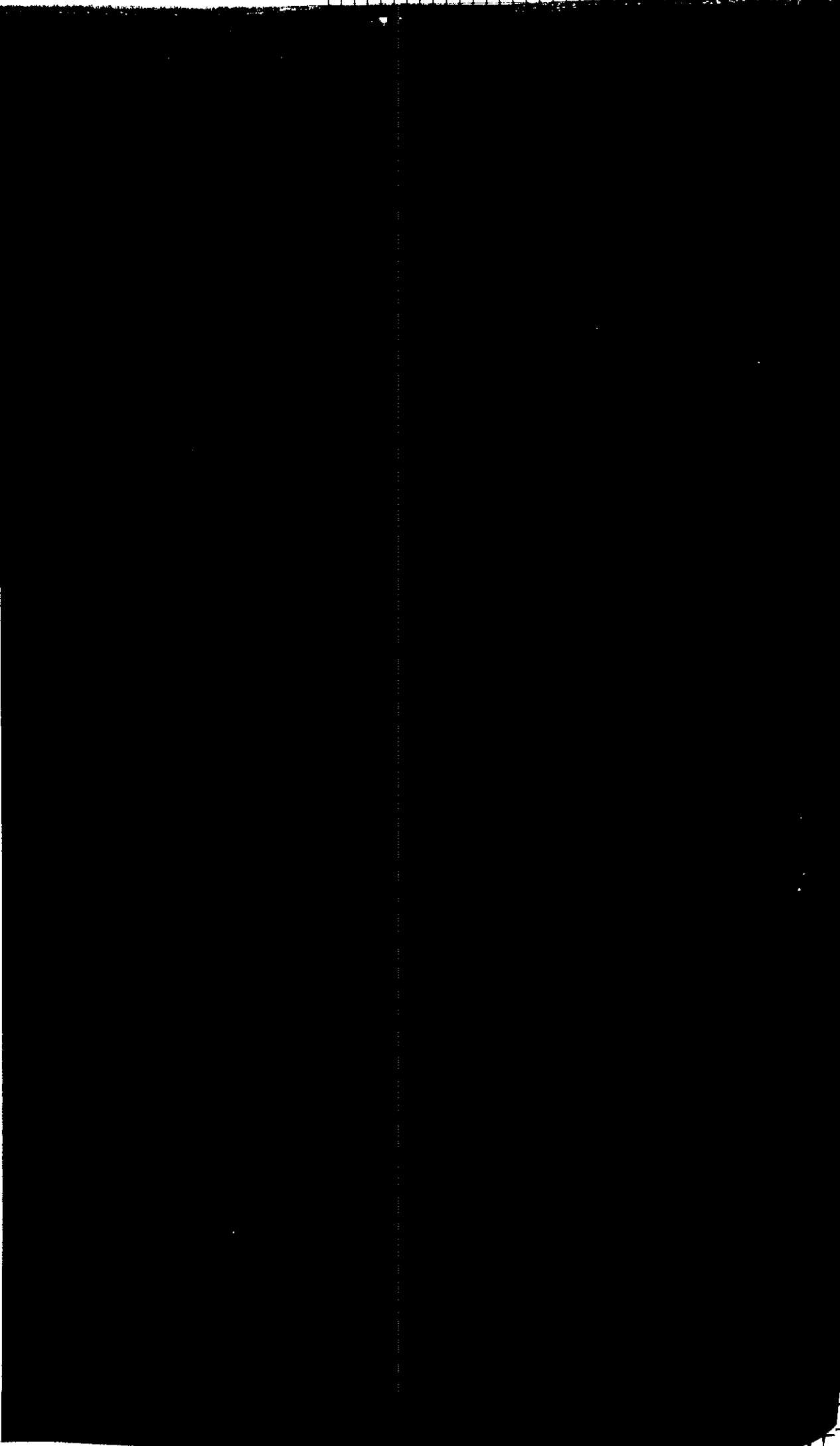


FISCAL YEAR 2004

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LIVE ENTERTAINMENT TAX FEBRUARY 2004 RECEIPTS
FISCAL YEAR 2004

			Admission	Food & Merch	Taxable	Calculated	Admission	Calculated												
		Post	Amt	Sold	Amt	tax 10%	Amt	tax 5%	Penalty	Interest			Prior	Amount	Amount	Short	Deposit			
		Date	300-7499	300-7499	300-7499		7500	7500	10%	1%	Debit(s)	Credit(s)	Liabilities	Due	Paid	or Over	#			
LET	BUSINESS NAME																			



FISCAL YEAR 2004

Appellants' Appendix

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FISCAL YEAR 2006

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LIVE ENTERTAINMENT TAX
JULY 2005 RECEIPTS
FISCAL YEAR 2006

Post	Admission	Food & Merch	Taxable	Calculated	Admission	Calculated	Penalty	Interest	Debit(s)	Credit(s)	Prior	Amount	Amount	Short	Deposit
Date	Amt	Sold	Amt	tax 10%	Amt	tax 5%	10%	1%			Liabilities	Due	Paid	or Over	\$
	300-7499	300-7499	300-7499	300-7499	7500	7500									
TOTAL AMOUNT	1,776,606.38	3,434,398.89	5,211,006.07	521,100.51	5,910,759.33	295,537.97	0.00	0.00	0.00	0.00	44,015.18	857,181.37	830,366.33	13,366.46	
TOTAL AMOUNT YEAR TO DATE											44,015.18	857,181.37	830,366.33	13,366.46	

LIVE ENTERTAINMENT TAX
AUGUST 2008 RECEIPTS
FISCAL YEAR 2008

F.E. No.	BUSINESS NAME	Post Date	Admission		Food & Merch		Taxable		Calculated		Admission		Calculated		Penalty	Interest	Deductions	Credits	Liabilities	Prior	Amount Due	Amount Paid	Short or Over	Deposit #
			Amnt	200-7499	Sold	200-7499	Amnt	200-7499	tax 10%	200-7499	Amnt	7500	tax 5%	7500										

