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Electronically Filed  
Oct 27 2016 04:38 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**SUPREME COURT  
OF THE STATE OF NEVADA**

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

Appellants,

vs.

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

Respondents.

Supreme Court Docket: 69886

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

**Appellants' Appendix**

**APPELLANTS' APPENDIX**  
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# EXHIBIT Y

# EXHIBIT Y



KENNY C. GUINN  
Governor

BARBARA SMITH CAMPBELL  
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK  
Executive Director

## STATE OF NEVADA DEPARTMENT OF TAXATION

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Fax: (775) 688-1303

## PUBLIC NOTICE

**TO:** To All Interested Parties  
**FROM:** Dino DiCianno, Deputy Executive Director *DD*  
**DATE:** September 5, 2003  
**RE:** Workshop on Proposed Tax Regulations

We will hold the following meeting, in conjunction with the State Gaming Control Board, to receive input on proposed language concerning emergency regulations to implement the provisions of Senate Bill 8 of the 20<sup>th</sup> Special Session at the following locations.

**Carson City –**

Friday, September 19, 2003      Room 2134      Nevada Legislative Building

**Las Vegas - Via Video Conference –**

Friday, September 19, 2003      Room 4401      Grant Sawyer State Office Building

The September 19, 2003 meeting will start at 9:00 a.m.

### AGENDA

9:00 a.m.

1. Sections 65 through 80 of Senate Bill 8 of the 20<sup>th</sup> Special Session concerning the Live Entertainment Tax (joint coordination of the administration and collection of the tax).
2. Sections 101 through 108 of Senate Bill 8 of the 20<sup>th</sup> Special Session concerning the definition of a "business."

If the meeting needs to continue into the afternoon, then a lunch break will be taken at approximately 12 noon for one hour.

On or before 3:00 pm Adjourn

All interested parties will have the opportunity to present their ideas for suggested language at this meeting. Drafts will be prepared using this input and will be circulated to all parties, prior to submission to the Legislative Counsel Bureau, and prior to the public hearing(s) before the Nevada Tax Commission. It is our intention to develop a consensus of the parties and take those versions to the Nevada Tax Commission for final adoption.

Proposed draft regulations will be available on our web site for review. Proposed amendments to the administrative code will be discussed at the above scheduled meeting. We encourage you to provide us with your suggestions in writing.

If you require any additional information concerning this matter, please don't hesitate to contact the Department of Taxation. Thank you.



## **REGULATION WORKSHOPS**

Priority of types of regulations and workshop timing needed for the Tax Commission and the Department to administer the provisions of Assembly Bill 4 & Senate Bill 8 of the 20<sup>th</sup> Special Session.

### **I. Priority and Timing for August, September & October Workshops:**

#### **SECOND AMENDMENT** **PRIORITY OF REGULATIONS** **Emergency Regulations\***

1. Modified Business Tax on Financial Institutions: 8/14/03, 9/12/03, 9/25/03, 10/9/03, 10/23/03, 10/30/03 if needed
2. Modified Business Tax: ..... 8/14/03, 9/12/03, 9/25/03, 10/9/03, 10/23/03, 10/30/03 if needed
3. Live Entertainment Tax: ..... 8/27/03, 9/19/03, 10/2/03, 10/16/03, 10/30/03 if needed
4. Excise Tax on Banks: ..... 8/21/03, 9/4/03, 10/30/03 if needed
5. Definition of a Business per SB 8 ..... 8/21/03, 9/4/03, 9/19/03, 10/30/03 if needed
6. Other Emergency Regulations? ..... Open for Discussion

**\* Note: Further workshops to be scheduled for November if needed.**

### **II. Priority and Timing for Other Workshops:**

#### **PRIORITY OF REGULATIONS** **Regular Permanent Regulations**

1. Real Property Transfer Tax: ..... Begin September 2003
2. Audit Selection Process: ..... Begin September 2003
3. Electronic Filing and Payment of Taxes: ..... Begin September 2003
4. Repeal of Current Business Tax – if needed: ..... Begin August 2003
5. Annual Business License Fee – if needed: ..... Begin August 2003
6. Annual Business License Fee Late Payment Penalty – if needed: .. Begin August 2003
7. Collection Allowances on all taxes – if needed: ..... Open for Discussion
8. Permit Fees on Sales/Use Tax – if needed: ..... Open for Discussion
9. Cigarette Tax – if needed: ..... Open for Discussion
10. Liquor Tax – if needed: ..... Open for Discussion
11. Other Regulations?..... Open for Discussion

## **Business License Fee**

### **Sec X. Types of Entities Included Within Definition of "Business."**

1. For purposes of paragraph (a) of subsection 1 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, and except as otherwise provided in subsection 2 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, any corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust, or an equivalent organized under the laws of this state or another jurisdiction, shall be deemed to constitute a "business," even if it was formed or created for the limited purpose of estate planning, probate protection, asset protection or a related purpose.

2. For purposes of paragraph (c) of subsection 2 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, earnings will be deemed to mean the gross earnings of the person.

3. For purposes of paragraph (a) through (e) of subsection 2 of section 108 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, a natural person with multiple business activities who reports each activity to the Internal Revenue Service on Schedule C (Form 1040), Profit or Loss From Business Form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor forms, shall be required to obtain one business license.

4. If a business entity is disregarded for federal income tax purposes, pursuant to the Internal Revenue Code or the regulations promulgated thereunder, because its sole member is a natural person or another disregarded entity whose sole member is a natural person, then the entity shall be deemed a natural person subject to the provisions of paragraph 3.

5. In no event shall a natural person with multiple business activities be required to have more than one business license. Each spouse shall be deemed a separate natural person, if each spouse is required to file a separate Schedule C (Form 1040), Profit or Loss From Business Form, or a separate Schedule F (Form 1040), Profit or Loss From Farming Form or its equivalent or successor forms.

4. As used in Section 3, a natural person is a person that is treated as such for federal income tax purposes. The activities of a natural person include a single member limited-liability company that has not elected to be treated as other than a disregarded entity for federal income tax purposes, a single member limited-liability company that has as its sole member a single member limited-liability company that has as its sole member a natural person that has not elected to be treated as other than a disregarded entity for federal income tax purposes, and any trust this is defined as a "Grantor Trust" under 26 USC, Sections 671 through 679.

Disregarded  
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## **Bank Excise Tax**

### **Sec. X. Excise Tax on Branch Offices of Banks**

1. Except as otherwise provided in section 10.5 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if a bank maintains a branch office in this state on the first day of a calendar quarter, the entire excise tax shall be due for the branch office, even if the bank ceases to maintain the branch office prior to the last day of the calendar quarter. No excise tax shall be due, with respect to any calendar quarter, if the bank commences its maintenance of the branch office after the first day of the calendar quarter.

2. For purposes of this section, a bank will be deemed to have commenced the maintenance of a branch office as of the date that branch office first opens for business to the public.

3. For purposes of this section, if the first day of a calendar quarter falls on a non-business day, a bank will be deemed to have maintained a branch office on that day if the branch office was open for business to the public during the preceding calendar quarter and will continue to conduct business with the public during the current calendar quarter.

September 5, 2003

(775) 684-7742  
Fax: (775) 687-8221

**TO: ALL NONRESTRICTED LICENSEES, RESTRICTED LICENSEES  
AND INTERESTED PERSONS**

**SUBJECT: CLARIFICATION OF APPLICABILITY OF SB 8 TO PIANO  
PLAYERS AND SIMILAR FORMS OF ENTERTAINMENT**

On August 7, 2003, I mailed and posted on the Board's website a letter that outlined the Board's interpretation of the live entertainment tax provisions of Senate Bill 8. In Attachment A to that letter, I included a then-current analysis of the applicability of entertainment tax to a variety of common forms of entertainment. I indicated that present interpretations were subject to revision and that the Board and the Department of Taxation would be working on a more detailed definition of "live entertainment" in order to ensure consistent taxation. In that continuing effort, one issue has emerged that requires clarification now.

Under the previous Casino Entertainment Tax statutes, "instrumental music alone" was exempted from taxation [NRS 463.4015(1)(j)]. As of September 1, 2003, all of NRS 463.4015 was repealed, hence removing any exemptions not otherwise specified in Senate Bill 8. Our initial interpretation was that since there was no longer an exemption provided for background instrumental music, sales of food, refreshments and merchandise made in facilities where such music is provided would be subject to the tax.

However, significant public comment has been received, and research into legislative intent has been conducted. Senate Bill 8 maintains the existing exemptions for strolling musicians and casual assemblages. The bill also grants the Department of Taxation and the Board authority to further define live entertainment and issue guidance in these areas. In consideration of these factors, I have determined that it was not the intent of Senate Bill 8 to tax incidental entertainment that is not the primary attraction of the facility but rather, serves only to enhance the ambience of the facility.

One example of this type of live entertainment is "ambient background music" provided by musicians such as pianists or harpists who do not sing but play instruments while people eat, drink and converse. To qualify as ambient background music, the volume of the music should be low enough to permit conversation to occur and should not be of a nature that would tend to cause people to watch as well as listen.

**Clarification for Ambient Instrumental Music  
Industry Letter  
Page 2**

Not all instrumental-only performances will meet these criteria and qualify as ambient, incidental music. If you believe that the form of entertainment you offer qualifies as ambient music but wish to verify this, please contact Chief Deputy Auditor Lynda Hartzell via email at [lhartzell@gcb.state.nv.us](mailto:lhartzell@gcb.state.nv.us) or at (702) 486-2060. Group II and restricted licensees should direct questions to Tax and License Division Chief Steve Hixon at (775) 684-7770.

Sincerely,

Dennis Neilander  
Board Chairman

DKN/GG

cc: Bobby L. Siller, Board Member  
Scott Scherer, Board Member  
Records and Research Services

**DINO DICIANNO**

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**From:** [REDACTED]  
**Sent:** Friday, September 05, 2003 12:57 PM  
**To:** Cathy Chambers  
**Cc:** DINO DICIANNO  
**Subject:** Chairman Neilander's Letter

Hi Dino and Cathy-

Chairman Neilander asked that I send you a copy of this letter. Please pass it along to others in your organization that should be aware of it.

Thank you.

[REDACTED]

## General Provisions

**Section A. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Ambient background music" means instrumental music provided for the enjoyment of patrons while they eat, drink or converse. To qualify as ambient background music, the music must be low enough in volume so as not to interfere with casual conversation or encourage patrons to watch rather than simply listen.

2. "Facility" means any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises. The term does not encompass the entire area or premises where live entertainment may be broadcast via television, radio or internet, unless such entire area or premises is limited to the physical boundaries or specified borders of the facility.

3. "Live entertainment" means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present. Live entertainment includes, without limitation, the following:

(a) a concert or musical production provided by one or more professional or amateur musicians or vocalists;

(b) a ballet or dance production provided by one or more professional or amateur dancers or performers;

(c) a theatrical or stage production provided by one or more professional or amateur actors or players;

(d) an acrobatic or stunt production provided by one or more professional or amateur acrobats, performers or stunt persons;

(e) a circus production, animal show, or similar event provided by one or more animal handlers or trainers who cause or causes one or more animals to perform for human entertainment;

(f) an athletic contest, event or exhibition, provided by one or more professional or amateur athletes;

(g) a comedy show, magic show, variety show, or similar event produced or performed by one or more professional or amateur comics, magicians, entertainers or performers;

(h) a cooking or product demonstration provided by one or more professional or amateur chefs, speakers, or demonstrators;

(i) a show or production involving any combination of the activities described above.

4. "Nonprofit organization" means an organization described in paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

5. "Boxing contest or exhibition" defined. For purposes for this regulation the term "boxing contest or exhibition" shall have the meaning accorded to "unarmed combat" in NRS 467.0107.



## **Imposition of the Tax**

### **Section B. Nonprofit Organizations.**

1. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is deemed to be "provided by or entirely for the benefit of" a nonprofit organization if no portion or percentage of any admission charge inures to the benefit of a person other than a nonprofit organization. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in section 65 to 100 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session or this chapter, the Department shall assess and compute the excise tax in accordance with section D.

2. 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 it contracts for goods or services with a person other than a nonprofit organization, provided that:

(a) the contract consideration is based strictly upon a flat fee or hourly charge; and

(b) no portion or percentage of any admission charge inures to the benefit of a person other than a nonprofit organization.

3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there shall be no tax on amounts paid for food, refreshments or merchandise sold within the facility where the live entertainment is provided, even if the food, refreshments or merchandise are sold by a person other than a nonprofit organization.

### **Section C. Admission Charges.**

1. No excise tax shall be imposed upon live entertainment unless there is an admission charge for the right or privilege to have access to a facility where the live entertainment is provided. An admission charge may include, without limitation, any amount identified as an admission price, an entertainment fee, a cover charge or a required minimum purchase of food, refreshments or merchandise. However, no admission price shall be deemed consideration paid for the right or privilege to have access to a facility where live entertainment is provided, unless patrons would typically enter the facility for the primary purpose of viewing, hearing, or participating in, the live entertainment. Patrons shall be deemed to have entered a facility for a primary purpose other than viewing, listening, or participating in, live entertainment if:

(a) the facility hosts an athletic or sporting camp, contest, event, tournament, exhibition or activity, and patrons attend for the purpose of participating as athletes, rather than as spectators, and provided that any live entertainment provided or offered at the facility is limited in accordance with paragraph 2 of this section;

(b) the facility hosts a farmer's market, flea market, swap meet, home show, recreational show, consumer show, food or beverage tasting, ethnic festival, art, craft or artisan's fair or festival, professional conference, or similar event, and patrons attend for the purpose of viewing or sampling food, beverages, or consumer products, networking with members of a particular trade, profession, industry, or ethnic group, or learning about services available to members of a particular trade,

profession, industry or ethnic group, and provided that any live entertainment provided or offered at the facility is limited in accordance with paragraph 2 of this section;

(c) the facility hosts a zoo, museum, botanical garden, or outdoor display or exhibition of natural or geological history, and patrons attend for the purpose of viewing or learning about plants, animals or natural features of the environment, and provided that any live entertainment provided or offered at the facility is limited in accordance with paragraph 2 of this section;

(d) the facility hosts a display, show or event where entertainment is generated exclusively by mechanical, robotic or electronic devices or systems.

2. To qualify for consideration under subparagraphs (a), (b) and (c) of paragraph 1 of this section, live entertainment must be limited to:

(a) an inspirational, motivational, educational or informational speech or lecture provided by one or more professional or amateur speakers or lecturers; or,

(b) consumer product demonstrations addressed to individuals or groups;

(c) samplings of food or beverages;

(d) ambient background music;

(e) live entertainment described in subsection 5 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session; or,

(f) any combination of the above.

#### **Computation of the Tax**

##### **Section D. Computation.**

In computing the amount of any excise tax due pursuant to subsection 1 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Department shall apply the appropriate tax rate to total admission charges, and if applicable, to the total amount paid for food, beverages or merchandise, less sales tax.

##### **Section E. Capacity**

For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including evidence of actual attendance, the number of tickets sold, the square footage of the facility, the physical needs or requirements including public health and safety of the patrons, (i.e. police, fire and sanitation requirement) in relation to the nature of the live entertainment provided, and any other evidence tending to establish the actual seating capacity of the facility.

## **Business License Fee**

### **Sec X. Types of Entities Included Within Definition of "Business."**

1. For purposes of paragraph (a) of subsection 1 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, and except as otherwise provided in subsection 2 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, any corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust, or an equivalent organized under the laws of this state or another jurisdiction, shall be deemed to constitute a "business," even if it was formed or created for the limited purpose of estate planning, probate protection, asset protection or a related purpose.

2. For purposes of paragraph (c) of subsection 2 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, earnings will be deemed to mean the gross earnings of the person.

3. For purposes of paragraph (a) through (e) of subsection 2 of section 108 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, a natural person with multiple business activities who reports each activity to the Internal Revenue Service on Schedule C (Form 1040), Profit or Loss From Business Form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor forms, shall be required to obtain one business license.

4. If a business entity is disregarded for federal income tax purposes, pursuant to the Internal Revenue Code or the regulations promulgated thereunder, because its sole member is a natural person or another disregarded entity whose sole member is a natural person, then the entity shall be deemed a natural person subject to the provisions of paragraph 3.

5. In no event shall a natural person with multiple business activities be required to have more than one business license. Each spouse shall be deemed a separate natural person, if each spouse is required to file a separate Schedule C (Form 1040), Profit or Loss From Business Form, or a separate Schedule F (Form 1040), Profit or Loss From Farming Form or its equivalent or successor forms.

## **Bank Excise Tax**

### **Sec. X. Excise Tax on Branch Offices of Banks**

1. Except as otherwise provided in section 10.5 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if a bank maintains a branch office in this state on the first day of a calendar quarter, the entire excise tax shall be due for the branch office, even if the bank ceases to maintain the branch office prior to the last day of the calendar quarter. No excise tax shall be due, with respect to any calendar quarter, if the bank commences its maintenance of the branch office after the first day of the calendar quarter.

2. For purposes of this section, a bank will be deemed to have commenced the maintenance of a branch office as of the date that branch office first opens for business to the public.

3. For purposes of this section, if the first day of a calendar quarter falls on a non-business day, a bank will be deemed to have maintained a branch office on that day if the branch office was open for business to the public during the preceding calendar quarter and will continue to conduct business with the public during the current calendar quarter.

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4. As used in Section 3, a natural person is a person that is treated as such for federal income tax purposes. The activities of a natural person include a single member limited-liability company that has not elected to be treated as other than a disregarded entity for federal income tax purposes, a single member limited-liability company that has as its sole member a single member limited-liability company that has as its sole member a natural person that has not elected to be treated as other than a disregarded entity for federal income tax purposes, and any trust this is defined as a "Grantor Trust" under 26 USC, Sections 671 through 679.

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## **Business License Fee**

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2. For purposes of paragraph (c) of subsection 2 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, earnings will be deemed to mean the gross earnings of the person.

3. For purposes of paragraph (a) through (e) of subsection 2 of section 108 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, a natural person with multiple business activities who reports each activity to the Internal Revenue Service on Schedule C (Form 1040), Profit or Loss From Business Form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor forms, shall be required to obtain one business license.

4. If a business entity is disregarded for federal income tax purposes, pursuant to the Internal Revenue Code or the regulations promulgated thereunder, because its sole member is a natural person or another disregarded entity whose sole member is a natural person, then the entity shall be deemed a natural person subject to the provisions of paragraph 3.

5. In no event shall a natural person with multiple business activities be required to have more than one business license. Each spouse shall be deemed a separate natural person, if each spouse is required to file a separate Schedule C (Form 1040), Profit or Loss From Business Form, or a separate Schedule F (Form 1040), Profit or Loss From Farming Form or its equivalent or successor forms.

6. For purposes of paragraph (a) and (c) of subsection 3 of section 104 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, and except as otherwise provided in subsection 2 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, a non-employee shall be required to obtain a business license.

## **OR**

1. For purposes of paragraph (a) of subsection 1 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, and except as otherwise provided in subsection 2 of section 103 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, a "business," shall include all entities formed or created for the limited purpose of estate planning, probate protection, asset protection or a related purpose.

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## **Business License Fee**

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## General Provisions

**Section A. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Ambient background music" means instrumental music provided for the enjoyment of patrons while they eat, drink or converse. To qualify as ambient background music, the music must be low enough in volume so as not to interfere with casual conversation or encourage patrons to watch rather than simply listen.
2. "Facility" means any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises. The term does not encompass the entire area or premises where live entertainment may be broadcast via television, radio or internet, unless such entire area or premises is limited to the physical boundaries or specified borders of the facility.
3. "Live entertainment" means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present. Live entertainment includes, without limitation, the following:
  - (a) a concert or musical production provided by one or more professional or amateur musicians or vocalists;
  - (b) a ballet or dance production provided by one or more professional or amateur dancers or performers;
  - (c) a theatrical or stage production provided by one or more professional or amateur actors or players;
  - (d) an acrobatic or stunt production provided by one or more professional or amateur acrobats, performers or stunt persons;
  - (e) a circus production, animal show, or similar event provided by one or more animal handlers or trainers who cause or causes one or more animals to perform for human entertainment;
  - (f) an athletic contest, event or exhibition, provided by one or more professional or amateur athletes;
  - (g) a comedy show, magic show, variety show, or similar event produced or performed by one or more professional or amateur comics, magicians, entertainers or performers;
  - (h) a cooking or product demonstration provided by one or more professional or amateur chefs, speakers, or demonstrators;
  - (i) a show or production involving any combination of the activities described above.
4. "Nonprofit organization" means an organization described in paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.
5. "Boxing contest or exhibition" defined. For purposes for this regulation the term "boxing contest or exhibition" shall have the meaning accorded to "unarmed combat" in NRS 467.0107.

## **Imposition of the Tax**

### **Section B. Nonprofit Organizations.**

1. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is deemed to be "provided by or entirely for the benefit of" a nonprofit organization if no portion or percentage of any admission charge inures to the benefit of a person other than a nonprofit organization. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in section 65 to 100 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session or this chapter, the Department shall assess and compute the excise tax in accordance with section D.

2. 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 it contracts for goods or services with a person other than a nonprofit organization, provided that:

(a) the contract consideration is based strictly upon a flat fee or hourly charge; and

(b) no portion or percentage of any admission charge inures to the benefit of a person other than a nonprofit organization.

3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there shall be no tax on amounts paid for food, refreshments or merchandise sold within the facility where the live entertainment is provided, even if the food, refreshments or merchandise are sold by a person other than a nonprofit organization.

### **Section C. Admission Charges.**

1. No excise tax shall be imposed upon live entertainment unless there is an admission charge for the right or privilege to have access to a facility where the live entertainment is provided. An admission charge may include, without limitation, any amount identified as an admission price, an entertainment fee, a cover charge or a required minimum purchase of food, refreshments or merchandise. However, no admission price shall be deemed consideration paid for the right or privilege to have access to a facility where live entertainment is provided, unless patrons would typically enter the facility for the primary purpose of viewing, hearing, or participating in, the live entertainment. Patrons shall be deemed to have entered a facility for a primary purpose other than viewing, listening, or participating in, live entertainment if:

(a) the facility hosts an athletic or sporting camp, contest, event, tournament, exhibition or activity, and patrons attend for the purpose of participating as athletes, rather than as spectators, and provided that any live entertainment provided or offered at the facility is limited in accordance with paragraph 2 of this section;

(b) the facility hosts a farmer's market, flea market, swap meet, home show, recreational show, consumer show, food or beverage tasting, ethnic festival, art, craft or artisan's fair or festival, professional conference, or similar event, and patrons attend for the purpose of viewing or sampling food, beverages, or consumer products, networking with members of a particular trade, profession, industry, or ethnic group, or learning about services available to members of a particular trade,

profession, industry or ethnic group, and provided that any live entertainment provided or offered at the facility is limited in accordance with paragraph 2 of this section;

(c) the facility hosts a zoo, museum, botanical garden, or outdoor display or exhibition of natural or geological history, and patrons attend for the purpose of viewing or learning about plants, animals or natural features of the environment, and provided that any live entertainment provided or offered at the facility is limited in accordance with paragraph 2 of this section;

(d) the facility hosts a display, show or event where entertainment is generated exclusively by mechanical, robotic or electronic devices or systems.

2. To qualify for consideration under subparagraphs (a), (b) and (c) of paragraph 1 of this section, live entertainment must be limited to:

(a) an inspirational, motivational, educational or informational speech or lecture provided by one or more professional or amateur speakers or lecturers; or,

(b) consumer product demonstrations addressed to individuals or groups;

(c) samplings of food or beverages;

(d) ambient background music;

(e) live entertainment described in subsection 5 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session; or,

(f) any combination of the above.

#### **Computation of the Tax**

##### **Section D. Computation.**

In computing the amount of any excise tax due pursuant to subsection I of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Department shall apply the appropriate tax rate to total admission charges, and if applicable, to the total amount paid for food, beverages or merchandise, less sales tax.

##### **Section E. Capacity**

This section will be developed after we get additional information from the cities and counties on their permitting process.

**DINO DICIANNO**

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**From:** Cathy Chambers  
**Sent:** Tuesday, September 16, 2003 11:32 AM  
**To:** [REDACTED]  
**Cc:** DINO DICIANNO  
**Subject:** RE: LIVE ENT. TAX

[REDACTED]

Thank you for your input. This issue is being researched for clarification and will be addressed in the emergency regulations. The next public workshop is scheduled for Friday, September 19, 2003 at 9:00, Room 2134 of the Legislature Building in Carson City and via video conference from Las Vegas.

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

**From:** [REDACTED] (mailto:[REDACTED])  
**Sent:** Sunday, September 14, 2003 7:54 AM  
**To:** Cathy Chambers  
**Subject:** LIVE ENT. TAX

Ms. Chambers: I was reading the entertainment tax sections of the bill and have a suggestion for you which is to clarify what is meant by seating. My concern is that with clarification to include that seating must be provided, then the tax would kick in every time more than 300 people congregated in an enclosed area. My vision when reading the bill without a collection of boy scout troops which charge \$10 for expenses for some trip. While they are in a parking lot (the enclosed area) the various scout masters speak and one tells a funny story about bears.(the entertainment). I doubt that the legislature intended to tax to kick in except when people sit down to watch something. Hence my suggestion. [REDACTED]

ATTORNEY- CLIENT  
PRIVILEGED DOCUMENT

**Section 1. Live Entertainment Defined.**

**1. Live entertainment means entertainment provided within a facility, in real time, by one or more human musicians, entertainers, actors, performers, athletes, acrobats, animal handlers, animal trainers, comedians, speakers, lecturers, instructors, or demonstrators, to an audience that has entered the facility for the primary purpose of viewing or listening to the entertainment. Live entertainment includes, without limitation, any of the following:**

- (a) a concert or musical production provided by one or more professional or amateur musicians or vocalists;**
- (b) a ballet or dance production provided by one or more professional or amateur dancers or performers;**
- (c) a theatrical or stage production provided by one or more professional or amateur actors or players;**
- (d) an acrobatic or stunt production provided by one or more professional or amateur acrobats, performers or stunt persons;**
- (e) a circus production, animal show, or similar event provided by one or more animal handlers or trainers who cause or causes one or more animals to perform for human entertainment;**
- (f) an athletic contest, event or exhibition, provided by one or more professional or amateur athletes;**
- (g) a comedy show, magic show, variety show, or similar event produced or performed by one or more professional or amateur comics, magicians, entertainers or performers;**
- (h) a cooking or product demonstration provided by one or more professional or amateur chefs, speakers, or demonstrators;**
- (i) an inspirational, motivational, educational or informational speech or lecture provided by one or more professional or amateur speakers or lecturers;**
- (j) a show or production involving any combination of the activities described above.**

**2. Live entertainment does not include:**

- (a) an athletic camp, contest, event, tournament, exhibition or activity that involves persons primarily as participants in the camp, contest, event, tournament, exhibition or activity, rather than as spectators, provided that there is no admission charge to spectators, and further provided that any accompanying entertainment is not live entertainment as defined in paragraph 1 of this section, or is otherwise limited in accordance with paragraph 3 of this section;**

(b) a farmer's market, flea market, swap meet, home show, recreational show, consumer show, food or beverage tasting, ethnic festival, art, craft or artisan's fair or festival, or any similar event, if patrons enter the facility primarily for the purpose of viewing or sampling food, beverages, or commercial wares or products, provided that any accompanying entertainment is not live entertainment as defined in paragraph 1 of this section, or is otherwise limited in accordance with paragraph 3 of this section;

(c) a zoo, botanical garden, or display or exhibition of natural or geological history, provided that any accompanying entertainment is not live entertainment as defined in paragraph 1 of this section, or is otherwise limited in accordance with paragraph 3 of this section.

(d) Museum displays or exhibits, provided that any accompanying entertainment is not live entertainment as defined in paragraph 1 of this section, or is otherwise limited in accordance with paragraph 3 of this section.

(e) Light shows, laser shows, and pyrotechnic displays, provided that any accompanying entertainment is not live entertainment as defined in paragraph 1 of this section, or is otherwise limited in accordance with paragraph 3 of this section.

3. For purposes of paragraph 2 of this section, accompanying entertainment is not live entertainment if it is limited to:

(a) training, instruction or education addressed to individuals or groups of fewer than three hundred persons;

(b) consumer product demonstrations addressed to individuals or groups of fewer than three hundred persons;

(c) samplings of food or beverages;

(d) ambient background music;

(e) live entertainment described in paragraph 5 of Section 78; or,

(f) any combination of the above.

4. As used in this section, the term "facility" has the meaning ascribed to it in Section 70 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session. The term does not encompass the entire area where live entertainment may be seen or heard via television, radio or internet broadcast, unless such area is limited to the physical boundaries of the facility.

5. As used in this section, "ambient background music" is instrumental music provided for the enjoyment of patrons while they eat, drink or converse. To qualify as ambient background music, the music must be low enough in volume so as not to interfere with casual conversation or encourage patrons to watch rather than simply listen.

\*  
Senate Bill No. 8—Committee of the Whole

CHAPTER .....

AN ACT relating to state financial administration; providing for the imposition and administration of certain excise taxes on financial institutions; providing for the imposition and administration of an excise tax on employers based on wages paid to their employees; replacing the casino entertainment tax with a tax on all live entertainment; eliminating the tax imposed on the privilege of conducting business in this state; revising the taxes on liquor and cigarettes; imposing a state tax on the transfer of real property and revising the provisions governing the existing tax; revising the fees charged for certain gaming licenses; establishing the Legislative Committee on Taxation, Public Revenue and Tax Policy; requiring the Legislative Auditor to conduct performance audits of certain school districts; requiring the Department of Education to prescribe a minimum amount of money that each school district must expend each year for textbooks, instructional supplies and instructional hardware; revising provisions governing the purchase of retirement credit for certain educational personnel; apportioning the State Distributive School Account in the State General Fund for the 2003-2005 biennium; making appropriations to the State Distributive School Account for purposes relating to class-size reduction; making various other changes relating to state financial administration; authorizing certain expenditures; making an additional appropriation; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 18-18    **Sec. 64.** Title 32 of NRS is hereby amended by adding thereto  
18-19    a new chapter to consist of the provisions set forth as sections 65 to  
18-20    100, inclusive, of this act.  
18-21    **Sec. 65.** *As used in this chapter, unless the context otherwise*  
18-22    *requires, the words and terms defined in sections 66 to 75,*  
18-23    *inclusive, of this act have the meanings ascribed to them in those*  
18-24    *sections.*  
18-25    **Sec. 66.** *"Admission charge" means the total amount,*  
18-26    *expressed in terms of money, of consideration paid for the right*  
18-27    *or privilege to have access to a facility where live entertainment is*  
18-28    *provided.*  
18-29    **Sec. 67.** *"Board" means the State Gaming Control Board.*  
18-30    **Sec. 68.** *"Business" means any activity engaged in or caused*  
18-31    *to be engaged in by a business entity with the object of gain,*  
18-32    *benefit or advantage, either direct or indirect, to any person or*



18-33 governmental entity.

18-34 Sec. 69. 1. "Business entity" includes:

18-35 (a) A corporation, partnership, proprietorship, limited-liability

18-36 company, business association, joint venture, limited-liability

18-37 partnership, business trust and their equivalents organized under

18-38 the laws of this state or another jurisdiction and any other type of

18-39 entity that engages in business.

18-40 (b) A natural person engaging in a business if he is deemed to

18-41 be a business entity pursuant to section 76 of this act.

18-42 2. The term does not include a governmental entity.

18-43 Sec. 70. "Facility" means:

18-44 1. Any area or premises where live entertainment is provided

18-45 and for which consideration is collected for the right or privilege

19-1 of entering that area or those premises if the live entertainment is

19-2 provided at:

19-3 (a) An establishment that is not a licensed gaming

19-4 establishment; or

19-5 (b) A licensed gaming establishment that is licensed for less

19-6 than 51 slot machines, less than six games, or any combination of

19-7 slot machines and games within those respective limits.

19-8 2. Any area or premises where live entertainment is provided

19-9 if the live entertainment is provided at any other licensed gaming

19-10 establishment.

19-11 Sec. 71. "Game" has the meaning ascribed to it in

19-12 NRS 463.0152.

19-13 Sec. 72. "Licensed gaming establishment" has the meaning

19-14 ascribed to it in NRS 463.0169.

19-15 Sec. 73. "Live entertainment" means any activity provided

19-16 for pleasure, enjoyment, recreation, relaxation, diversion or other

19-17 similar purpose by a person or persons who are physically present

19-18 when providing that activity to a patron or group of patrons who

19-19 are physically present.