LIVE ENTERTAINMENT TAX
AUGUST 2006 RECEIPTS
FISCAL YEAR 2006

BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated Tax 10%	Admission Amt	Calculated Tax 4%	Penalty 10%	Interest 1%	Debita	Credit	Prior Balance	Amount Due	Amount Paid	Short or Over	Deposit #
TOTAL AMOUNT		1,351,328.59	2,500,436.76	3,851,765.35	385,176.54	1,568,594.29	78,428.71	0.00	0.00	335.00	335.00	782,921.32	651,545.99	640,914.56	10,631.43	
TOTAL AMOUNT YEAR TO DATE					385,176.54		78,428.71					879,881.65	1,205,307.24	1,015,988.05	187,591.55	

LIVE ENTERTAINMENT TAX
SEPTEMBER 2009 RECEIPTS
FISCAL YEAR 2009

ET	BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Debits	Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit #
			300-7499	300-7499	300-7499	300-7499	7500	7500									

LIVE ENTERTAINMENT TAX
SEPTEMBER 2005 RECEIPTS
FISCAL YEAR 2009[illegible]

LIVE ENTERTAINMENT TAX
OCTOBER 2005 RECEIPTS
FISCAL YEAR 2006

PATRON'S NAME	Post Date	Admission		Food & Merch		Taxable		Calculated		Admission		Calculated		Penalty	Interest	Debits	Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit \$
		Am't		Sold		Am't		tax 10%		Am't		tax 5%										
		300-7498		300-7498		300-7498		300-7498		7500		7500		10%	1%							

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LIVE ENTERTAINMENT TAX
 NOVEMBER 2005 RECEIPTS
 FISCAL YEAR 2008

LEI	BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Debit	Credit	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit #
			2007488	2007488	2007488	2007488	7500	7500						0.00	0.00	0.00	

LIVE ENTERTAINMENT TAX
NOVEMBER 2005 RECEIPTS
FISCAL YEAR 2006[illegible]

LIVE ENTERTAINMENT TAX
DECEMBER 2005 RECEIPTS
FISCAL YEAR 2006

BUSINESS NAME	Post Date	Admission		Food & Merch		Taxable		Calculated		Admission		Calculated		Penalty 10%	Interest 1%	Debits/Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit Ch
		Amt		Sold		Amt		tax 10%		Amt		tax 5%									
		300-7499		300-7499		300-7499		300-7499		7500		7500									

LIVE ENTERTAINMENT TAX
DECEMBER 2005 RECEIPTS
FISCAL YEAR 2006

BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Debts/Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit #
[REDACTED]															
TOTAL AMOUNT		1,721,969.10	2,840,602.29	4,467,813.49	446,781.35	3,623,538.83	181,176.94	0.00	0.00	0.00	0.00	627,958.29	615,098.96	12,861.34	
TOTAL AMOUNT YEAR TO DATE											0.00	3,609,563.21	3,478,004.12	200,402.12	

LIVE ENTERTAINMENT TAX
JANUARY 2008 RECEIPTS
FISCAL YEAR 2008

LET	BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Debit	Credit	Prior Amount Due	Amount Paid	Short	Deposit
			200-7488	100-7488	200-7488	200-7488	7500	7500								

**LIVE ENTERTAINMENT TAX
JANUARY 2008 RECEIPTS
FISCAL YEAR 2008**

BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 6%	Penalty 10%	Interest 1%	Deductions	Credits	Prior Unsettled Due	Amount Paid	Short or Over \$
BUSINESS NAME	Date	206-7489	206-7489	206-7489	206-7489	7800	7800							
TOTAL AMOUNT YEAR TO DATE		2,352,096.56	4,561,367.07	9,503,473.62	960,347.36	6,077,229.60	300,861.50	4,812.64	108.59	22,404.59	4,326.18	29,623.28	1,029,692.59	344,656.01 / 117,786.64
TOTAL AMOUNT YEAR TO DATE					1,598,628.49							978,898.50	6,187,538.49	4,673,428.37 / 539,283.49

LIVE ENTERTAINMENT TAX FEBRUARY 2008 RECEIPTS
FISCAL YEAR 2008

LET	BUSINESS NAME	Post Date	Admission		Food & Merch		Taxable		Calculated		Admission		Calculated		Penalty	Interest	Debit	Credit	Prior	Amount Due	Amount Paid	Short or Over	Deposit
			Amnt	200-7499	Sold	200-7499	Amnt	200-7499	tax 10%	200-7499	Amnt	7500	tax 5%	7500									

FISCAL YEAR 2006

LINE	BUSINESS NAME	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 6%	Penalty 10%	Interest 1%	Debit(s)	Credit(s)	Prior Balance	Amount Due	Amount Paid	Short or Over	Deposit #
TOTAL AMOUNT:			2,081,448.38	4,208,786.30	6,300,230.68	630,023.07	6,002,881.12	300,143.08	4,508.72	80,146.33	80,146.33	385,488.32	588,015.82	548,880.88	388,378.82	183,602.18	
TOTAL AMOUNT YEAR TO DATE						2,228,562.58		300,143.08					1,581,812.42	5,737,417.44	5,059,806.19	689,786.61	

LIVE ENTERTAINMENT TAX
MARCH 2008 RECEIPTS
FISCAL YEAR 2008

Post	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Debits	Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit
	200-7489	200-7489	200-7489	200-7489	7500	7500									

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf of a book. The paper has a slightly textured appearance with some minor discoloration and a small dark stain near the bottom center. The right edge of the page reveals the binding structure, including the spine and the edges of other pages.

	Post Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 6%	Penalty 10%	Interest 1%	Deduction	Credits	Prior Liabilities Due	Amount Paid	Short or Over	Deposit \$
BUSINESS NAME	200-7498	200-7498	200-7498	200-7498	200-7498	7500	7500	7500	1%						
LET															
TOTAL AMOUNT	2,608,176.12	4,688,487,997,277,668.11	727,788.81	13,705,243.01	895,282.15	2,676.88	1,014.20	108,154.32	63,121.88	83,606.92	1,537,281.20	1,326,708.86	210,574.34		
TOTAL AMOUNT YEAR TO DATE													7,274,878.64	6,398,512.05	870,318.86

Appellants' Appendix

Page

LIVE ENTERTAINMENT TAX
APRIL 2008 RECEIPTS
FISCAL YEAR 2008

BUSINESS NAME	Post Date	Admission		Food & Merch		Taxable		Calculated		Admission		Calculated		Penalty	Interest	Debit(s)	Credit(s)	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit
		Amt		Sold		Amt		tax 10%		Amt		tax 5%										
		200-7499		200-7499		200-7499		200-7499		7500		7500		10%	1%							

LIVE ENTERTAINMENT TAX
APRIL 2008 RECEIPTS
FISCAL YEAR 2008

		Post	Admission	Food & Merch	Taxable	Calculated	Admission	Calculated	Penalty	Interest	Debit	Credit	Prior	Amount	Amount	Short	Deposit
		Date	Amt	Sold	Amt	tax 10%	Amt	tax 5%	10%	1%			Liabilities	Due	Paid	or Over	\$
LET	BUSINESS NAME		208-7498	200-7498	200-7498	200-7498	7500	7500									
	TOTAL AMOUNT		2,387,281.77	4,316,639.67	6,772,801.44	677,280.14	2,945,459.92	147,273.00	27.66	981.73	108,021.76	35,714.02	1,136,897.61	1,007,783.86	837,683.38	170,080.58	
	TOTAL AMOUNT YEAR TO DATE					677,280.14		147,273.00					1,136,897.61	2,282,482.59	7,224,206.44	1,090,410.51	

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Page 1893

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LIVE ENTERTAINMENT TAX
JUNE 2008 RECEIPTS
FISCAL YEAR 2008

LET	Post Mark	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 6%	Penalty 10%	Interest 1%	Debits	Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit \$
		200.7498	200.7498	200.7498	20.07498	7500	7500									

FISCAL YEAR 2008

	TOTAL AMOUNT YEAR TO DATE

LIVE ENTERTAINMENT TAX
SPORTING EVENTS
FISCAL YEAR 2008

	Post	Admission	Food & Merch	Taxable	Calculated	Admission	Calculated	Amount	Amount	Short	Deposit
	Mark	Amt	Sold	Amt	tax 10%	Amt	tax 5%	Due	Paid	or Over	
1	DATE	200-7499	200-7499	200-7499	200-7499	7500	7500				
	BUSINESS NAME										

LIVE ENTERTAINMENT TAX
SPORTING EVENTS
FISCAL YEAR 2006

BUSINESS NAME	Post Mark	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Amount Due	Amount Paid	Short or Over	Deposit
		200,749.99	200,749.99	200,749.99	20,074.99	7500	7500				
[REDACTED]											
TOTAL AMOUNT		50,458.80	12,361.30	62,820.10	6,282.01	31,262,209.95	1,563,110.50	1,569,392.51	1,477,488.41		

Prepared by: Michelle Jacoby

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Page 1

LIVE ENTERTAINMENT TAX
JULY 2006 RECEIPTS
FISCAL YEAR 2007

Post	Admission	Food & Merch	Taxable	Calculated	Admission	Calculated	Penalty	Interest	Credit	Prior	Amount	Amount	Short	Deposit
Mark	Am't	Sold	Am't	tax 10%	Am't	tax 5%	10%	1%	(Credit)	Liabilities	Due	Paid	or Over	\$
			700.7488	200.7488	7500	7500								

LIVE ENTERTAINMENT TAX
AUGUST 2008 RECEIPTS
FISCAL YEAR 2007

BUSINESS NAME	Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated Tax 10%	Admissions Amt	Calculated Tax 5%	Penalty 10%	Interest 1%	Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit \$
	200-7-89		200-7-89	200-7-89	146.10	7500	375.00								
TOTAL AMOUNT DUE:	6/27/08/79	537,403.60	1,022,308.46	51,116.31	17,441.04	203,642.18	812,831.48	784,866.42	17,961.11					0.00	
TOTAL AMOUNT PAID TO DATE						444,271.74	1,608,328.48	1,487,723.00	140,802.58						

LIVE ENTERTAINMENT TAX
SEPTEMBER 2008 RECEIPTS
FISCAL YEAR 2007

LET	BUSINESS NAME	Post Mkt Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit #
			200.7498	200.7498	200.7498	20.07498	1500	75.00								

FISCAL YEAR 2007

	Post Mark Date	Admission Amt	Food & Merch Sold	Taxable Amt	Calculated tax 10%	Admission Amt	Calculated tax 5%	Penalty 10%	Interest 1%	Credit	Prior Balance	Amount Due	Amount Paid	Short or Over	Deposit \$
BUSINESS NAME	0308	200.7489	200.7489	200.7489	20.0749	7500	7500								
TOTAL AMOUNT OCTOBER				6,511,708.28	651,370.83	3,828,780.69	191,439.53	4,127.78	11,141.46	34,227.58	140,862.49	984,764.58	813,808.82	141,157.33	
TOTAL AMOUNT YEAR TO DATE											714,238.87	3,436,188.41	3,048,071.18	390,177.23	

LIVE ENTERTAINMENT TAX
 NOVEMBER 2008 RECEIPTS
 FISCAL YEAR 2007

ET	Post	Admission	Food & Merch	Taxable	Calculated	Admission	Calculated	Penalty	Interest	Credit	Debit	Amount	Amount	Short	Deposit
	Mark	Am	Sold	Am	tax 10%	Am	tax 5%	10%	1%	Credit	Debit	Due	Paid	or Over	\$
	Date	200-7488	200-7488	200-7488	200-7488	7500	7500								

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Page 1905

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LIVE ENTERTAINMENT TAX
FEBRUARY 2007 RECEIPTS
FISCAL YEAR 2007

Post	Admission	Food & Merch	Taxable	Calculated	Admission	Calculated	Penalty	Interest	Credits	Prior	Amount	Amount	Short	Deposit
DATE	AMT	DATE	AMT	TAX 10%	DATE	TAX 5%	10%	1%		Liabilities	Due	Paid	or Over	\$
BUSINESS NAME	200-7488	200-7488	200-7488	200-7488	7500	7500								
[REDACTED]														
TOTAL AMOUNT FEBRUARY			5,687,128.39	860,638.66	13,507,122.33	693,038.61	2,040.18	2,241.64	972.58	430,581.33	1,778,080.04	1,254,180.45	483,128.63	
TOTAL AMOUNT YEAR TO DATE										2,048,458.62	8,638,278.44	6,715,482.65	1,922,792.79	