19-20 Sec. 74. "Slot machine" has the meaning ascribed to it in

19-21 NRS 463.0191.

19-22 Sec. 75. "Taxpayer" means:

19-23 1. If live entertainment that is taxable under this chapter is

19-24 provided at a licensed gaming establishment, the person licensed

19-25 to conduct gaming at that establishment.

19-26 2. Except as otherwise provided in subsection 3, if live

19-27 entertainment that is taxable under this chapter is not provided at

19-28 a licensed gaming establishment, the owner or operator of the

19-29 facility where the live entertainment is provided.

19-30 3. If live entertainment that is taxable under this chapter is

19-31 provided at a publicly owned facility or on public land, the person

19-32 who collects the taxable receipts.

19-33 Sec. 76. A natural person engaging in a business shall be

19-34 deemed to be a business entity that is subject to the provisions of  
 19-35 this chapter if the person is required to file with the Internal  
 19-36 Revenue Service a Schedule C (Form 1040), Profit or Loss From  
 19-37 Business Form, or its equivalent or successor form, or a Schedule  
 19-38 E (Form 1040), Supplemental Income and Loss Form, or its  
 19-39 equivalent or successor form, for the business.  
 19-40 Sec. 77. The Department shall provide by regulation for a  
 19-41 more detailed definition of "live entertainment" consistent with  
 19-42 the general definition set forth in section 73 of this act for use by  
 19-43 the Board and the Department in determining whether an activity  
 19-44 is a taxable activity under the provisions of this chapter.  
 19-45 Sec. 78. 1. Except as otherwise provided in this section,  
 19-46 there is hereby imposed an excise tax on admission to any facility  
 20-1 in this state where live entertainment is provided. If the live  
 20-2 entertainment is provided at a facility with a maximum seating  
 20-3 capacity of:  
 20-4 (a) Less than 7,500, the rate of the tax is 10 percent of the  
 20-5 admission charge to the facility plus 10 percent of any amounts  
 20-6 paid for food, refreshments and merchandise purchased at the  
 20-7 facility.  
 20-8 (b) At least 7,500, the rate of the tax is 5 percent of the  
 20-9 admission charge to the facility.  
 20-10 2. Amounts paid for gratuities directly or indirectly remitted  
 20-11 to persons employed at a facility where live entertainment is  
 20-12 provided or for service charges, including those imposed in  
 20-13 connection with the use of credit cards or debit cards, which are  
 20-14 collected and retained by persons other than the taxpayer are not  
 20-15 taxable pursuant to this section.  
 20-16 3. A business entity that collects any amount that is taxable  
 20-17 pursuant to subsection 1 is liable for the tax imposed, but is  
 20-18 entitled to collect reimbursement from any person paying that  
 20-19 amount.  
 20-20 4. Any ticket for live entertainment must state whether the tax  
 20-21 imposed by this section is included in the price of the ticket. If the  
 20-22 ticket does not include such a statement, the taxpayer shall pay  
 20-23 the tax based on the face amount of the ticket.  
 20-24 5. The tax imposed by subsection 1 does not apply to:  
 20-25 (a) Live entertainment that this state is prohibited from taxing  
 20-26 under the Constitution, laws or treaties of the United States or the  
 20-27 Nevada Constitution.  
 20-28 (b) Live entertainment that is provided by or entirely for the  
 20-29 benefit of a nonprofit religious, charitable, fraternal or other  
 20-30 organization that qualifies as a tax-exempt organization pursuant  
 20-31 to 26 U.S.C. § 501(c).  
 20-32 (c) Any boxing contest or exhibition governed by the  
 20-33 provisions of chapter 467 of NRS.

20-34 (d) Live entertainment that is not provided at a licensed  
 20-35 gaming establishment if the facility in which the live  
 20-36 entertainment is provided has a maximum seating capacity of less  
 20-37 than 300.

20-38 (e) Live entertainment that is provided at a licensed gaming  
 20-39 establishment that is licensed for less than 51 slot machines, less  
 20-40 than six games, or any combination of slot machines and games  
 20-41 within those respective limits, if the facility in which the live  
 20-42 entertainment is provided has a maximum seating capacity of less  
 20-43 than 300.

20-44 (f) Merchandise sold outside the facility in which the live  
 20-45 entertainment is provided, unless the purchase of the  
 20-46 merchandise entitles the purchaser to admission to the  
 20-47 entertainment.

21-1 (g) Live entertainment that is provided at a trade show.

21-2 (h) Music performed by musicians who move constantly  
 21-3 through the audience if no other form of live entertainment is  
 21-4 afforded to the patrons.

21-5 (i) Live entertainment that is provided at a licensed gaming  
 21-6 establishment at private meetings or dinners attended by members  
 21-7 of a particular organization or by a casual assemblage if the  
 21-8 purpose of the event is not primarily for entertainment.

21-9 (j) Live entertainment that is provided in the common area of a  
 21-10 shopping mall, unless the entertainment is provided in a facility  
 21-11 located within the mall.

21-12 6. As used in this section, "maximum seating capacity"  
 21-13 means, in the following order of priority:

21-14 (a) The maximum occupancy of the facility in which live  
 21-15 entertainment is provided, as determined by the State Fire  
 21-16 Marshal or the local governmental agency that has the authority  
 21-17 to determine the maximum occupancy of the facility;

21-18 (b) If such a maximum occupancy has not been determined,  
 21-19 the maximum occupancy of the facility designated in any permit  
 21-20 required to be obtained in order to provide the live entertainment;  
 21-21 or

21-22 (c) If such a permit does not designate the maximum  
 21-23 occupancy of the facility, the actual seating capacity of the facility  
 21-24 in which the live entertainment is provided.

21-25 Sec. 79. A taxpayer shall hold the amount of all taxes for  
 21-26 which he is liable pursuant to this chapter in a separate account  
 21-27 in trust for the State.

21-28 Sec. 80. 1. The Board shall:

21-29 (a) Collect the tax imposed by this chapter from taxpayers who  
 21-30 are licensed gaming establishments; and

21-31 (b) Adopt such regulations as are necessary to carry out the  
 21-32 provisions of paragraph (a). The regulations must be adopted in

21-33 *accordance with the provisions of chapter 233B of NRS and must*  
 21-34 *be codified in the Nevada Administrative Code.*  
 21-35 *2. The Department shall:*  
 21-36 *(a) Collect the tax imposed by this chapter from all other*  
 21-37 *taxpayers; and*  
 21-38 *(b) Adopt such regulations as are necessary to carry out the*  
 21-39 *provisions of paragraph (a).*  
 21-40 *3. For the purposes of:*  
 21-41 *(a) Subsection 1, the provisions of chapter 463 of NRS relating*  
 21-42 *to the payment, collection, administration and enforcement of*  
 21-43 *gaming license fees and taxes, including, without limitation, any*  
 21-44 *provisions relating to the imposition of penalties and interest,*  
 21-45 *shall be deemed to apply to the payment, collection,*  
 21-46 *administration and*  
 22-1 *enforcement of the taxes imposed by this chapter to the extent that*  
 22-2 *those provisions do not conflict with the provisions of this chapter.*  
 22-3 *(b) Subsection 2, the provisions of chapter 360 of NRS relating*  
 22-4 *to the payment, collection, administration and enforcement of*  
 22-5 *taxes, including, without limitation, any provisions relating to the*  
 22-6 *imposition of penalties and interest, shall be deemed to apply to*  
 22-7 *the payment, collection, administration and enforcement of the*  
 22-8 *taxes imposed by this chapter to the extent that those provisions*  
 22-9 *do not conflict with the provisions of this chapter.*  
 22-10 *4. To ensure that the tax imposed by section 78 of this act is*  
 22-11 *collected fairly and equitably, the Board and the Department*  
 22-12 *shall:*  
 22-13 *(a) Jointly, coordinate the administration and collection of*  
 22-14 *that tax and the regulation of taxpayers who are liable for the*  
 22-15 *payment of the tax.*  
 22-16 *(b) Upon request, assist the other agency in the collection of*  
 22-17 *that tax.*  
 22-18 *Sec. 81. 1. Except as otherwise provided in this section:*  
 22-19 *(a) Each taxpayer who is a licensed gaming establishment*  
 22-20 *shall file with the Board, on or before the 24th day of each month,*  
 22-21 *a report showing the amount of all taxable receipts for the*  
 22-22 *preceding month. The report must be in a form prescribed by the*  
 22-23 *Board.*  
 22-24 *(b) All other taxpayers shall file with the Department, on or*  
 22-25 *before the last day of each month, a report showing the amount of*  
 22-26 *all taxable receipts for the preceding month. The report must be*  
 22-27 *in a form prescribed by the Department.*  
 22-28 *2. The Board or the Department, if it deems it necessary to*  
 22-29 *ensure payment to or facilitate the collection by the State of the*  
 22-30 *tax imposed by section 78 of this act, may require reports to be*  
 22-31 *filed not later than 10 days after the end of each calendar quarter.*  
 22-32 *3. Each report required to be filed by this section must be*

22-33 accompanied by the amount of the tax that is due for the period  
 22-34 covered by the report.

22-35 4. The Board and the Department shall deposit all taxes,  
 22-36 interest and penalties it receives pursuant to this chapter in the  
 22-37 State Treasury for credit to the State General Fund.

22-38 Sec. 82. Upon written application made before the date on  
 22-39 which payment must be made, the Board or the Department may,  
 22-40 for good cause, extend by 30 days the time within which a  
 22-41 taxpayer is required to pay the tax imposed by this chapter. If the  
 22-42 tax is paid during the period of extension, no penalty or late  
 22-43 charge may be imposed for failure to pay at the time required, but  
 22-44 the taxpayer shall pay interest at the rate of 1 percent per month  
 23-1 from the date on which the amount would have been due without  
 23-2 the extension until the date of payment, unless otherwise provided  
 23-3 in NRS 360.232 or 360.320.

23-3 Sec. 83. 1. Each person responsible for maintaining the  
 23-4 records of a taxpayer shall:

23-5 (a) Keep such records as may be necessary to determine the  
 23-6 amount of the liability of the taxpayer pursuant to the provisions  
 23-7 of this chapter;

23-8 (b) Preserve those records for:

23-9 (1) At least 5 years if the taxpayer is a licensed gaming  
 23-10 establishment or until any litigation or prosecution pursuant to  
 23-11 this chapter is finally determined, whichever is longer; or  
 23-12 (2) At least 4 years if the taxpayer is not a licensed gaming  
 23-13 establishment or until any litigation or prosecution pursuant to  
 23-14 this chapter is finally determined, whichever is longer; and

23-15 (c) Make the records available for inspection by the Board or  
 23-16 the Department upon demand at reasonable times during regular  
 23-17 business hours.

23-18 2. The Board and the Department may by regulation specify  
 23-19 the types of records which must be kept to determine the amount  
 23-20 of the liability of a taxpayer from whom they are required to  
 23-21 collect the tax imposed by this chapter.

23-22 3. Any agreement that is entered into, modified or extended  
 23-23 after January 1, 2004, for the lease, assignment or transfer of any  
 23-24 premises upon which any activity subject to the tax imposed by  
 23-25 this chapter is, or thereafter may be, conducted shall be deemed to  
 23-26 include a provision that the taxpayer required to pay the tax must  
 23-27 be allowed access to, upon demand, all books, records and  
 23-28 financial papers held by the lessee, assignee or transferee which  
 23-29 must be kept pursuant to this section. Any person conducting  
 23-30 activities subject to the tax imposed by section 78 of this act who  
 23-31 fails to maintain or disclose his records pursuant to this  
 23-32 subsection is liable to the taxpayer for any penalty paid by the  
 23-33 taxpayer for the late payment or nonpayment of the tax caused by

23-34 the failure to maintain or disclose records.

23-35 4. A person who violates any provision of this section is guilty

23-36 of a misdemeanor.

23-37 Sec. 84. 1. To verify the accuracy of any report filed or, if

23-38 no report is filed by a taxpayer, to determine the amount of tax

23-39 required to be paid:

23-40 (a) The Board, or any person authorized in writing by the

23-41 Board, may examine the books, papers and records of any

23-42 licensed gaming establishment that may be liable for the tax

23-43 imposed by this chapter.

23-44 (b) The Department, or any person authorized in writing by

23-45 the Department, may examine the books, papers and records of

24-1 any other person who may be liable for the tax imposed by this

24-2 chapter.

24-3 2. Any person who may be liable for the tax imposed by this

24-4 chapter and who keeps outside of this state any books, papers and

24-5 records relating thereto shall pay to the Board or the Department

24-6 an amount equal to the allowance provided for state officers and

24-7 employees generally while traveling outside of the State for each

24-8 day or fraction thereof during which an employee of the Board or

24-9 the Department is engaged in examining those documents, plus

24-10 any other actual expenses incurred by the employee while he is

24-11 absent from his regular place of employment to examine those

24-12 documents.

24-13 Sec. 85. 1. Except as otherwise provided in this section and

24-14 NRS 360.250, the records and files of the Board and the

24-15 Department concerning the administration of this chapter are

24-16 confidential and privileged. The Board, the Department and any

24-17 employee of the Board or the Department engaged in the

24-18 administration of this chapter or charged with the custody of any

24-19 such records or files shall not disclose any information obtained

24-20 from the records or files of the Board or the Department or from

24-21 any examination, investigation or hearing authorized by the

24-22 provisions of this chapter. The Board, the Department and any

24-23 employee of the Board or the Department may not be required to

24-24 produce any of the records, files and information for the

24-25 inspection of any person or for use in any action or proceeding.

24-26 2. The records and files of the Board and the Department

24-27 concerning the administration of this chapter are not confidential

24-28 and privileged in the following cases:

24-29 (a) Testimony by a member or employee of the Board or the

24-30 Department and production of records, files and information on

24-31 behalf of the Board or the Department or a taxpayer in any action

24-32 or proceeding pursuant to the provisions of this chapter, if that

24-33 testimony or the records, files or information, or the facts shown

24-34 thereby, are directly involved in the action or proceeding.