LIVE ENTERTAINMENT TAX
MARCH 2007 RECEIPTS
FISCAL YEAR 2007

Post	Admission	Food & Merch	Taxable	Calculated	Admission	Calculated	Penalty	Interest	Prior	Amount	Amount	Short	Deposit
Mark	Am't	Sold	Am't	tax 10%	Am't	tax 5%	10%	1%	Liability	Due	Filed	or Over	\$
				7500	7500	7500	7500	7500					

LIT	BUSINESS NAME	Prod Date	Admission Amt	Food & Merch Sold	Totals Amt	Calculated Tax 10%	Admission Amt	Calculated Tax 5%	Penalty 10%	Interest 1%	Credits	Prior Liabilities	Amount Due	Amount Paid	Short or Over	Deposit		
		206-7498		206-7498	206-7498	206-7498	7500	7500										
TOTAL AMOUNT DUE																		
					7,184,426.25	718,442.62	7,184,426.25	359,221.31	718,442.62	1,500.44	0.00	306,324.31	1,790,144.87	1,483,820.56	306,324.31			
TOTAL AMOUNT PAID TO DATE																		
								2,761,826.78	11,164,500.18	1,250,427.40	1,459,451.28							

LIVE ENTERTAINMENT TAX
MAY 2007 RECEIPTS
FISCAL YEAR 2007

LINE	BUSINESS NAME	Post	Admission	Food & Merch	Table	Calculated	Admission	Calculated	Penalty	Interest	Credit	Prior	Amount	Amount	Short	Deposit			
		Made	Am't	Sum	Am't	tax 10%	Am't	tax 6%	10%	1%	(Q)	Liabilities	Due	Paid	of Over	\$			
1		2007-7-19	2007-7-19	2007-7-19	2007-7-19	2007-7-19	7.500	7.500											

LIVE ENTERTAINMENT TAX
JUNE 2007 RECEIPTS
FISCAL YEAR 2007[illegible]

NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name Under 7500	TID #	Loc#	PED 7/07	PED 8/07	PED 9/07	PED 10/07	PED 11/07	PED 12/07	Subtotal
[REDACTED]									
									6467.80

NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name Under 7500	TID #	Loc #	PED 7/07	PED 8/07	PED 9/07	PED 10/07	PED 11/07	PED 12/07	Subtotal
[REDACTED]									
TOTAL UNDER 7500			\$707,794.30	\$807,757.90	\$625,744.23	\$678,659.89	\$642,827.70	\$617,275.32	

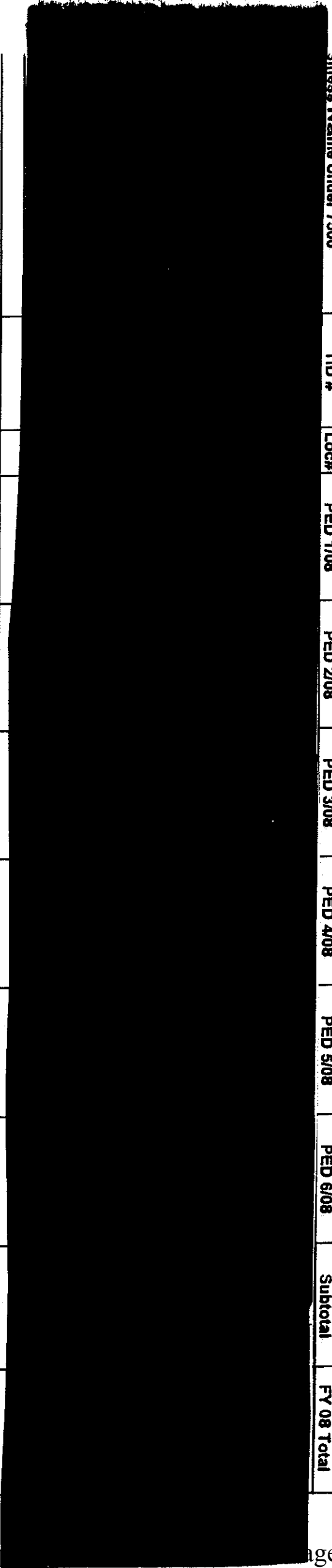
NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name 7500 or more	TID #	Loc #	PED 7/07	PED 8/07	PED 9/07	PED 10/07	PED 11/07	PED 12/07	Subtotal
TOTAL OVER 7500			\$92,314.54	\$164,540.57	\$120,496.32	\$225,003.18	\$66,634.32	\$2,788.92	
TOTAL DEPOSITS			\$800,108.84	\$972,298.47	\$746,240.55	\$903,663.07	\$709,462.02	\$620,064.24	

NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name Under 7500	TID #	Loc#	PED 1/08	PED 2/08	PED 3/08	PED 4/08	PED 5/08	PED 6/08	Subtotal	FY 08 Total
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NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

Business Name Under 7500	TID #	Loc#	PED 1/08	PED 2/08	PED 3/08	PED 4/08	PED 5/08	PED 6/08	Subtotal	FY 08 Total
										
TOTAL UNDER 7500			\$828,524.67	\$724,374.09	\$775,895.40	\$846,064.73	\$950,547.29	\$773,898.48	\$4,899,304.66	

NEVADA DEPARTMENT OF TAXATION
LIVE ENTERTAINMENT TAX
FISCAL YEAR 2008

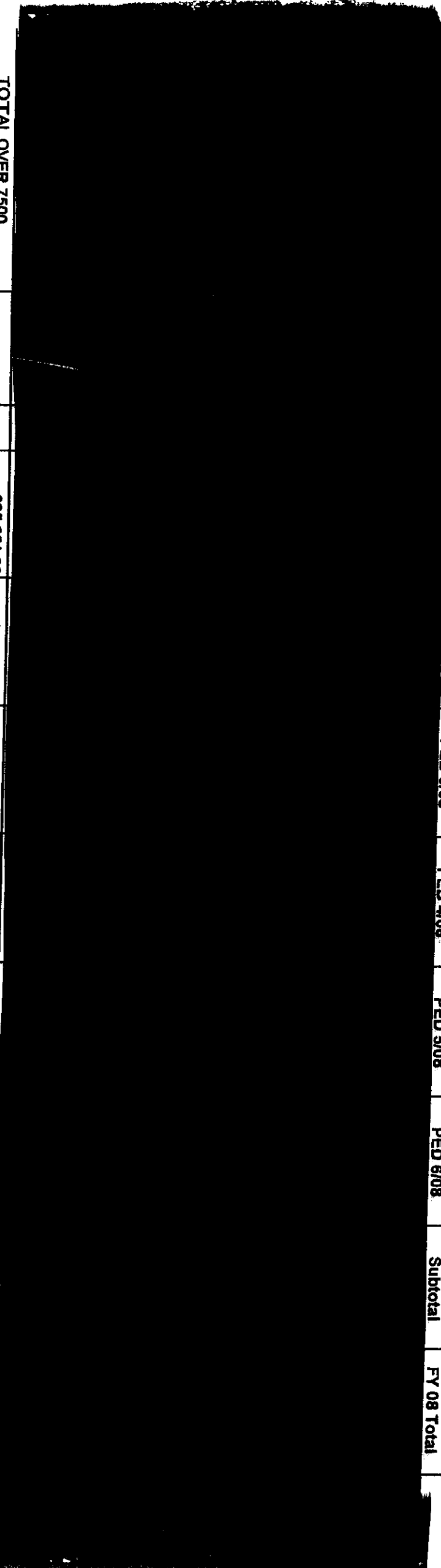
Business Name 7500 or more	TID #	Loc#	PED 1/08	PED 2/08	PED 3/08	PED 4/08	PED 5/08	PED 6/08	Subtotal	FY 08 Total
										
TOTAL OVER 7500			\$35,851.20	\$68,378.46	\$128,312.89	\$135,845.94	\$130,910.24	\$38,158.87	\$537,457.60	
TOTAL DEPOSIT			\$864,375.87	\$792,752.55	\$904,208.29	\$981,910.67	\$1,081,457.53	\$812,057.35	\$5,438,762.26	
TOTAL DEPOSITS FY 08										\$10,188,599.45

EXHIBIT M

EXHIBIT M

FISCAL YEAR 2007

[illegible]

Prepared by:
Michelle Jacobs
7/23/2009 12:22 PM

EXHIBIT N

EXHIBIT N

RRVAR702
Print Date 04/17/2009

Nevada Department of Taxation
TAS Monthly Balance

Page 1 of 2

Reported Date: 02/28/2009(FINAL) Tax Types included: LET

Receipts	LET	\$554,866.75
	Subtotal:	\$554,866.75
Transfers	LET from AR	
	LET from SUT	
	LET to AR	
	Subtotal:	
External Transfer Adj	LET	
	Subtotal:	
Credit Lockbox Adjustments	LET	
	Subtotal:	
Debit Lockbox Adjustments	LET	
	Subtotal:	
Credit Online Tax Adjustments	LET	
	Subtotal:	
Debit Online Tax Adjustments	LET	
	Subtotal:	
Other Credit Adjustments	LET	
	Subtotal:	
Other Debit Adjustments	LET	
	Subtotal:	
Refunds	LET	
	Subtotal:	
Total Receipts:	LET	\$667,480.50
	Total:	\$667,480.50
Current Period Distributions	LET	
	Subtotal:	
Future Period Distributions	LET	
	Subtotal:	
ISSUE: Unfunded rmd/ofst	LET	
	Subtotal:	
Unallocated Pool	LET	
	Subtotal:	
Total Recorded:	LET	\$667,480.50
	Total:	\$667,480.50
DIFFERENCE:		\$0.00

Print Date 04/17/2009

Nevada Department of Taxation
TAS Monthly Balance

TAS Monthly Balance

Page 2 of 2

Unallocated Pool - Posted w/o Return

LET
Subtotal:

Subtotal:

Unallocated Pool - Overpaid

LET
Subtotal:

Subtotal:

Total UTS to date: Unallocated Pool

LET
Subtotal:

Subtotal:

**Total UTS to date: Unallocated Pool -
Posted w/o Return**

LET
Subtotal:

Subtotal:

Total UTS to date: Unallocated Pool - Overpaid

LET
Subtotal:

Subtotal:

Total UTS to date: Cash Bond

LET
Subtotal:

LET

Subtotal:**Subtotal:****Subtotal:****Subtotal:**

Nevada Department of Taxation
TAS Distribution Summary

Period Ending 02/28/2009(FINAL). Tax Types included: LET

	Tax type	Process	Distribution Period	Amount
Current	LET	Jan 2009	Feb 2009	\$37,705.54
		Feb 2009	Feb 2009	\$613,478.21
	Subtotal			\$651,183.75
Future	LET	Feb 2009	Mar 2009	\$54,005.35
	Subtotal			\$54,005.35
Totals:	Current			\$651,183.75
	Future			\$54,005.35
				\$705,189.10

RRVAR750

Run Date: 04/17/09

Nevada Department of Taxation
Monthly Deposit Report
For 03/18/2009 - 04/17/2009

Tax Types: LET

Deposit	Tax Type	Location	Date	Amount
[REDACTED]	LET	[REDACTED]	03/24/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	03/25/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	03/26/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	03/30/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	03/30/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	03/31/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	03/31/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	04/03/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	04/03/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	04/03/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	04/06/2009	[REDACTED]
[REDACTED]	LET	[REDACTED]	04/15/2009	[REDACTED]
Totals				

Transfer 6,000.00
IN 5,306.61
10,000.00
5,000.00
2,309.24
73,997.99
006 112,613.75*