24-35 (b) Delivery to a taxpayer or his authorized representative of a  
 24-36 copy of any report or other document filed by the taxpayer  
 24-37 pursuant to this chapter.  
 24-38 (c) Publication of statistics so classified as to prevent the  
 24-39 identification of a particular person or document.  
 24-40 (d) Exchanges of information with the Internal Revenue  
 24-41 Service in accordance with compacts made and provided for in  
 24-42 such cases.  
 24-43 (e) Disclosure in confidence to the Governor or his agent in  
 24-44 the exercise of the Governor's general supervisory powers, or to  
 24-45 any person authorized to audit the accounts of the Board or the  
 24-46 Department in pursuance of an audit, or to the Attorney General  
 25-1 or other legal representative of the State in connection with an  
 25-2 action or proceeding pursuant to this chapter, or to any agency of  
 25-3 this or any other state charged with the administration or  
 25-4 enforcement of laws relating to taxation.  
 25-5 Sec. 86. 1. If:  
 25-6 (a) The Board determines that a taxpayer who is a licensed  
 25-7 gaming establishment is taking any action with intent to defraud  
 25-8 the State or to evade the payment of the tax or any part of the tax  
 25-9 imposed by this chapter, the Board shall establish an amount  
 25-10 upon which the tax imposed by this chapter must be based.  
 25-11 (b) The Department determines that a taxpayer who is not a  
 25-12 licensed gaming establishment is taking any action with intent to  
 25-13 defraud the State or to evade the payment of the tax or any part of  
 25-14 the tax imposed by this chapter, the Department shall establish an  
 25-15 amount upon which the tax imposed by this chapter must be  
 25-16 based.  
 25-17 2. The amount established by the Board or the Department  
 25-18 pursuant to subsection 1 must be based upon the tax liability of  
 25-19 business entities that are deemed comparable by the Board or the  
 25-20 Department to that of the taxpayer.  
 25-21 Sec. 87. 1. If a taxpayer:  
 25-22 (a) Is unable to collect all or part of an admission charge or  
 25-23 charges for food, refreshments and merchandise which were  
 25-24 included in the taxable receipts reported for a previous reporting  
 25-25 period; and  
 25-26 (b) Has taken a deduction on his federal income tax return  
 25-27 pursuant to 26 U.S.C. § 166(a) for the amount which he is unable  
 25-28 to collect,  
 25-29 he is entitled to receive a credit for the amount of tax paid on  
 25-30 account of that uncollected amount. The credit may be used  
 25-31 against the amount of tax that the taxpayer is subsequently  
 25-32 required to pay pursuant to this chapter.  
 25-33 2. If the Internal Revenue Service disallows a deduction  
 25-34 described in paragraph (b) of subsection 1 and the taxpayer

25-35 claimed a credit on a return for a previous reporting period  
 25-36 pursuant to subsection 1, the taxpayer shall include the amount of  
 25-37 that credit in the amount of taxes reported pursuant to this  
 25-38 chapter in the first return filed with the Board or the Department  
 25-39 after the deduction is disallowed.  
 25-40 3. If a taxpayer collects all or part of an admission charge or  
 25-41 charges for food, refreshments and merchandise for which he  
 25-42 claimed a credit on a return for a previous reporting period  
 25-43 pursuant to subsection 2, he shall include:  
 25-44 (a) The amount collected in the charges reported pursuant to  
 25-45 paragraph (a) of subsection 1; and  
 26-1 (b) The tax payable on the amount collected in the amount of  
 26-2 taxes reported,  
 26-3 in the first return filed with the Board or the Department after that  
 26-4 collection.  
 26-5 4. Except as otherwise provided in subsection 5, upon  
 26-6 determining that a taxpayer has filed a return which contains one  
 26-7 or more violations of the provisions of this section, the Board or  
 26-8 the Department shall:  
 26-9 (a) For the first return of any taxpayer that contains one or  
 26-10 more violations, issue a letter of warning to the taxpayer which  
 26-11 provides an explanation of the violation or violations contained in  
 26-12 the return. Green numbers along left margin indicate location on the printed  
 bill (e.g., 5-15 indicates page 5, line 15).  
 26-13 (b) For the first or second return, other than a return  
 26-14 described in paragraph (a), in any calendar year which contains  
 26-15 one or more violations, assess a penalty equal to the amount of  
 26-16 the tax which was not reported.  
 26-17 (c) For the third and each subsequent return in any calendar  
 26-18 year which contains one or more violations, assess a penalty of  
 26-19 three times the amount of the tax which was not reported.  
 26-20 5. For the purposes of subsection 4, if the first violation of  
 26-21 this section by any taxpayer was determined by the Board or the  
 26-22 Department through an audit which covered more than one  
 26-23 return of the taxpayer, the Board or the Department shall treat all  
 26-24 returns which were determined through the same audit to contain  
 26-25 a violation or violations in the manner provided in paragraph (a)  
 26-26 of subsection 4.  
 26-27 Sec. 88. The remedies of the State provided for in this  
 26-28 chapter are cumulative, and no action taken by the Board, the  
 26-29 Department or the Attorney General constitutes an election by the  
 26-30 State to pursue any remedy to the exclusion of any other remedy  
 26-31 for which provision is made in this chapter.  
 26-32 Sec. 89. If the Department determines that any tax, penalty  
 26-33 or interest it is required to collect has been paid more than once  
 26-34 or has been erroneously or illegally collected or computed, the



26-35 Department shall set forth that fact in its records and shall certify  
26-36 to the State Board of Examiners the amount collected in excess of  
26-37 the amount legally due and the person from whom it was collected  
26-38 or by whom it was paid. If approved by the State Board of  
26-39 Examiners, the excess amount collected or paid must be credited  
26-40 on any amounts then due from the person under this chapter, and  
26-41 the balance refunded to the person or his successors in interest.  
26-42 Sec. 90. 1. Except as otherwise provided in NRS 360.235  
26-43 and 360.395:  
26-44 (a) No refund may be allowed unless a claim for it is filed  
26-45 with:  
27-1 (1) The Board, if the taxpayer is a licensed gaming  
27-2 establishment; or  
27-3 (2) The Department, if the taxpayer is not a licensed  
27-4 gaming establishment.  
27-5 A claim must be filed within 3 years after the last day of the month  
27-6 following the reporting period for which the overpayment was  
27-7 made.  
27-8 (b) No credit may be allowed after the expiration of the period  
27-9 specified for filing claims for refund unless a claim for credit is  
27-10 filed with the Board or the Department within that period.  
27-11 2. Each claim must be in writing and must state the specific  
27-12 grounds upon which the claim is founded.  
27-13 3. Failure to file a claim within the time prescribed in this  
27-14 chapter constitutes a waiver of any demand against the State on  
27-15 account of overpayment.  
27-16 4. Within 30 days after rejecting any claim in whole or in  
27-17 part, the Board or the Department shall serve notice of its action  
27-18 on the claimant in the manner prescribed for service of notice of  
27-19 a deficiency determination.  
27-20 Sec. 91. 1. Except as otherwise provided in this section and  
27-21 NRS 360.320, interest must be paid upon any overpayment of any  
27-22 amount of the tax imposed by this chapter in accordance with the  
27-23 provisions of section 80 of this act.  
27-24 2. If the overpayment is paid to the Department, the interest  
27-25 must be paid:  
27-26 (a) In the case of a refund, to the last day of the calendar  
27-27 month following the date upon which the person making the  
27-28 overpayment, if he has not already filed a claim, is notified by  
27-29 the Department that a claim may be filed or the date upon which  
27-30 the claim is certified to the State Board of Examiners, whichever  
27-31 is earlier.  
27-32 (b) In the case of a credit, to the same date as that to which  
27-33 interest is computed on the tax or amount against which the credit  
27-34 is applied.  
27-35 3. If the Board or the Department determines that any

27-36 overpayment has been made intentionally or by reason of  
 27-37 carelessness, the Board or the Department shall not allow any  
 27-38 interest on the overpayment.

27-39 Sec. 92. 1. No injunction, writ of mandate or other legal or  
 27-40 equitable process may issue in any suit, action or proceeding in  
 27-41 any court against this state or against any officer of the State to  
 27-42 prevent or enjoin the collection under this chapter of the tax  
 27-43 imposed by this chapter or any amount of tax, penalty or interest  
 27-44 required to be collected.

27-45 2. No suit or proceeding may be maintained in any court for  
 27-46 the recovery of any amount alleged to have been erroneously or  
 28-1 illegally determined or collected unless a claim for refund or credit  
 28-2 has been filed.

28-3 Sec. 93. 1. Within 90 days after a final decision upon a  
 28-4 claim filed pursuant to this chapter is rendered by:

28-5 (a) The Nevada Gaming Commission, the claimant may bring  
 28-6 an action against the Board on the grounds set forth in the claim.

28-7 (b) The Nevada Tax Commission, the claimant may bring an  
 28-8 action against the Department on the grounds set forth in the  
 28-9 claim.

28-10 2. An action brought pursuant to subsection 1 must be  
 28-11 brought in a court of competent jurisdiction in Carson City, the  
 28-12 county of this state where the claimant resides or maintains his  
 28-13 principal place of business or a county in which any relevant  
 28-14 proceedings were conducted by the Board or the Department, for  
 28-15 the recovery of the whole or any part of the amount with respect  
 28-16 to which the claim has been disallowed.

28-17 3. Failure to bring an action within the time specified  
 28-18 constitutes a waiver of any demand against the State on account  
 28-19 of alleged overpayments.

28-20 Sec. 94. 1. If the Board fails to mail notice of action on a  
 28-21 claim within 6 months after the claim is filed, the claimant may  
 28-22 consider the claim disallowed and file an appeal with the Nevada  
 28-23 Gaming Commission within 30 days after the last day of the  
 28-24 6-month period.

28-25 2. If the Department fails to mail notice of action on a claim  
 28-26 within 6 months after the claim is filed, the claimant may  
 28-27 consider the claim disallowed and file an appeal with the Nevada  
 28-28 Tax Commission within 30 days after the last day of the 6-month  
 28-29 period.

28-30 3. If the claimant is aggrieved by the decision of:

28-31 (a) The Nevada Gaming Commission rendered on appeal, the  
 28-32 claimant may, within 90 days after the decision is rendered, bring  
 28-33 an action against the Board on the grounds set forth in the claim  
 28-34 for the recovery of the whole or any part of the amount claimed as  
 28-35 an overpayment.

28-36 (b) *The Nevada Tax Commission rendered on appeal, the*  
28-37 *claimant may, within 90 days after the decision is rendered, bring*  
28-38 *an action against the Department on the grounds set forth in the*  
28-39 *claim for the recovery of the whole or any part of the amount*  
28-40 *claimed as an overpayment.*

28-41 4. *If judgment is rendered for the plaintiff, the amount of the*  
28-42 *judgment must first be credited towards any tax due from the*  
28-43 *plaintiff.*

28-44 5. *The balance of the judgment must be refunded to the*  
28-45 *plaintiff.*

29-1 Sec. 95. *In any judgment, interest must be allowed at the rate*  
29-2 *of 6 percent per annum upon the amount found to have been*  
29-3 *illegally collected from the date of payment of the amount to the*  
29-4 *date of allowance of credit on account of the judgment, or to a*  
29-5 *date preceding the date of the refund warrant by not more than 30*  
29-6 *days. The date must be determined by the Board or the*  
29-7 *Department.*

29-8 Sec. 96. *A judgment may not be rendered in favor of the*  
29-9 *plaintiff in any action brought against the Board or the*  
29-10 *Department to recover any amount paid when the action is*  
29-11 *brought by or in the name of an assignee of the person paying the*  
29-12 *amount or by any person other than the person who paid the*  
29-13 *amount.*

29-14 Sec. 97. 1. *The Board or the Department may recover a*  
29-15 *refund or any part thereof which is erroneously made and any*  
29-16 *credit or part thereof which is erroneously allowed in an action*  
29-17 *brought in a court of competent jurisdiction in Carson City or*  
29-18 *Clark County in the name of the State of Nevada.*

29-19 2. *The action must be tried in Carson City or Clark County*  
29-20 *unless the court, with the consent of the Attorney General, orders*  
29-21 *a change of place of trial.*

29-22 3. *The Attorney General shall prosecute the action, and the*  
29-23 *provisions of NRS, the Nevada Rules of Civil Procedure and the*  
29-24 *Nevada Rules of Appellate Procedure relating to service of*  
29-25 *summons, pleadings, proofs, trials and appeals are applicable to*  
29-26 *the proceedings.*

29-27 Sec. 98. 1. *If any amount in excess of \$25 has been*  
29-28 *illegally determined, either by the person filing the return or by*  
29-29 *the Board or the Department, the Board or the Department shall*  
29-30 *certify this fact to the State Board of Examiners, and the latter*  
29-31 *shall authorize the cancellation of the amount upon the records*  
29-32 *of the Board or the Department.*

29-33 2. *If an amount not exceeding \$25 has been illegally*  
29-34 *determined, either by the person filing a return or by the Board or*  
29-35 *the Department, the Board or the Department, without certifying*  
29-36 *this fact to the State Board of Examiners, shall authorize the*

29-37 *cancellation of the amount upon the records of the Board or the*  
29-38 *Department.*

29-39 *Sec. 99. Any licensed gaming establishment liable for the*  
29-40 *payment of the tax imposed by section 78 of this act who willfully*  
29-41 *fails to report, pay or truthfully account for the tax is subject to*  
29-42 *the revocation of his gaming license by the Nevada Gaming*  
29-43 *Commission.*

29-44 *Sec. 100. 1. A person shall not:*

29-45 *(a) Make, cause to be made or permit to be made any false or*  
29-46 *fraudulent return or declaration or false statement in any report*  
30-1 *or declaration, with intent to defraud the State or to evade*  
30-2 *payment of the tax or any part of the tax imposed by this chapter.*

*(b) Make, cause to be made or permit to be made any false*  
30-3 *entry in books, records or accounts with intent to defraud the State*  
30-4 *or to evade the payment of the tax or any part of the tax imposed*  
30-5 *by this chapter.*

30-6 *(c) Keep, cause to be kept or permit to be kept more than one*  
30-7 *set of books, records or accounts with intent to defraud the State*  
30-8 *or to evade the payment of the tax or any part of the tax imposed*  
30-9 *by this chapter.*

30-10 *2. Any person who violates the provisions of subsection 1 is*  
30-11 *guilty of a gross misdemeanor.*

30-1

100-3 *Sec. 171. NRS 463.401 is hereby amended to read as follows:*

100-4 *463.401 1. In addition to any other license fees and taxes*  
100-5 *imposed by this chapter, a casino entertainment tax equivalent to 10*  
100-6 *percent of all amounts paid for admission, food, refreshments and*  
100-7 *merchandise is hereby levied, except as otherwise provided in*  
100-8 *subsection 2, upon each licensed gaming establishment in this state*  
100-9 *where ~~[music and dancing privileges or any other]~~ live*  
100-10 *entertainment is provided to the patrons ~~[in a cabaret, nightclub,~~*  
100-11 *~~cocktail lounge or casino showroom in connection with the serving~~*  
100-12 *~~or selling of food or refreshments or the selling of any~~*  
100-13 *~~merchandise.] of the licensed gaming establishment.~~ Amounts paid*  
100-14 *for gratuities directly or indirectly remitted to employees of the*  
100-15 *licensee or for service charges, including those imposed in*  
100-16 *connection with use of credit cards or debit cards, that are collected*  
100-17 *and retained by persons other than the licensee are not taxable*  
100-18 *pursuant to this section.*

100-19 *2. A licensed gaming establishment is not subject to tax*  
100-20 *pursuant to this section if:*

100-21 *(a) The establishment is licensed for less than 51 slot machines,*  
100-22 *less than six games, or any combination of slot machines and games*  
100-23 *within those respective limits ~~;~~*

100-24 ~~—(b) The entertainment is presented in a facility that would not~~  
 100-25 ~~have been subject to taxation pursuant to 26 U.S.C. § 4231(6) as~~  
 100-26 ~~that provision existed in 1965;~~  
 100-27 ~~—(c) The entertainment is presented in a facility that would have~~  
 100-28 ~~been subject to taxation pursuant to 26 U.S.C. § 4231(1), (2), (3),~~  
 100-29 ~~(4) or (5) as those provisions existed in 1965; or~~  
 100-30 ~~—(d) In other cases, if:~~  
 100-31 ~~—(1) No distilled spirits, wine or beer is served or permitted to~~  
 100-32 ~~be consumed;~~  
 100-33 ~~—(2) Only light refreshments are served;~~  
 100-34 ~~—(3) Where space is provided for dancing, no charge is made~~  
 100-35 ~~for dancing; and~~  
 100-36 ~~—(4) Where music is provided or permitted, the music is~~  
 100-37 ~~provided without any charge to the owner, lessee or operator of the~~  
 100-38 ~~establishment or to any concessionaire.] ; or~~  
 100-39 *(b) The facility in which the live entertainment is provided has*  
 100-40 *a maximum seating capacity that is at least 7,500.*  
 100-41 3. The tax imposed by this section does not apply to  
 100-42 {merchandise} :  
 100-43 *(a) Live entertainment that this state is prohibited from taxing*  
 100-44 *under the Constitution, laws or treaties of the United States or the*  
 100-45 *Nevada Constitution.*  
 101-1 *(b) Merchandise sold outside the facility in which the live*  
 101-2 *entertainment is presented, unless the purchase of the merchandise*  
 101-3 *entitles the purchaser to admission to the entertainment.*  
 101-4 *(c) Any live entertainment that is provided by or entirely for*  
 101-5 *the benefit of a nonprofit organization that is recognized as*  
 101-6 *exempt from taxation pursuant to 26 U.S.C. § 501(c).*  
 101-7 *(d) Live entertainment that is provided at a trade show.*  
 101-8 *(e) Music performed by musicians who move constantly*  
 101-9 *through the audience if no other form of live entertainment is*  
 101-10 *afforded to the patrons.*  
 101-11 *(f) Any boxing contest or exhibition governed by the provisions*  
 101-12 *of chapter 467 of NRS.*  
 101-13 *(g) Live entertainment that is provided or occurs at private*  
 101-14 *meetings or dinners attended by members of a particular*  
 101-15 *organization or by a casual assemblage and the purpose of the*  
 101-16 *event is not primarily for entertainment.*  
 101-17 *(h) Live entertainment presented in a common area of a*  
 101-18 *shopping mall, unless the entertainment is provided in a facility*  
 101-19 *located within the mall.*  
 101-20 4. The tax imposed by this section must be paid by the licensee  
 101-21 of the establishment.  
 101-22 5. As used in this section, "live entertainment" means any  
 101-23 activity provided for pleasure, enjoyment, recreation, relaxation,  
 101-24 diversion or other similar purpose by a person or persons who are

101-25 *physically present when providing that activity to a patron or*  
 101-26 *group of patrons who are physically present.*  
 101-27 **Sec. 172.** NRS 463.4055 is hereby amended to read as  
 101-28 follows:  
 101-29 463.4055 Any ticket for admission to ~~{a cabaret, nightclub,~~  
 101-30 ~~cocktail lounge or casino showroom}~~ *an activity subject to the tax*  
 101-31 *imposed by NRS 463.401* must state whether the casino  
 101-32 entertainment tax is included in the price of the ticket. If the ticket  
 101-33 does not include such a statement, the licensed gaming  
 101-34 establishment shall pay the casino entertainment tax on the face  
 101-35 amount of the ticket.  
 101-36 **Sec. 173.** NRS 463.408 is hereby amended to read as follows:  
 101-37 463.408 1. As used in this section, "holidays or special  
 101-38 events" refers to periods during which the influx of tourist activity  
 101-39 in this state or any area thereof may require additional or alternative  
 101-40 industry accommodation as determined by the Board.  
 101-41 2. Any licensee holding a valid license under this chapter may  
 101-42 apply to the Board, on application forms prescribed by the Board,  
 101-43 for a holiday or special event permit to:  
 101-44 (a) Increase the licensee's game operations during holidays or  
 101-45 special events; or  
 102-1 (b) Provide persons who are attending a special event with  
 102-2 gaming in an area of the licensee's establishment to which access by  
 102-3 the general public may be restricted.  
 102-4 3. The application must be filed with the Board at least 15 days  
 102-5 before the date of the holiday or special event.  
 102-6 4. If the Board approves the application, it shall issue to the  
 102-7 licensee a permit to operate presently existing games or any  
 102-8 additional games in designated areas of the licensee's  
 102-9 establishment. The number of additional games must not exceed 50  
 102-10 percent of the number of games operated by the licensee at the time  
 102-11 the application is filed. The permit must state the period for which  
 102-12 it is issued and the number, if any, of additional games allowed. For  
 102-13 purposes of computation, any fractional game must be counted as  
 102-14 one full game. The licensee shall present any such permit on the  
 102-15 demand of any inspecting agent of the Board or Commission.  
 102-16 5. Before issuing any permit, the Board shall charge and collect  
 102-17 from the licensee a fee of \$14 per game per day for each day the  
 102-18 permit is effective. The fees are in lieu of the fees required under  
 102-19 NRS 463.380, 463.383 and 463.390.  
 102-20 6. The additional games allowed under a permit must not be  
 102-21 counted in computing the ~~{casino entertainment tax under NRS~~  
 102-22 ~~463.401}~~ *tax imposed by section 78 of this act.*  
 102-23 7. If any such additional games are not removed at the time the  
 102-24 permit expires, the licensee is immediately subject to the fees  
 102-25 provided for in this chapter.

102-26 Sec. 173.5. NRS 463.770 is hereby amended to read as  
 102-27 follows:  
 102-28 463.770 1. All gross revenue from operating interactive  
 102-29 gaming received by an establishment licensed to operate interactive  
 102-30 gaming, regardless of whether any portion of the revenue is shared  
 102-31 with another person, must be attributed to the licensee and counted  
 102-32 as part of the gross revenue of the licensee for the purpose of  
 102-33 computing the license fee required by NRS 463.370.  
 102-34 2. A manufacturer of interactive gaming systems who is  
 102-35 authorized by an agreement to receive a share of the revenue from  
 102-36 an interactive gaming system from an establishment licensed to  
 102-37 operate interactive gaming is liable to the establishment for a  
 102-38 portion of the license fee paid pursuant to subsection 1. The portion  
 102-39 for which the manufacturer of interactive gaming systems is liable  
 102-40 is ~~{6.25}~~ 6.75 percent of the amount of revenue to which the  
 102-41 manufacturer of interactive gaming systems is entitled pursuant to  
 102-42 the agreement.  
 102-43 3. For the purposes of subsection 2, the amount of revenue to  
 102-44 which the manufacturer of interactive gaming systems is entitled  
 102-45 pursuant to an agreement to share the revenue from an interactive  
 102-46 gaming system:  
 103-1 (a) Includes all revenue of the manufacturer of interactive  
 103-2 gaming systems that is his share of the revenue from the interactive  
 103-3 gaming system pursuant to the agreement; and  
 103-4 (b) Does not include revenue that is the fixed purchase price for  
 103-5 the sale of a component of the interactive gaming system.

Sec. 186. 1. NRS 364A.160, 375.025 and 375.075 are  
 132-11 hereby repealed.  
 132-12 2. NRS 463.4001, 463.4002, 463.4004, 463.4006, 463.4008,  
 132-13 463.4009 and 463.4015 are hereby repealed.  
 132-14 3. NRS 364A.010, 364A.020, 364A.030, 364A.040, 364A.050,  
 132-15 364A.060, 364A.070, 364A.080, 364A.090, 364A.100, 364A.110,  
 132-16 364A.120, 364A.130, 364A.135, 364A.140, 364A.150, 364A.151,  
 132-17 364A.152, 364A.1525, 364A.170, 364A.175, 364A.180, 364A.190,  
 132-18 364A.230, 364A.240, 364A.250, 364A.260, 364A.270, 364A.280,  
 132-19 364A.290, 364A.300, 364A.310, 364A.320, 364A.330, 364A.340  
 132-20 and 364A.350 are hereby repealed.  
 132-21 4. NRS 463.401, 463.402, 463.403, 463.404, 463.4045,  
 132-22 463.405, 463.4055 and 463.406 are hereby repealed.  
 132-

155-4 Sec. 193. 1. This section and sections 110, 120, 121, 122,  
 155-5 122.3, 122.4, 122.5, 127, 130, 141, 143, 145, 154 to 161, inclusive,  
 155-6 164.10 to 164.34, inclusive, 166.5, 170, 185, 185.5, 185.7, 185.9,  
 155-7 187 to 188.7, inclusive, and 190 to 192.5, inclusive, of this act and  
 155-8 subsection 1 of section 186 of this act become effective upon  
 155-9 passage and approval.  
 155-10 2. Sections 189.58 and 189.64 of this act become effective  
 155-11 upon passage and approval and apply retroactively to June 30,  
 155-12 2003.  
 155-13 3. Sections 164.50, 164.60, 164.70, 165.2, 185.1, 185.3, 189,  
 155-14 189.10, 189.14 to 189.56, inclusive, 189.60, 189.62 and 189.66 of  
 155-15 this act become effective upon passage and approval and apply  
 155-16 retroactively to July 1, 2003.  
 155-17 4. Sections 122.1, 122.2, 169.5 and 173.5 of this act become  
 155-18 effective on August 1, 2003.  
 155-19 5. Sections 171 and 172 of this act and subsection 2 of section  
 155-20 186 of this act become effective:  
 155-21 (a) Upon passage and approval for the purpose of adopting  
 155-22 regulations and performing any other preparatory administrative  
 155-23 tasks that are necessary to carry out the provisions of this act; and  
 155-24 (b) On September 1, 2003, for all other purposes.  
 155-25 6. Sections 1 to 10, inclusive, 11 to 50, inclusive, 51 to 63,  
 155-26 inclusive, 101 to 109, inclusive, 111 to 119, inclusive, 123 to 126,  
 155-27 inclusive, 128, 129, 131 to 140, inclusive, 147 to 153, inclusive,  
 155-28 163, 164, 165, 166, 167, 174, 176 to 179, inclusive, 181.30 to  
 155-29 181.50, inclusive, 183 and 183.3 of this act and subsection 3 of  
 155-30 section 186 of this act become effective:  
 155-31 (a) Upon passage and approval for the purpose of adopting  
 155-32 regulations and performing any other preparatory administrative  
 155-33 tasks that are necessary to carry out the provisions of this act; and  
 155-34 (b) On October 1, 2003, for all other purposes.  
 155-35 7. Sections 10.5, 64 to 100, inclusive, 162, 164.38, 168, 169,  
 155-36 173, 173.7, 175, 180, 181 and 182 of this act and subsection 4 of  
 155-37 section 186 of this act become effective:  
 155-38 (a) Upon passage and approval for the purpose of adopting  
 155-39 regulations and performing any other preparatory administrative  
 155-40 tasks that are necessary to carry out the provisions of this act; and  
 155-41 (b) On January 1, 2004, for all other purposes.  
 155-42 8. Sections 183.5 and 184 of this act become effective:  
 155-43 (a) Upon passage and approval for the purpose of adopting  
 155-44 regulations and performing any other preparatory administrative  
 155-45 tasks that are necessary to carry out the provisions of this act; and  
 155-46 (b) On July 1, 2004, for all other purposes.  
 155-47 9. Sections 165.4 and 189.12 of this act become effective on  
 155-48 July 1, 2004.  
 155-49 10. Sections 50.5, 109.5 and 119.5 of this act become effective:



155-50 (a) Upon passage and approval for the purpose of adopting  
155-51 regulations and performing any other preparatory administrative  
155-52 tasks that are necessary to carry out the provisions of this act; and  
155-53 (b) On July 1, 2005, for all other purposes.  
155-54 11. Sections 142, 144 and 146 of this act become effective at  
155-55 12:01 a.m. on October 1, 2029.  
155-56 12. Sections 154 to 160, inclusive, of this act expire by  
155-57 limitation on June 30, 2005.  
155-58 13. Sections 141, 143 and 145 of this act expire by limitation  
155-59 on September 30, 2029.

# EXHIBIT Z

# EXHIBIT Z



KENNY C. GUINN  
Governor

BARBARA SMITH CAMPBELL  
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK  
Executive Director

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DEPARTMENT OF TAXATION

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## MEMORANDUM

Date: December 7, 2003

To: Administrator, State Library & Archives

From: Dino DiCianno

CC: Chuck Chinnock, Executive Director

Subject: Filing of Adopted Regulations by the Nevada Tax  
Commission

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Attached are copies of regulations adopted by the Nevada Tax Commission, which relate to the Department's administration of statutes, Chapters 363A, 363B and 368A, governing the modified business tax on general business, the modified business tax on financial institutions, and the live entertainment tax as found in Senate Bill 8 of the 20<sup>th</sup> Special Session.

The regulations have been filed with the Secretary of State pursuant to NRS 233B.070 and are in effect based upon that date of filing.

The regulations are being filed with you pursuant to subsection 5 of NRS 233B.070.

Thank you

Deputy Executive Director

STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
401 S. CARSON STREET  
CARSON CITY, NEVADA 89701-4747  
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800  
RANDOLPH J. TOWNSEND, Senator, Chairman  
Lorne J. Malkiewicz, Director, Secretary

INTERIM FINANCE COMMITTEE (775) 684-6821  
MORSE ARBERRY, JR., Assemblyman, Chairman  
Mark W. Stevens, Fiscal Analyst  
Gary L. Giggeri, Fiscal Analyst

LORNE J. MALKIEWICH, Director  
(775) 684-6800

PAUL V. TOWNSEND, Legislative Auditor (775) 684-6815  
ROBERT E. ERICKSON, Research Director (775) 684-6825  
BRENDA J. ERDOES, Legislative Counsel (775) 684-6830

December 4, 2003

Mr. Chuck Chinnock  
Executive Director  
Department of Taxation  
1550 E. College Parkway, No. 115  
Carson City, Nevada 89706-7937

Attention: Mr. Dino DiCianno, Deputy Executive Director

Re: LCB File Nos. R204-03 and R205-03

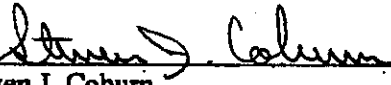
Dear Mr. Chinnock:

The attached regulations adopted by the Nevada Tax Commission have been filed today with the Secretary of State pursuant to NRS 233B.067. As provided in NRS 233B.070, these regulations become effective upon filing.

Enclosed are two copies of each regulation bearing the stamp of the Secretary of State which indicates that they have been filed. One copy of each is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 5 of NRS 233B.070.

Very truly yours,

Brenda J. Erdoes  
Legislative Counsel

By   
Steven J. Coburn  
Codification Advisor

SJC/msb

Enclosures

STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
401 S. CARSON STREET  
CARSON CITY, NEVADA 89701-4747  
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LORNE J. MALKIEWICH, Director  
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PAUL V. TOWNSEND, Legislative Auditor (775) 684-6813  
ROBERT E. ERICKSON, Research Director (775) 684-6825  
BRENDA J. ERDOES, Legislative Counsel (775) 684-6830

December 4, 2003

Mr. Chuck Chinnock  
Executive Director  
Department of Taxation  
1550 E. College Parkway, No. 115  
Carson City, Nevada 89706-7937

Attention: Mr. Dino DiCianno, Deputy Executive Director

Re: LCB File No. R212-03

Dear Mr. Chinnock:

The attached regulation adopted by the Nevada Tax Commission has been filed today with the Secretary of State pursuant to NRS 233B.067. As provided in NRS 233B.070, this regulation becomes effective upon filing.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 5 of NRS 233B.070.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Brenda J. Erdoes".

Brenda J. Erdoes  
Legislative Counsel

BJE/msb

Enclosures

Secretary of State  
Filing Date  
2003 DEC -4 A 10 22  
FILED  
CARSON CITY  
NEVADA

For Filing Administrative  
Regulations

For Emergency  
Regulations Only  
Effective Date \_\_\_\_\_  
Expiration Date \_\_\_\_\_  
Governor's Signature \_\_\_\_\_

Agency NEVADA TAX COMMISSION

LCB FILE NO. R204-03

Classification: ☐ PROPOSED ☒ ADOPTED BY AGENCY ☐ EMERGENCY

Brief description of action: File with LCB adopted permanent additions to NAC 363B.

Authority citation other than 233B: NRS 360.090 and Senate Bill 8 of the 20<sup>th</sup> Special Session.

Notice Date: 10/24/03

Date of Adoption by Agency

Hearing Date: 11/25/03

11/25/03

Noticed proposed permanent amendments adopted:

NAC 363B Adding new regulations to Chapter 363B of the Administrative Code, to establish the administrative procedural language concerning the Modified Business Tax and the deduction for employee health benefit plans associated with Senate Bill 8 of the 20<sup>th</sup> Special Session. LCB File No. R204-03.

\_\_\_\_\_  
Chuck Chinnock, Executive Director

November 25, 2003

**Nevada Tax Commission Meeting**

DESERT RESEARCH INSTITUTE  
2215 Raggio Pkwy, Conference Room A  
Reno, Nevada

VIDEO CONFERENCE  
DESERT RESEARCH INSTITUTE  
755 E. Flamingo Rd, Room 182  
Las Vegas, Nevada  
November 25, 2003

ACTION WILL BE TAKEN ON THE ITEMS INDICATED IN BOLD

9:00 a.m. I. **COMPLIANCE DIVISION:**

A. **Consideration of Adoption of Additions to Permanent Regulations:**

- 1) **Adding new regulations to the Administrative Code to establish the administrative procedural language concerning (1) the Modified Business Tax, (2) the Modified Business tax on Financial Institutions, and (3) the deduction for employee health benefit plans. More specifically, Sections 1 through 11, inclusive; Sections 39 through 44, inclusive; and Section 50 of Senate Bill 8 of the 20<sup>th</sup> Special Session.**
- 2) **Adding new regulations to the Administrative Code to establish the administrative procedural language associated with the Live Entertainment Tax. More specifically, Sections 65 through 80, inclusive; of Senate Bill 8 of the 20<sup>th</sup> Special Session.**

II. **BRIEFINGS:**

- A. **Briefing to/from the Commission and the Deputy Attorney General**
- B. **Briefing to/from the Commission and the Executive Director**

III. **Next Meeting Date**

IV. **\*\*Public Comment**

V. **Adjourn**

Times are tentative; the Commission may wish to take the agenda items in a different sequence for efficiency.

\*Appellants appearing before the Tax Commission may request closure of discussion to the public. If no request to close is received, discussion and Commission decision on these matters are made in public session. Appellants are advised that decisions may be rendered at any time subsequent to a hearing; that Staff or a Deputy Attorney General may be queried at the time requesting additional information or legal points on the matter; thus, appellants may wish to be in attendance for the entire meeting. Decisions of the Tax Commission and any information submitted in public session will become public and may be published.