0.00
112,613.75+
554,866.75+
002 667,480.5*

RRVAR75

Run Date: 04/17/09

Nevada Department of Taxation
Monthly Deposit Report

For 03/18/2009 - 04/17/2009

Tax Types: LET

Transfer In Details

Deposit	Deposit Date	PLN	From Tax Type	To Tax Type	Period End Date Posted To	Amount
	03/20/2009	0	AR	LET	12/31/2008	
	03/20/2009		AR	LET	10/31/2008	
	04/02/2009		AR	LET	11/30/2007	
	04/02/2009		AR	LET	06/30/2007	
	04/02/2009		AR	LET	12/31/2007	
	04/02/2009		AR	LET	01/31/2008	
	04/09/2009		AR	LET	12/31/2008	
	04/09/2009		AR	LET	12/31/2008	
	04/15/2009		AR	LET	12/31/2008	
			AR	LET	01/31/2008	
			AR	LET	03/31/2008	
			AR	LET	07/31/2008	
			AR	LET	08/31/2008	
			AR	LET	10/31/2008	
			AR	LET	07/31/2008	
			AR	LET	07/31/2007	
			AR	LET	10/31/2007	
			AR	LET	11/30/2008	
			AR	LET	11/30/2008	
			AR	LET	11/30/2008	
			AR	LET	11/30/2008	
			AR	LET	05/31/2008	
			AR	LET	04/30/2006	
			AR	LET	03/31/2008	
			AR	LET	11/30/2007	
	03/26/2009		LET	LET	02/28/2009	
	03/05/2009		SUT	LET	01/31/2009	
			SUT	LET	02/28/2009	
Totals						\$131,652.88

TRANSFER
OUT

RRVAR75

Run Date: 04/17/09

Nevada Department of Taxation
Monthly Deposit Report

For 03/18/2009 - 04/17/2009

Tax Types: LET

Transfer Out Details

Deposit

Deposit Date

PLN

From Tax Type

To Tax Type

Period End Date Posted To

Amount

03/26/2009

Totals

\$19,039.13

RRVAR75

Run Date: 04/17/09

Transfer In Summary

LET
LET
LET

Total Transfer to LET

Total Transfer In Summary

Amount

LET
LET
LET

\$131,652.88

\$131,652.88

Nevada Department of Taxation
Monthly Deposit Report
For 03/18/2009 - 04/17/2009

Tax Types: LET

RRVAR75

Run Date: 04/17/09

Transfer Out Summary

Transfer Out Summary
[REDACTED]
[REDACTED]
[REDACTED]

Total Transfer From Summary

Amount

[REDACTED]
[REDACTED]
[REDACTED]

\$19,039.13

Nevada Department of Taxation
Monthly Deposit Report
For 03/18/2009 - 04/17/2009

Tax Types: LET

EXHIBIT O

EXHIBIT O

GENERAL FUND REVENUES - ECONOMIC FORUM DECEMBER 1, 2008 FORECAST
ECONOMIC FORUM'S FORECAST FOR FY 2009, FY 2010, AND FY 2011 APPROVED AT THE DECEMBER 1, 2008 MEETING

December 1, 2008 - 4:00 PM

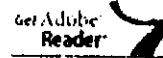
DESCRIPTION	FY 2005			FY 2006			FY 2007			FY 2008			FY 2009			FY 2010			FY 2011		
	ACTUAL	%	CHANGE	ACTUAL	%	CHANGE	ACTUAL	%	CHANGE	ACTUAL	%	CHANGE	ACTUAL	%	CHANGE	ACTUAL	%	CHANGE	ACTUAL	%	CHANGE
TAXES																					
TOTAL MINING TAXES	\$16,448,304	-2.7%		\$16,061,886	19.5%		\$17,600,719	40.9%		\$23,131,075	28.8%		\$33,600,000	-4.4%		\$29,100,000	-4.4%		\$26,600,000	-5.3%	
TOTAL SALES AND USE TAX (14-FY04)	\$913,893,384	15.6%		\$1,025,054,248	10.0%		\$1,020,762,102	1.8%		\$985,739,728	-3.4%		\$900,951,000	-8.8%		\$805,549,000	-8.8%		\$932,735,000	3.0%	
TOTAL GAMING TAXES (2-FY04) (14-FY04)	\$749,559,022	4.8%		\$838,084,208	11.8%		\$854,463,522	2.3%		\$803,946,125	-4.4%		\$715,272,700	-11.0%		\$736,866,700	3.1%		\$767,472,900	3.0%	
CASINO LIVE ENTERTAINMENT TAX (14-FY04) (2-FY04)	\$107,844,337	2.0%		\$117,100,288	8.6%		\$132,463,622	13.1%		\$131,820,221	-0.5%		\$125,927,000	-4.5%		\$126,879,000	0.7%		\$137,256,000	5.7%	
LOTTO TAX (2-FY04)	\$215,940,874	11.1%		\$238,637,989	10.5%		\$260,000,136	9.0%		\$237,347,240	-1.0%		\$252,822,400	-0.5%		\$254,063,400	0.5%		\$261,438,900	2.9%	
CIGARETTE TAX (2-FY04)	\$35,440,874	7.5%		\$37,347,240	5.2%		\$38,811,094	4.2%		\$39,434,816	1.3%		\$39,278,000	-0.4%		\$39,940,000	1.7%		\$40,918,000	2.4%	
OTHER TOBACCO TAX (2-FY04)	\$114,262,684	6.1%		\$114,683,245	0.4%		\$115,077,337	-0.3%		\$116,418,266	1.2%		\$100,337,000	-8.7%		\$102,329,000	1.3%		\$102,329,000	0.0%	
LATE FEE & REVOLUT. FEE	\$7,357,607	8.1%		\$8,178,560	8.2%		\$8,841,781	8.1%		\$8,840,560	-0.1%		\$8,928,000	1.0%		\$9,057,000	1.4%		\$9,212,000	1.7%	
HECC TRANSFER	\$5,000,000			\$5,000,000			\$5,000,000			\$5,000,000			\$5,000,000			\$5,000,000			\$5,000,000		
BUSINESS LICENSE FEE (14-FY04) (2-FY04)	\$14,486,315	22.2%		\$17,887,085	51.2%		\$19,897,653	8.7%		\$18,568,390	-6.7%		\$19,880,000	1.6%		\$19,817,000	-0.4%		\$19,817,000	0.0%	
BUSINESS LICENSE TAX (2-FY04)	\$1,297,383	-84.2%		\$431,986	-66.7%		\$239,466	-44.6%		\$13,863	-99.4%		\$10,000			\$7,500			\$5,000		
MODIFIED BUSINESS TAX	\$209,348,170	40.5%		\$232,760,812	13.3%		\$257,432,283	10.6%		\$263,902,120	2.5%		\$264,203,000	0.1%		\$274,174,000	3.8%		\$260,733,000	-3.4%	
MBT FINANCIAL (14-FY04) (2-FY04)	\$21,575,335	39.3%		\$22,481,110	4.2%		\$21,520,319	-4.3%		\$20,688,287	-3.8%		\$18,696,000	-9.7%		\$17,774,000	-7.1%		\$18,696,000	5.2%	
BRANCH BANK FEE TAX (2-FY04) (2-FY04)	\$1,084,456	104.5%		\$2,810,210	8.6%		\$3,028,987	7.5%		\$3,142,660	3.7%		\$3,218,000	2.4%		\$3,126,000	-2.8%		\$3,213,000	2.8%	
REAL PROPERTY TRANSFER TAX (14-FY04) (2-FY04)	\$148,730,274	68.0%		\$164,414,508	10.6%		\$170,374,961	3.7%		\$165,882,722	-2.7%		\$168,840,000	2.4%		\$174,000,000	3.0%		\$172,000,000	-1.1%	
TOTAL TAXES	\$2,559,687,384	14.1%		\$2,828,038,594	10.5%		\$2,888,014,822	2.1%		\$2,770,904,158	-4.2%		\$2,585,289,100	-7.4%		\$2,474,159,800	-4.3%		\$2,557,922,800	3.2%	
LICENSES																					
INSURANCE LICENSES	\$11,358,651	7.4%		\$12,536,529	10.4%		\$13,708,573	9.3%		\$14,500,714	5.8%		\$15,226,000	5.0%		\$15,967,000	5.0%		\$16,786,000	5.0%	
BANKING LICENSES	\$999,890	0.9%		\$1,058,974	5.9%		\$1,128,628	6.5%		\$1,198,628	6.2%		\$1,268,628	5.8%		\$1,338,628	5.5%		\$1,408,628	5.2%	
WHALE LICENSES	\$84,122,084	11.7%		\$91,136,628	8.3%		\$98,151,172	7.7%		\$105,165,716	7.2%		\$112,180,260	6.7%		\$119,194,804	6.2%		\$126,209,348	5.7%	
TOTAL PRIVATE SCHOOL LICENSES	\$274,132	8.8%		\$294,102	7.3%		\$314,072	6.8%		\$334,042	6.4%		\$354,012	6.0%		\$374,000	5.6%		\$394,000	5.3%	
PRIVATE EMPLOYMENT AGENCY	\$18,700	-28.1%		\$18,700	-28.1%		\$18,700	-28.1%		\$18,700	-28.1%		\$18,700	-28.1%		\$18,700	-28.1%		\$18,700	-28.1%	
TOTAL REAL ESTATE TAXES (14-FY04) (2-FY04)	\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%	
TOTAL FINANCIAL INSTITUTIONS (14-FY04)	\$2,462,427	9.0%		\$2,642,773	7.3%		\$2,823,123	6.8%		\$3,003,473	6.4%		\$3,183,823	6.0%		\$3,364,173	5.6%		\$3,544,523	5.2%	
ATHLETIC COMMISSION FEES	\$101,463,908	10.1%		\$111,463,908	9.9%		\$121,463,908	9.0%		\$131,463,908	8.1%		\$141,463,908	7.6%		\$151,463,908	7.1%		\$161,463,908	6.6%	
FEES AND FINES																					
VITAL STATISTICS FEES (14-FY04)	\$445,362	11.3%		\$495,362	11.3%		\$545,362	10.0%		\$595,362	9.3%		\$645,362	8.6%		\$695,362	7.9%		\$745,362	7.2%	
DIVORCE FEES	\$208,070	1.2%		\$218,070	4.8%		\$228,070	4.6%		\$238,070	4.4%		\$248,070	4.2%		\$258,070	4.0%		\$268,070	3.8%	
CIVIL ACTION FEES	\$1,472,010	2.8%		\$1,572,010	6.8%		\$1,672,010	6.4%		\$1,772,010	6.0%		\$1,872,010	5.6%		\$1,972,010	5.2%		\$2,072,010	4.8%	
INSURANCE FEES	\$576,035	-7.7%		\$576,035	-7.7%		\$576,035	-7.7%		\$576,035	-7.7%		\$576,035	-7.7%		\$576,035	-7.7%		\$576,035	-7.7%	
MEDICAL PLAN DISCOUNT REGISTRATION FEES	\$1,472,010	2.8%		\$1,572,010	6.8%		\$1,672,010	6.4%		\$1,772,010	6.0%		\$1,872,010	5.6%		\$1,972,010	5.2%		\$2,072,010	4.8%	
TOTAL REAL ESTATE FEES	\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%		\$2,628,028	-1.0%	
SHORT-TERM CAR LEASE	\$1,472,010	13.2%		\$1,672,010	13.6%		\$1,872,010	12.0%		\$2,072,010	10.7%		\$2,272,010	9.7%		\$2,472,010	8.8%		\$2,672,010	7.9%	
ATHLETIC COMMISSION LICENSES FEES	\$26,793,014	4.5%		\$28,793,014	7.5%		\$30,793,014	7.0%		\$32,793,014	6.6%		\$34,793,014	6.1%		\$36,793,014	5.7%		\$38,793,014	5.3%	
WATER ENGINEER FEES	\$122,515	11.6%		\$137,515	12.3%		\$152,515	10.9%		\$167,515	9.8%		\$182,515	8.9%		\$197,515	8.2%		\$212,515	7.6%	
STATE ENGINEER FEES	\$2,072,432	22.3%		\$2,272,432	9.7%		\$2,472,432	9.0%		\$2,672,432	8.1%		\$2,872,432	7.5%		\$3,072,432	6.9%		\$3,272,432	6.3%	
SUPREME COURT FEES	\$208,203	4.8%		\$218,203	4.8%		\$228,203	4.6%		\$238,203	4.4%		\$248,203	4.2%		\$258,203	4.0%		\$268,203	3.8%	
MISC. FINES/OPPORTUNITIES	\$1,472,010	2.8%		\$1,572,010	6.8%		\$1,672,010	6.4%		\$1,772,010	6.0%		\$1,872,010	5.6%		\$1,972,010	5.2%		\$2,072,010	4.8%	
TOTAL FEES AND FINES	\$11,970,815	8.2%		\$12,970,815	8.4%		\$13,970,815	7.7%		\$14,970,815	7.2%		\$15,970,815	6.7%		\$16,970,815	6.2%		\$17,970,815	5.7%	
USE OF MONEY AND PROPERTY																					
LYON COUNTY REVENUES	\$2,100,078	4.5%		\$2,200,078	4.8%		\$2,300,078	4.5%		\$2,400,078	4.3%		\$2,500,078	4.1%		\$2,600,078	3.9%		\$2,700,078	3.7%	
COST RECOVERY PLAN	\$10,512	0.0%		\$10,512	0.0%		\$10,512	0.0%		\$10,512	0.0%		\$10,512	0.0%		\$10,512	0.0%		\$10,512	0.0%	
MARLETT REVENUE	\$1,585,869	20.2%		\$1,685,869	6.3%		\$1,785,869	6.0%		\$1,885,869	5.6%		\$1,985,869	5.3%		\$2,085,869	5.0%		\$2,185,869	4.7%	
INTEREST INCOME	\$1,796,458	141.2%		\$1,896,458	5.6%		\$1,996,458	5.3%		\$2,096,458	5.0%		\$2,196,458	4.7%		\$2,296,458	4.4%		\$2,396,458	4.1%	
TOTAL USE OF MONEY AND PROPERTY	\$3,596,458	141.2%		\$3,696,458	2.8%		\$3,796,458	2.7%		\$3,896,458	2.6%		\$3,996,458	2.5%		\$4,096,458	2.4%		\$4,196,458	2.3%	
OTHER REVENUE																					
MOOREHEAD REVENUE	\$300,000	58.9%		\$300,000	58.9%		\$300,000	58.9%		\$300,000	58.9%		\$300,000	58.9%		\$300,000	58.9%		\$300,000	58.9%	
MISC. SALES AND REVENUES	\$1,428,335	-0.9%		\$1,428,335	-0.9%		\$1,428,335	-0.9%		\$1,428,335	-0.9%		\$1,428,335	-0.9%		\$1,428,335	-0.9%		\$1,428,335	-0.9%	
COST RECOVERY PLAN	\$9,624,186	4.3%		\$9,624,186	4.3%		\$9,624,186	4.3%		\$9,624,186	4.3%		\$9,624,186	4.3%		\$9,624,186	4.3%		\$9,624,186	4.3%	
PRELIMINARY INSPECTION FEES	\$342,201	1.0%		\$342,201	1.0%		\$342,201	1.0%		\$342,201	1.0%		\$342,201	1.0%		\$342,201	1.0%		\$342,201	1.0%	
UNCLAIMED PROPERTY (2-FY04)	\$1,931,868	1.0%		\$1,931,868	1.0%		\$1,931,868	1.0%		\$1,931,868	1.0%		\$1,931,868	1.0%		\$1,931,868	1.0%		\$1,931,868	1.0%	
TOTAL OTHER REVENUE	\$1,716,384	2.1%		\$1,716,384	2.1%		\$1,716,384	2.1%		\$1,716,384	2.1%		\$1,716,384	2.1%		\$1,716,384	2.1%		\$1,716,384	2.1%	
TOTAL GENERAL FUND REVENUE	\$2,742,665,321	14.1%		\$2,928,038,594	6.6%		\$3,008,014,822	2.7%		\$2,904,904,158	-3.3%		\$2,777,278,455	-4.5%		\$2,644,159,800	-4.7%		\$2,557,922,800	-3.3%	