If a transcript of any hearing held before the Commission is desired by the petitioner or appellant, he/she may obtain a copy, at the party's expense, from the reporter furnished by the Commission.

**\*\*This item is to receive public comment on any issue and any discussion of those items. However, no action will be taken on any items raised in the public comment period.**

**Members of the public who are disabled and require accommodations or assistance at this meeting are requested to notify the Department of Taxation in writing or call 687-4892 prior to the meeting.**

**Notice of this meeting has been posted at the Department of Taxation 1550 E. College Parkway; and mailed to each County Public Library for posting.**

**Notice of this meeting was FAXED for posting to the following locations: Department of Taxation, 555 E. Washington Street; Las Vegas, Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada State Library, Carson City, Nevada.**





KENNY C. GUINN  
Governor

BARBARA SMITH CAMPBELL  
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK  
Executive Director

STATE OF NEVADA  
DEPARTMENT OF TAXATION

1550 E. College Parkway  
Suite 115  
Carson City, Nevada 89706-7937

Phone: (775) 687-4820 • Fax: (775) 687-5981

In-State Toll Free: 800-992-0900

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

LAS VEGAS OFFICE  
Grant Sawyer 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 O, Suite 263  
Reno, Nevada 89502  
Phone: (775) 688-1235  
Fax: (775) 688-1303

POSTED 10/24/03

**NOTICE OF PUBLIC HEARING FOR THE ADOPTION AND  
AMENDMENT OF PERMANENT REGULATIONS OF THE  
NEVADA DEPARTMENT OF TAXATION**

The Nevada Tax Commission will hold a public hearing on November 25, 2003 commencing at 9:00 a.m. at the Desert Research Institute, 755 E. Flamingo Rd, Room 182, Las Vegas, Nevada and Video Conference at Desert Research Institute, 2215 Raggio Pkwy, Conference Room A, Reno, Nevada. The Nevada Tax Commission will receive testimony from all interested persons and consider and take action on the following proposed permanent adoption of amendments, additions and deletions to the Nevada Administrative Code pertaining to the Department of Taxation. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Tax Commission may proceed immediately to act upon any written submissions:

**1. The Need for and Purpose of the Proposed Permanent Regulations.**

The need and purpose of the proposed permanent regulations are to implement certain statutes with respect to the administration of taxation by the Nevada Department of Taxation, and to set forth and clarify various substantive and procedural matters in connection with the administration of taxation in this state pursuant to Senate Bill 8 of the 20<sup>th</sup> Special Session.

**2. Terms or Substance of the Proposed Permanent Regulations or Description of the Subjects and Issues Involved.**

**First:** Adding new permanent regulations to the Administrative Code to establish the administrative procedural language concerning (1) the Modified Business Tax, (2) the Modified Business Tax on Financial Institutions and (3) the deduction for employee health benefit plans. More specifically, Sections 1 through 11, inclusive, Sections 39 through 44, inclusive, and Section 50 of Senate Bill 8 of the 20<sup>th</sup> Special Session.

**Second:** Adding new permanent regulations to the Administrative Code to establish the administrative procedural language associated with the Live Entertainment Tax. More specifically, Sections 65 through 80, inclusive, of Senate Bill 8 of the 20<sup>th</sup> Special Session.

**3. Estimated Economic Effect of the Proposed Permanent Regulations on the Business, which it is to Regulate and the Public.**

**A. Adverse and Beneficial Effects.**

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. However, the regulations could have a beneficial economic effect on businesses and the general public. Those impacts cannot be quantified at this time.

**B. Immediate and Long-Term Effects.**

Same as above.

**4. Estimated Cost to Agency for Enforcement of Proposed Permanent Regulations.**

The proposed permanent regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement. However, it appears that there may be some additional administrative costs for the Department of Taxation, which cannot be quantified at this time.

**5. Regulations of Other State or Local Governmental Agencies which the Proposed Permanent Regulations Overlap or Duplicate and the Necessity Therefore.**

The proposed permanent regulations do not appear to overlap or duplicate regulations of other state or local governmental agencies.

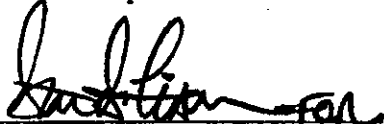
**6. Establishment of New Fee or Existing Fee Increase.**

None.

Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 1550 E. College Parkway, Suite 115, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

A copy of this notice and the proposed permanent regulations to be adopted and amended will be on file at the Nevada State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed permanent regulations to be adopted and amended will be available at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of the proposed permanent regulations will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.



Charles E. Chinnock, Executive Director  
October 24, 2003

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-687-4896 no later than five working days prior to the meeting.

Notice has been posted at the following locations: The Department of Taxation - 1550 E. College Parkway, Carson City, Nevada. Notice was mailed to each County Public Library for posting.

Notice has been FAXED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Suite 1300, Las Vegas, Nevada; Department of Taxation - 850 Elm Street, No. 2, Elko, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R204-03**

**Effective December 4, 2003**

EXPLANATION - Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

**AUTHORITY:** §§1-19, NRS 360.090 and section 45 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 141 (NRS 363B.060).

**Section 1.** Chapter 363B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Commission" means the Nevada Tax Commission.*

**Sec. 4.** *"Department" means the Department of Taxation.*

**Sec. 5.** *"Division" means the Employment Security Division of the Department of Employment, Training and Rehabilitation.*

**Sec. 6.** *"Employer" has the meaning ascribed to it in section 42 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 141 (NRS 363B.030).*

-1--

Adopted Regulation R204-03

Appellants' Appendix

SUPP.ROA01945

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DV000282

*Sec. 7. "Health care deduction" means the deduction allowed by subsection 4 of section 50 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 142 (NRS 363B.110).*

*Sec. 8. "Indian tribe" has the meaning ascribed to it in section 42 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 141 (NRS 363B.030).*

*Sec. 9. "Nonprofit organization" has the meaning ascribed to it in section 42 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 141 (NRS 363B.030).*

*Sec. 10. "Political subdivision" has the meaning ascribed to it in section 42 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 141 (NRS 363B.030).*

*Sec. 11. "Self-insured employer" means an employer that provides a program of self-insurance for its employees.*

*Sec. 12. For the purposes of section 50 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 142 (NRS 363B.110), the Commission interprets the term:*

*1. "Claims" to mean claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.*

2. *"Direct administrative services costs" to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:*

*(a) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;*

*(b) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;*

*(c) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;*

*(d) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;*

*(e) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and*

*(f) The depreciation of property other than medical or office supplies, as computed pursuant to section 13 of this regulation, used for the provision of medical care or the direct administration of claims.*

3. *"Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by section 50 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 142 (NRS 363B.110), and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.*

4. "Health benefit plan" to mean a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

5. "Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan" to mean any amounts which are:

(a) Paid by an employer to a Taft-Hartley trust which:

(1) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(2) Qualifies as an employee welfare benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(b) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

Sec. 13. If a self-insured employer claims the depreciation of property as a direct administrative services cost for purposes of the health care deduction, the employer must compute that depreciation for each calendar quarter, beginning with the calendar quarter in which the property is first placed into service, according to a straight-line method which is based upon:

1. For tangible personal property other than a mobile home:

(a) Ninety-five percent of the cost of acquisition of the property; and

(b) A useful life determined in accordance with the Personal Property Manual adopted by the Commission for the period in which the property is first placed into service;

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Adopted Regulation R204-03

2. *For a mobile home which has not been converted to real property:*

*(a) Eighty percent of the cost of acquisition of the mobile home; and*

*(b) A useful life of 15 years; and*

3. *For an improvement to real property:*

*(a) Seventy-five percent of the cost of acquisition of the improvement; and*

*(b) A useful life of 50 years.*

**Sec. 14.** *The health care deduction does not:*

1. *Except as otherwise provided in subsection 6 of section 50 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 142 (NRS 363B.110), allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.*

2. *Allow an employer to deduct any sum paid by the employer before October 1, 2003.*

**Sec. 15.** 1. *An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by section 50 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 142 (NRS 363B.110).*

2. *Each employer shall:*

*(a) File with the Department each quarterly return required by paragraph (a) of subsection 3 of section 50 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 142 (NRS 363B.110), regardless of whether any tax is due from the employer for that quarter; and*

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Adopted Regulation R204-03

*(b) Provide to the Department, on such forms as the Department prescribes, any reports required by the Department for the administration or enforcement of this chapter or sections 40 to 63, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 141 to 146, inclusive (chapter 363B of NRS).*

*Sec. 16. 1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of section 50 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 142 (NRS 363B.110), if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department will notify an employer if the Department is unable to obtain that information pursuant to such an agreement.*

*2. An employer who is in compliance with section 19 of this regulation shall be deemed to have submitted any proof required by subsection 6 of section 50 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 142 (NRS 363B.110).*

*3. The provisions of this section do not affect any other provision of law requiring an employer to retain or provide any records requested by the Department.*

*Sec. 17. If an employer files a return pursuant to paragraph (a) of subsection 3 of section 50 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 142 (NRS 363B.110), which contains any errors, the employer shall:*

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Adopted Regulation R204-03



1. *File with the Department an amended or adjusted return which corrects those errors.*

*Any corrections to:*

*(a) The wages reported by the employer must be accompanied by an explanation of those corrections; and*

*(b) Any health care deduction claimed by the employer must be supported by appropriate documentation and explained to the satisfaction of the Department.*

2. *Remit to the Department any applicable amount due.*

*Sec. 18. 1. An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of section 50 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 142 (NRS 363B:110), regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.*

*2. Any person who claims to be a nonprofit organization exempt from the provisions of section 50 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 142 (NRS 363B:110), shall, upon the request of the Department:*

*(a) If the person does not claim to be an exempt religious organization, provide to the Department a letter from the Internal Revenue Service indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or*

*(b) If the person claims to be an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person meets the*

Adopted Regulation R204-03

*criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.*

*Sec. 19. Each employer shall maintain and, upon the request of the Department, provide to the Department:*

- 1. Copies of any reports filed with or submitted to the Division by the employer.*
- 2. Copies of any records required to be maintained by the employer pursuant to NAC 612.020.*
- 3. If the employer claims the health care deduction:*
  - (a) Records describing the nature and amount of any contributions for health insurance or an employee benefit plan made by any employees of the employer.*
  - (b) Proof of any payments for health insurance or a health benefit plan made by the employer.*
  - (c) A copy of any policy, agreement or other document describing:*
    - (1) Any health benefit for which the health care deduction is claimed, including, without limitation, the cost of the benefit; and*
    - (2) The number of employees covered under the applicable health insurance or health benefit plan.*
  - (d) Such records as are required to explain and verify any apportionment of payments between the employer and any of its employees for any pertinent health insurance or health benefit plan.*
- 4. Any other records reasonably requested by the Department if:*
  - (a) The records are available to the employer; and*

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Adopted Regulation R204-03

*(b) The disclosure of the records is not prohibited pursuant to NRS 49.225, 449.720, 683A.0873 or 689B.280, or any other state or federal law regarding the confidentiality of the records.*

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Adopted Regulation R204-03

Appellants' Appendix

SUPP.ROA01953

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DV000290

**INFORMATIONAL STATEMENT**  
**Permanent Regulation of the Nevada Tax Commission**

**LCB File No. R204-03**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 363B.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed permanent regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed permanent regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on November 25, 2003 video conferenced between the Desert Research Institute, 2215 Raggio Parkway, Conference Room A, Reno, Nevada and the Desert Research Institute, 755 E. Flamingo Road, Room 182, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed permanent regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed permanent regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed permanent regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on November 20, 2003. Thus, the proposed permanent regulation, for practical purposes, was discussed at five workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:
- (a) Attended the hearing: 50
  - (b) Testified at the hearing: 4
  - (c) Submitted to the Tax Commission written comments: Written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission from various trade associations, the Fiscal & Legal Division's of the Legislative Counsel Bureau and the Nevada Taxpayers Association.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 250 interested businesses and persons on the Department of Taxation's mailing list.

4. If the permanent regulation was adopted without changing any part of the proposed permanent regulation, a summary of the reasons for adopting the regulation without change.

The proposed permanent regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, the Attorney General or Tax Commission members, and the Tax Commission believed no changes other than those made at the workshops were necessary.

5. The estimated economic effect of the adopted permanent regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

The proposed permanent regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public.

(b) Immediate and long-term effects.

Same as #5(a) above.

6. The estimated cost to the agency for enforcement of the adopted permanent regulation.

The proposed permanent regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some initial administrative costs for the Department, which are not quantifiable at this time.

**7. A description of any regulations of other state or governmental agencies which the permanent regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the permanent regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The proposed permanent regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

**8. If the permanent regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

There are no known federal regulations pertaining to the modified business tax procedure, which are the subject of the proposed permanent regulation.

**9. If the permanent regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed permanent regulation does not provide a new fee or increase an existing fee.

Secretary of State  
 DEPUTY SECRETARY  
 SECRETARY OF STATE  
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 Regulations

For Emergency  
 Regulations Only  
 Effective Date \_\_\_\_\_  
 Expiration Date \_\_\_\_\_  
 Governor's Signature \_\_\_\_\_

Agency **NEVADA TAX COMMISSION**  
 LCB File No. **R205-03**

Classification: ☐ PROPOSED ☒ ADOPTED BY AGENCY ☐ EMERGENCY

Brief description of action: File with LCB adopted permanent additions to NAC 363A.

Authority citation other than 233B: NRS 360.090 and Senate Bill 8 of the 20<sup>th</sup> Special Session.

Notice Date: 10/24/03

Date of Adoption by Agency

Hearing Date: 11/25/03

11/25/03

**Noticed proposed permanent amendments adopted:**

NAC 363A Adding new regulations to Chapter 363A of the Administrative Code, to establish the administrative procedural language concerning the Modified Business Tax on Financial Institutions and the deduction for employee health benefit plans associated with Senate Bill 8 of the 20<sup>th</sup> Special Session. LCB File No. R205-03.

Chuck Chinnock, Executive Director

November 25, 2003

**ADOPTED REGULATION OF  
THE NEVADA TAX COMMISSION**

**LCB File No. R205-03**

**Effective December 4, 2003**

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

**AUTHORITY:** §§1-41, NRS 360.090 and section 7 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 135 (NRS 363A.070).

**Section 1.** Chapter 363A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Commission" means the Nevada Tax Commission.*

**Sec. 4.** *"Department" means the Department of Taxation.*

**Sec. 5.** *"Division" means the Employment Security Division of the Department of Employment, Training and Rehabilitation.*

**Sec. 6.** *"Employer" has the meaning ascribed to it in section 4 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 133 (NRS 363A.030).*

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Adopted Regulation R205-03

Appellants' Appendix

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Sec. 7. "Health care deduction" means the deduction allowed by subsection 4 of section 11 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 137 (NRS 363A.130).

Sec. 8. "Indian tribe" has the meaning ascribed to it in section 4 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 133 (NRS 363A.030).

Sec. 9. "NAICS" means the North American Industry Classification System, as adopted by reference in section 17 of this regulation.

Sec. 10. "Nonprofit organization" has the meaning ascribed to it in section 4 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 133 (NRS 363A.030).

Sec. 11. "Political subdivision" has the meaning ascribed to it in section 4 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 133 (NRS 363A.030).

Sec. 12. "Self-insured employer" means an employer that provides a program of self-insurance for its employees.

Sec. 13. "SIC" means the Standard Industrial Classification Manual, as adopted by reference in section 17 of this regulation.

Sec. 14. 1. For the purposes of section 5.5 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 134 (NRS 363A.050):

*(a) The Commission interprets the term "financial institution" to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.*

*(b) A seller of goods or a provider of services who provides or extends credit, or retains a security interest in the goods he sells, only in connection with the financing of the goods he sells or the services he provides shall not be deemed to be a business entity engaged in the business of lending money, providing credit or securitizing receivables.*

*2. As used in this section, "security interest" has the meaning ascribed to it in NRS 104.1201.*

*Sec. 15. For the purposes of section 10.5 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 136 (NRS 363A.120), the Commission interprets the term "bank" to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.*

*Sec. 16. For the purposes of section 11 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 137 (NRS 363A.130), the Commission interprets the term:*

*1. "Claims" to mean claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.*

2. *"Direct administrative services costs" to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:*

*(a) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;*

*(b) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;*

*(c) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;*

*(d) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;*

*(e) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and*

*(f) The depreciation of property other than medical or office supplies, as computed pursuant to section 35 of this regulation, used for the provision of medical care or the direct administration of claims.*

3. *"Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by section 11 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 137 (NRS 363A.130), and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.*

4. "Health benefit plan" to mean a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

5. "Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan" to mean any amounts which are:

(a) Paid by an employer to a Taft-Hartley trust which:

(1) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(2) Qualifies as an employee welfare benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(b) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

Sec. 17. 1. The Standard Industrial Classification Manual, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$40.