EXHIBIT P

EXHIBIT P



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SB247

Introduced on: Mar 21, 2005

By: (Bolded name indicates primary sponsorship)
Titus

Revises provisions governing tax on live entertainment. (BDR 32-680)

DECLARED EXEMPT

Fiscal Notes

Effect on Local Government: No.

Effect on State: No.

Most Recent History

Action: (No further action taken.)
(See full list below)

Upcoming Hearings

Past Hearings

Senate Taxation	Apr-12-2005 01:30 PM	Minutes	No Action.
Senate Taxation	Apr-14-2005 01:30 PM	Minutes	Amend, and do pass as amended.
Assembly Commerce and Labor	May-16-2005 02:00 PM	Minutes	Rerefer.
Assembly Ways and Means	May-26-2005 08:00 AM	Minutes	No Action.
Senate Taxation	Jun-05-2005 02:00 PM	Minutes	After Passage Discussion.

Votes

Senate Final Passage Apr-25 Yea 20, Nay 0, Excused 1, Not Voting 0, Absent 0

Bill Text As Introduced 1st Reprint
Amendments Amend. No.438

Bill History

Mar 21, 2005

- Read first time. Referred to Committee on Taxation. To printer.

Mar 22, 2005

- From printer. To committee.

Apr 11, 2005

- Notice of eligibility for exemption.

Apr 21, 2005

- From committee: Amend, and do pass as amended.

Apr 22, 2005

- Read second time. Amended. (Amend. No. 438.) To printer.

Apr 25, 2005

- From printer. To engrossment. Engrossed. First reprint.
- Read third time. Passed, as amended. Title approved. (Yeas: 20, Nays: None, Excused: 1.) To Assembly.

Apr 26, 2005

- In Assembly.
- Read first time. Referred to Committee on Commerce and Labor. To committee.

May 17, 2005

- From committee: Re-refer to Committee on Ways and Means.
- Rereferred to Committee on Ways and Means. To committee.
- Exemption effective.

Jun 07, 2005

- (No further action taken.)

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