2. The North American Industry Classification System, 2002 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$33.

**Sec. 18.** *In determining whether a person who is doing business in this state qualifies as a financial institution pursuant to paragraph (b) of subsection 1 of section 5.5 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 134 (NRS 363A.050), the Department shall use the four-digit industry codes set forth in the SIC, or the corresponding provisions of the NAICS, as described in sections 19 to 33, inclusive, of this regulation.*

**Sec. 19. 1.** *Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (1) or (2) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6211 (Security Brokers, Dealers, and Flotation Companies), or the corresponding provisions of NAICS Code 52311, 52312, 52391 or 523999.*

**2. SIC Code 6211:**

*(a) Refers to establishments primarily engaged in the purchase, sale and brokerage of securities, and those, generally known as investment bankers, primarily engaged in originating, underwriting and distributing issues of securities. Establishments primarily engaged in issuing shares of mutual and money market funds, unit investment trusts and face amount certificates are classified in SIC Industry Group 672 (Investment Offices). Establishments primarily engaged in providing investment advice on a contract or fee basis to establishments which deal in financial contracts are classified in SIC Code 6282 (Investment Advice).*

**(b) Includes, without limitation:**

- (1) Agents for mutual funds.**
- (2) Bond dealers and brokers.**
- (3) Distributors, security.**
- (4) Floor traders, security.**
- (5) Investment bankers.**
- (6) Investment certificates, sale of.**
- (7) Investment firm-general brokerage.**
- (8) Mineral leases, dealers in.**
- (9) Mineral royalties, dealers in.**
- (10) Mortgages, buying and selling (rediscounting).**
- (11) Mutual fund agents.**
- (12) Mutual funds, selling by independent salesperson.**
- (13) Note brokers.**
- (14) Oil and gas lease brokers.**
- (15) Oil royalties, dealers in.**
- (16) Option dealers, stock.**
- (17) Sale of partnership shares in real estate syndicates.**
- (18) Security brokers.**
- (19) Security dealers.**
- (20) Security flotation companies.**
- (21) Security traders.**

*(22) Security underwriters.*

*(23) Stock brokers and dealers.*

*(24) Tax certificate dealers.*

**Sec. 20. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (3) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6221 (Commodity Contracts Brokers and Dealers), or the corresponding provisions of NAICS Code 52313 or 52314.**

**2. SIC Code 6221:**

*(a) Refers to establishments primarily engaged in buying and selling commodity contracts on either a spot or future basis for their own account or for the account of others. These establishments are members, or are associated with members, of recognized commodity exchanges. Establishments primarily engaged in buying and selling commodities are classified in SIC Code 50 or 51 (Wholesale Trade).*

*(b) Includes, without limitation:*

*(1) Commodity brokers (contracts).*

*(2) Commodity dealers (contracts).*

*(3) Futures brokers, commodity.*

*(4) Futures dealers, commodity.*

*(5) Traders, commodity contract.*

**Sec. 21. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (4) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6231 (Security and Commodity Exchanges), or the corresponding provisions of NAICS Code 52321.**

**2. SIC Code 6231:**

**(a) Refers to establishments primarily engaged in furnishing space and other facilities to members for the purpose of buying, selling or otherwise trading in stocks, stock options, bonds or commodity contracts.**

**(b) Includes, without limitation:**

**(1) Commodity contract exchanges.**

**(2) Futures exchanges, contract.**

**(3) Option exchanges, stock.**

**(4) Security exchanges.**

**(5) Stock exchanges.**

**Sec. 22. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (5) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6282 (Investment Advice), or the corresponding provisions of NAICS Code 52392 or 52393.**



**2. SIC Code 6282:**

**(a) Refers to establishments primarily engaged in furnishing investment information and advice to companies and individuals concerning securities and commodities on a contract or fee basis. Establishments that provide advice and also act as brokers or dealers are classified in SIC Code 6211 (Security Brokers, Dealers, and Flotation Companies).**

**(b) Includes, without limitation:**

**(1) Futures advisory service.**

**(2) Investment advisory service.**

**(3) Investment counselors.**

**(4) Investment research.**

**(5) Manager of mutual funds, contract or fee basis.**

**Sec. 23. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (6) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6289 (Services Allied With the Exchange of Securities or Commodities, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 523991.**

**2. SIC Code 6289:**

**(a) Refers to establishments primarily engaged in furnishing services to security or commodity holders, brokers or dealers, not elsewhere classified.**

**(b) Includes, without limitation:**

- (1) *Bondholders protective committees.*
- (2) *Custodians of securities.*
- (3) *Exchange clearinghouses, commodity.*
- (4) *Exchange clearinghouses, security.*
- (5) *Financial reporting.*
- (6) *Quotation service, stock.*
- (7) *Royalty owners protective associations.*
- (8) *Security custodians.*
- (9) *Security holders protective committees.*
- (10) *Stock transfer agents.*
- (11) *Transfer agents, securities.*

**Sec. 24. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (7) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6712 (Offices of Bank Holding Companies), or the corresponding provisions of NAICS Code 551111.**

**2. SIC Code 6712:**

**(a) Refers to establishments primarily engaged in holding or owning the securities of banks for the sole purpose of exercising some degree of control over the activities of bank**

*companies whose securities they hold. Companies holding securities of banks, but which are predominantly operating the banks, are classified according to the kind of bank operated.*

*(b) Includes, without limitation, bank holding companies.*

*Sec. 25. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (8) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6719 (Offices of Holding Companies, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 551112.*

*2. SIC Code 6719:*

*(a) Refers to establishments primarily engaged in holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities they hold. Companies holding securities, but which are predominantly operating companies, are classified according to the kind of business operated.*

*(b) Includes, without limitation:*

*(1) Holding companies, except bank.*

*(2) Investment holding companies, except bank.*

*(3) Personal holding companies, except bank.*

*(4) Public utility holding companies.*

**Sec. 26. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (9) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6722 (Management Investment Offices, Open-End), or the corresponding provisions of NAICS Code 52591.**

**2. SIC Code 6722:**

**(a) Refers to establishments primarily engaged in issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the security holder.**

**(b) Includes, without limitation:**

- (1) Management investment funds, open-end.**
- (2) Money market mutual funds.**
- (3) Mutual fund sales on own account.**

**Sec. 27. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (10) or (11) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6726 (Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices), or the corresponding provisions of NAICS Code 52599.**

**2. SIC Code 6726:**

*(a) Refers to establishments primarily engaged in issuing unit investment trusts or face-amount certificates, and establishments primarily engaged in issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request of the security holder. Unit investment trust companies are organized under a trust indenture, contract of custodianship or agency, or similar instrument, do not have a board of directors, and issue only securities redeemable at the request of the security holder, each of which represents an undivided interest in a unit of specified securities, but does not include voting trusts. Face-amount certificates, sometimes referred to as guaranteed face-amount certificates, are essentially obligations of the issuing company to pay a fixed sum at a specified maturity date and usually require periodic payments by the purchaser.*

**(b) Includes, without limitation:**

- (1) Face-amount certificate issuing.**
- (2) Government National Mortgage Association (GNMA) pools.**
- (3) Investment funds, closed-end: management of.**
- (4) Investors' syndicates.**
- (5) Issuing of face-amount installment certificates.**
- (6) Management investment funds, closed-end.**
- (7) Unit investment trusts.**

**Sec. 28. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada**

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*2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (12) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6732 (Educational, Religious, and Charitable Trusts), or the corresponding provisions of NAICS Code 813211.*

**2. SIC Code 6732:**

*(a) Refers to establishments primarily engaged in the management of the funds of trusts and foundations organized for religious, educational, charitable or nonprofit research purposes.*

*(b) Includes, without limitation:*

*(1) Charitable trusts, management of.*

*(2) Educational trusts, management of.*

*(3) Religious trusts, management of.*

**Sec. 29. 1.** *Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (13) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6733 (Trusts, Except Educational, Religious, and Charitable), or the corresponding provisions of NAICS Code 52392, 523991 or 525.*

**2. SIC Code 6733:**

*(a) Refers to establishments primarily engaged in the management of the funds of trusts and foundations organized for purposes other than religious, educational, charitable or nonprofit research.*

*(b) Includes, without limitation:*

*(1) Administrators of private estates (nonoperating).*

*(2) Personal investment trusts, management of.*

*(3) Trustees: except for educational, religious, or charitable trusts.*

*(4) Trusts except educational, religious, and charitable: management of.*

*(5) Vacation funds for employees.*

*Sec. 30. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (14) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6792 (Oil Royalty Traders), or the corresponding provisions of NAICS Code 52391 or 53311.*

*2. SIC Code 6792:*

*(a) Refers to establishments primarily engaged in investing in oil and gas royalties or leases, or fractional interests therein.*

*(b) Includes, without limitation:*

*(1) Oil leases, buying and selling on own account.*

*(2) Oil royalty companies.*

**Sec. 31. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (15) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6794 (Patent Owners and Lessors), or the corresponding provisions of NAICS Code 53311.**

**2. SIC Code 6794:**

**(a) Refers to establishments primarily engaged in owning or leasing franchises, patents and copyrights which they in turn license others to use.**

**(b) Includes, without limitation:**

**(1) Copyright buying and licensing.**

**(2) Franchises, selling or licensing.**

**(3) Music licensing to radio stations.**

**(4) Music royalties, sheet and record.**

**(5) Patent buying and licensing.**

**(6) Patent leasing.**

**(7) Performance rights, publishing and licensing of.**

**Sec. 32. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (16) of paragraph (b) of**



*subsection 1 of that section if the person is appropriately classified under SIC Code 6798 (Real Estate Investment Trusts), or the corresponding provisions of NAICS Code 52593.*

**2. SIC Code 6798:**

*(a) Refers to establishments primarily engaged in closed-end investments in real estate or related mortgage assets operating so that they could meet the requirements of the Real Estate Investment Trust Act of 1960, as amended. The Real Estate Investment Trust Act of 1960 exempts trusts from corporate income and capital gains taxation, provided they invest primarily in specified assets, pay out most of their income to shareholders, and meet certain requirements regarding the dispersion of trust ownership.*

*(b) Includes, without limitation:*

*(1) Mortgage investment trusts.*

*(2) Mortgage trusts.*

*(3) Real estate investment trusts (REITs).*

*(4) Realty investment trusts.*

*(5) Realty trusts.*

**Sec. 33. 1.** *Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (17) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6799 (Investors, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 52391, 52392 or 52313.*

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**2. SIC Code 6799:**

**(a) Refers to establishments primarily engaged in investing, not elsewhere classified.**

**(b) Includes, without limitation:**

- (1) Commodity contract pool operators.**
- (2) Commodity contract trading companies.**
- (3) Investment clubs.**
- (4) Security speculators for own account.**
- (5) Tax liens: holding, buying, and selling.**
- (6) Venture capital companies.**

**Sec. 34. 1. Except as otherwise provided in subsection 2 of section 5.5 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 134 (NRS 363A.050), if the Division has appropriately classified a person who is doing business in this state under one or more of the provisions of the SIC or NAICS described in sections 19 to 33, inclusive, of this regulation, that person shall be deemed to be a financial institution pursuant to paragraph (b) of subsection 1 of section 5.5 of Senate Bill No. 8 of the 20th Special Session Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050). A person may dispute such a classification by the Division, solely for the purpose of determining whether the person qualifies as a financial institution pursuant to that paragraph, by filing a petition with the Department setting forth the reasons why the person believes that he has been misclassified by the Division. The petition must include:**

- (a) A description of the business of the person;**

*(b) A statement of each ground upon which the person disputes the classification by the Division; and*

*(c) Any financial records, documents and other evidence necessary to substantiate the person's claim that he has been misclassified by the Division, including, without limitation, any:*

*(1) Pertinent filings with the Securities and Exchange Commission;*

*(2) Pertinent filings with the Office of the Secretary of State;*

*(3) Pertinent evidence of his classification for the purpose of a local business license; and*

*(4) Other pertinent filings with federal, state or local agencies that classify or characterize the person.*

*2. Within 6 months after it receives a petition filed pursuant to this section, the Department shall issue a written decision granting or denying the petition. The decision must be served and may be appealed as provided in NRS 360.245.*

*Sec. 35. If a self-insured employer claims the depreciation of property as a direct administrative services cost for purposes of the health care deduction, the employer must compute that depreciation for each calendar quarter, beginning with the calendar quarter in which the property is first placed into service, according to a straight-line method which is based upon:*

*1. For tangible personal property other than a mobile home:*

*(a) Ninety-five percent of the cost of acquisition of the property; and*

*(b) A useful life determined in accordance with the Personal Property Manual adopted by the Commission for the period in which the property is first placed into service;*

*2. For a mobile home which has not been converted to real property:*

*(a) Eighty percent of the cost of acquisition of the mobile home; and*

*(b) A useful life of 15 years; and*

*3. For an improvement to real property:*

*(a) Seventy-five percent of the cost of acquisition of the improvement; and*

*(b) A useful life of 50 years.*

*Sec. 36. The health care deduction does not:*

*1. Except as otherwise provided in subsection 6 of section 11 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 137 (NRS 363A.130), allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.*

*2. Allow an employer to deduct any sum paid by the employer before October 1, 2003.*

*Sec. 37. 1. An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by section 11 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 137 (NRS 363A.130).*

*2. Each employer shall:*

*(a) File with the Department each quarterly return required by paragraph (a) of subsection 3 of section 11 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 137 (NRS 363A.130), regardless of whether any tax is due from the employer for that quarter; and*

*(b) Provide to the Department, on such forms as the Department prescribes, any reports required by the Department for the administration or enforcement of this chapter or sections 2 to 24, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 133 to 140, inclusive (chapter 363A of NRS).*

*Sec. 38. 1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of section 11 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 137 (NRS 363A.130), if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department shall notify an employer if the Department is unable to obtain that information pursuant to such an agreement.*

*2. An employer who is in compliance with section 41 of this regulation shall be deemed to have submitted any proof required by subsection 6 of section 11 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 137 (NRS 363A.130).*

*3. The provisions of this section do not affect any other provision of law requiring an employer to retain or provide any records requested by the Department.*

*Sec. 39. If an employer files a return pursuant to paragraph (a) of subsection 3 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5,*

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Adopted Regulation R205-03

*Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), which contains any errors, the employer shall:*

- 1. File with the Department an amended or adjusted return which corrects those errors.*

*Any corrections to:*

*(a) The wages reported by the employer must be accompanied by an explanation of those corrections; and*

*(b) Any health care deduction claimed by the employer must be supported by appropriate documentation and explained to the satisfaction of the Department.*

- 2. Remit to the Department any applicable amount due.*

*Sec. 40. 1. An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of section 11 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 137 (NRS 363A.130), regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.*

*2. Any person who claims to be a nonprofit organization exempt from the provisions of section 11 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 137 (NRS 363A.130), shall, upon the request of the Department:*

*(a) If the person does not claim to be an exempt religious organization, provide to the Department a letter from the Internal Revenue Service indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or*

*(b) If the person claims to be an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.*

**Sec. 41. Each employer shall maintain and, upon the request of the Department, provide to the Department:**

- 1. Copies of any reports filed with or submitted to the Division by the employer.*
- 2. Copies of any records required to be maintained by the employer pursuant to NAC 612.020.*
- 3. If the employer claims the health care deduction:*
  - (a) Records describing the nature and amount of any contributions for health insurance or an employee benefit plan made by any employees of the employer.*
  - (b) Proof of any payments for health insurance or a health benefit plan made by the employer.*
  - (c) A copy of any policy, agreement or other document describing:*
    - (1) Any health benefit for which the health care deduction is claimed, including, without limitation, the cost of the benefit; and*
    - (2) The number of employees covered under the applicable health insurance or health benefit plan.*
  - (d) Such records as are required to explain and verify any apportionment of payments between the employer and any of its employees for any pertinent health insurance or health benefit plan.*

4. *Any other records reasonably requested by the Department if:*
- (a) The records are available to the employer; and*
  - (b) The disclosure of the records is not prohibited pursuant to NRS 49.225, 449.720, 683A.0873 or 689B.280, or any other state or federal law regarding the confidentiality of the records.*



**INFORMATIONAL STATEMENT**  
**Permanent Regulation of the Nevada Tax Commission**

**LCB File No. R205-03**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 363A.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed permanent regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed permanent regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on November 25, 2003 video conferenced between the Desert Research Institute, 2215 Raggio Parkway, Conference Room A, Reno, Nevada and the Desert Research Institute, 755 E. Flamingo Road, Room 182, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed permanent regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed permanent regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed permanent regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on November 20, 2003. Thus, the proposed permanent regulation, for practical purposes, was discussed at five workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:

- (a) Attended the hearing: 50
- (b) Testified at the hearing: 3
- (c) Submitted to the Tax Commission written comments: Written comments were

submitted to, or received by, the Department of Taxation or the Nevada Tax Commission from various trade associations, various representatives of financial institutions, the Fiscal & Legal Division's of the Legislative Counsel Bureau and the Nevada Taxpayers Association.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 250 interested businesses and persons on the Department of Taxation's mailing list.

4. If the permanent regulation was adopted without changing any part of the proposed permanent regulation, a summary of the reasons for adopting the regulation without change.

Section 17, paragraph 2 of the proposed permanent regulation was modified prior to adoption, due to an issue raised by the Department of Taxation concerning the latest edition of the North American Industry Classification System. The remaining sections of the proposed permanent regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, the Attorney General or Tax Commission members, and the Tax Commission believed that no changes other than those made at the workshops were necessary.

5. The estimated economic effect of the adopted permanent regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

The proposed permanent regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public.

(b) Immediate and long-term effects.

Same as #5(a) above.

6. The estimated cost to the agency for enforcement of the adopted permanent regulation.

The proposed permanent regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some initial administrative costs for the Department, which are not quantifiable at this time.

7. A description of any regulations of other state or governmental agencies which the permanent regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the permanent regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed permanent regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the permanent regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations pertaining to the modified business tax on financial institutions procedure, which are the subject of the proposed permanent regulation.

9. If the permanent regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed permanent regulation does not provide a new fee or increase an existing fee.

Secretary of State  
 DEAN BELLER  
 SECRETARY OF STATE  
 2003 DEC -4 A 10 23  
 FILED  
 CARSON CITY  
 NEVADA

For Filing Administrative  
 Regulations

Agency **NEVADA TAX COMMISSION**  
 LCB File No. **R212-03**

For Emergency  
 Regulations Only

Effective Date \_\_\_\_\_

Expiration Date \_\_\_\_\_

Governor's Signature \_\_\_\_\_

Classification: ☐ PROPOSED ☒ ADOPTED BY AGENCY ☐ EMERGENCY

Brief description of action: File with LCB adopted permanent additions to NAC 368A.

Authority citation other than 233B: NRS 360.090 and Senate Bill 8 of the 20<sup>th</sup> Special Session.

Notice Date: 10/24/03

Date of Adoption by Agency

Hearing Date: 11/25/03

11/25/03

**Noticed proposed permanent amendments adopted:**

NAC 368A Adding new regulations to Chapter 368A of the Administrative Code, to establish the administrative procedural language concerning the Live Entertainment Tax associated with Senate Bill 8 of the 20<sup>th</sup> Special Session. LCB File No. R212-03.

\_\_\_\_\_  
 Chuck Chinnock, Executive Director

November 25, 2003

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R212-03**

**Effective November 25, 2003**

EXPLANATION - Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

**AUTHORITY:** §§ 1-18, NRS 360.090 and sections 77 and 83 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 147 and 150, respectively (NRS 368A.130 and 368A.160, respectively).

**Section 1.** Chapter 368A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Board" means the State Gaming Control Board.*

**Sec. 4.** *"Commission" means the Nevada Tax Commission.*

**Sec. 5.** *"Department" means the State Department of Taxation.*

**Sec. 6.** *"Executive Director" means the Executive Director of the Department.*

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Adopted Regulation R212-03

**Sec. 7. "Live entertainment status" means that condition which renders the admission to a facility or the selling of food, refreshments or merchandise subject to the tax imposed by chapter 368A of NRS.**

**Sec. 8. "Nonprofit organization" means any organization described in paragraph (b) of subsection 5 of section 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).**

**Sec. 9. "Patron" means a person who gains access to a facility where live entertainment is provided and who neither solicits nor receives, from any source, any payment, reimbursement, remuneration or other form of consideration for providing live entertainment at the facility.**

**Sec. 10. "Taxpayer" means any person described in section 75 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.110).**

**Sec. 11. For the purposes of sections 65 to 100, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.350, inclusive), the Commission will interpret the term:**

**1. "Admission charge" to include, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.**

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Adopted Regulation R212-03

2. *"Boxing contest or exhibition" to have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."*

3. *"Facility" to encompass any area or premises where live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises.*

4. *"Live entertainment":*

*(a) To include, without limitation, any one or more of the following activities:*

*(1) Music or vocals provided by one or more professional or amateur musicians or vocalists;*

*(2) Dancing performed by one or more professional or amateur dancers or performers;*

*(3) Acting or drama provided by one or more professional or amateur actors or players;*

*(4) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;*

*(5) Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph (7) of paragraph (b);*

*(6) Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes or sportsmen;*

*(7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;*

*(8) A show or production involving any combination of the activities described in subparagraphs (1) to (8), inclusive; and*

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Adopted Regulation R212-03

*(9) A performance involving one or more of the activities described in this paragraph by a disc jockey who presents recorded music. For the purposes of this subsection, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this paragraph if the disc jockey generally limits his interaction with patrons to introducing the recorded music, making announcements of general interest to patrons, and explaining, encouraging or directing participatory activities between patrons.*

*(b) To exclude, without limitation, any one or more of the following activities:*

*(1) Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to the volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;*

*(2) Occasional performances by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public;*

*(3) Performances by performers of any type if the performance occurs in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, as long as the performers stroll continuously throughout the facility;*

*(4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a gaming establishment other than a gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, which enhance the theme of the*

Adopted Regulation R212-03



*establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;*

*(5) Television, radio, closed circuit or Internet broadcasts of live entertainment;*

*(6) Entertainment provided by a patron or patrons, including, without limitation, singing by patrons or dancing by or between patrons; and*

*(7) Animal behaviors induced by animal trainers or caretakers primarily for the purpose of education and scientific research.*

*5. "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.*

*6. "Trade show" to mean an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services or discussing matters of interest to members of that trade or industry.*

*7. "Casual assemblage" to include, without limitation:*

*(a) Participants in conventions, business meetings or tournaments governed by chapter 463 of NRS, and their guests; or*

*(b) Persons celebrating a friend's or family member's wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.*

*Sec. 12. 1. For the purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada*

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*Adopted Regulation R212-03*

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 a 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 sale of food, refreshments or merchandise do not become the property of the nonprofit organization.

3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there will be no tax on amounts paid for food, refreshments or merchandise sold within the facility where the live entertainment is provided, even if the proceeds from the sale of food, refreshments or merchandise do not become the property of the nonprofit organization.

4. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in this chapter or sections 65 to 100 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.350,

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Adopted Regulation R212-03

*inclusive), the Department shall assess and compute the excise tax in accordance with section 15 of this regulation.*

*Sec. 13. Any person who claims to be a nonprofit organization exempt from the provisions of section 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), or any person who claims to provide live entertainment entirely for the benefit of such a nonprofit organization, shall, upon the request of the Department:*

- 1. If the person does not claim to be an exempt religious organization, provide to the Department a documentation from the Internal Revenue Service deemed appropriate by the Department indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or*
- 2. If the person claims to be an exempt religious organization, or claims to have provided live entertainment entirely for the benefit of an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person or the organization for whose benefit the person provided live entertainment meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.*

*Sec. 14. 1. Live entertainment status commences when any patron is required to pay an admission charge before he is allowed to enter a facility, regardless of when the live entertainment actually commences.*

*2. Live entertainment status ceases at the later of:*

*(a) The conclusion of the live entertainment; or*

*(b) The time when a facility for which an admission charge was required is completely vacated by admitted patrons or is opened to the general public free of any admission charge.*

*3. The tax applies to the sale of food, refreshments or merchandise at a facility with a seating capacity of less than 7,500, even if patrons are unable to see, hear or enjoy live entertainment from the location within the facility where the food, refreshments or merchandise is sold.*

*Sec. 15. 1. Pursuant to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, at page 147 (NRS 368A.200), the Department shall apply the tax rate to the total admission charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.*

*2. The Department shall apply the tax rate to the gross receipts from the sale of food, refreshments or merchandise at a facility where live entertainment is provided. As used in this section, "gross receipts" has the meaning ascribed to it in NRS 372.025, except that "gross receipts" will not be construed to include the amount of any tax imposed by this state or a political subdivision upon or with respect to retail sales of tangible personal property.*

*3. If applicable, a taxpayer may include the excise tax in the sales price of food, refreshments or merchandise sold at a facility where live entertainment is provided, but if he does so, he shall notify the patrons of the facility by posting a sign which is visible to all purchasers of food, refreshments or merchandise which states that the excise tax is included in the sales price. In the absence of such a notification, the total amount charged to the patron shall be deemed to be the price of the item.*

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Adopted Regulation R212-03

*Sec. 16. For the purposes of paragraph (c) of subsection 6 of section 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), if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including, without limitation, evidence of actual attendance, the number of tickets sold or offered for sale, the square footage of the facility, the physical needs or requirements of the patrons in relation to the nature of the live entertainment provided and any other evidence tending to establish the actual seating capacity of the facility.*

*Sec. 17. 1. As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 5 of section 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), or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 to 4, inclusive, of section 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).*

2. *Any over-collection must, if possible, be refunded by the taxpayer to the patron from whom it was collected.*
  3. *A taxpayer shall:*
    - (a) *Use all practical methods to determine any amount to be refunded pursuant to subsection 2 and the name and address of the person to whom the refund is to be made.*
    - (b) *Within 60 days after reporting to the Department that a refund must be made, make an accounting to the Department of all refunds paid. The accounting must be accompanied by any supporting documents required by the Department.*
  4. *If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the Department.*
  5. *If an audit of a taxpayer reveals the existence of an over-collection, the Department shall:*
    - (a) *Credit the over-collection toward any deficiency that results from the audit, if the taxpayer furnishes the Department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 2.*
    - (b) *Within 60 days after receiving notice from the Department that a refund must be made, seek an accounting of all refunds paid. The accounting must be accompanied by any supporting documents required by the Department.*
- Sec. 18. 1. *If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the Department to collect the tax. The taxpayer shall thereafter collect and remit the tax to the Department in accordance the provisions of this chapter and sections 65 to 100, inclusive, of Senate Bill No. 8 of the 20th*

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*Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.350, inclusive).*

*2. If a taxpayer intends to provide live entertainment at a facility that is a licensed gaming establishment, the taxpayer shall act in accordance with such regulations as may be prescribed by the Board.*

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Adopted Regulation R212-03

Appellants' Appendix

SUPP.ROA01997

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**INFORMATIONAL STATEMENT**  
**Permanent Regulation of the Nevada Tax Commission**

**LCB File No. R212-03**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 368A.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed permanent regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed permanent regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on November 25, 2003 video conferenced between the Desert Research Institute, 2215 Raggio Parkway, Conference Room A, Reno, Nevada and the Desert Research Institute, 755 E. Flamingo Road, Room 182, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed permanent regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed permanent regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed permanent regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on November 24, 2003. Thus, the proposed permanent regulation, for practical purposes, was discussed at four workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.



**2. The number of persons who:**

- (a) Attended the hearing: 50**
- (b) Testified at the hearing: 3**
- (c) Submitted to the Tax Commission written comments:** Written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission from the Nevada Resort Association, both the Nevada Gaming Commission and Gaming Control Board, various affected business establishments, the Fiscal & Legal Division's of the Legislative Counsel Bureau and the Nevada Taxpayers Association.

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 250 interested businesses and persons on the Department of Taxation's mailing list.

**4. If the permanent regulation was adopted without changing any part of the proposed permanent regulation, a summary of the reasons for adopting the regulation without change.**

The proposed permanent regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, the Attorney General or Tax Commission members, and the Tax Commission believed no changes other than those made at the workshops were necessary.

**5. The estimated economic effect of the adopted permanent regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.**

**(a) Adverse and beneficial effects.**

The proposed permanent regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public.

**(b) Immediate and long-term effects.**

Same as #5(a) above.

**6. The estimated cost to the agency for enforcement of the adopted permanent**

regulation.

The proposed permanent regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some initial administrative costs for the Department, which are not quantifiable at this time.

7. A description of any regulations of other state or governmental agencies which the permanent regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the permanent regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed permanent regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the permanent regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations pertaining to the live entertainment tax procedure, which are the subject of the proposed permanent regulation.

9. If the permanent regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed permanent regulation does not provide a new fee or increase an existing fee.

STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
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Lorne J. Malkiewicz, *Director, Secretary*

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Mark W. Stevens, *Fiscal Analyst*  
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BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830

October 30, 2003

Mr. Dino DiCianno  
Deputy Executive Director  
Department of Taxation  
1550 E. College Parkway, No 115  
Carson City, Nevada 89706-7937

Re: LCB File No. R152-03

Dear Mr. DiCianno:

The attached regulation adopted by the Department of Taxation has been filed today with the Secretary of State pursuant to NRS 233B.067. As provided in NRS 233B.070, this regulation becomes effective upon filing.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 5 of NRS 233B.070.

Very truly yours,

Brenda J. Erdoes  
Legislative Counsel

By Steven J. Coburn  
Steven J. Coburn  
Codification Advisor

SJC/msb

Enclosures

DEAN HELLER  
SECRETARY OF STATE  
OCT 30 P 3:03  
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Agency NEVADA TAX COMMISSION

LCB FILE No. R152-03

Classification: ☐ PROPOSED ☒ ADOPTED BY AGENCY ☐ EMERGENCY

Brief description of action: File with LCB adopted permanent additions to NAC 363.

Authority citation other than 233B: NRS 360.090, SB 8 of the 20<sup>th</sup> Special Session

Notice Date: 9/4/03

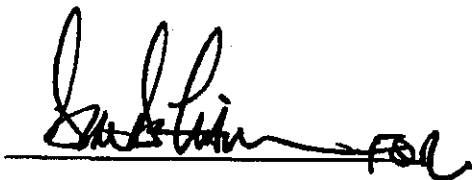
Date of Adoption by Agency

Hearing Date: 10/6/03

10/6/03

**Noticed proposed permanent amendments adopted:**

NAC 363 Adding new regulations to NAC 363 to establish the administrative procedural language and timing for the excise tax on branch offices of banks as provided in section 10.5 of Senate Bill 8 of the 20<sup>th</sup> Special Session of the Legislature. **LCB FILE NO. R152-03.**



Chuck Chinnock, Executive Director

October 8, 2003

**ADOPTED REGULATION OF  
THE DEPARTMENT OF TAXATION**

**LCB File No. R152-03**

**Effective October 30, 2003**

EXPLANATION - Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

**AUTHORITY:** §1, section 7 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 135 (NRS 363A.070).

**Section 1.** Chapter 363A of NAC is hereby amended by adding thereto a new section to read as follows:

*1. The entire amount of the excise tax imposed by section 10.5 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 136 (NRS 363A.120), becomes due for all the branch offices in excess of one operated or otherwise maintained by a bank in this state on the first day of a calendar quarter, regardless of whether the bank ceases to operate or otherwise maintain any of those branch offices during that calendar quarter.*

*2. If the operation or other maintenance of a branch office commences after the first day of a calendar quarter, no excise tax is due pursuant to the provisions of section 10.5 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 136 (NRS 363A.120), for the branch office for that calendar quarter.*

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Adopted Regulation R152-03

**3. For the purposes of this section:**

**(a) The operation or other maintenance of a branch office shall be deemed to commence on the date the branch office first opens for business to the public.**

**(b) If the first day of a calendar quarter does not occur on a regular banking day for a bank, the bank shall be deemed to operate or otherwise maintain a branch office on that date if the bank:**

**(1) Held the branch office open for business to the public at any time during the immediately preceding 5 regular banking days for the bank; and**

**(2) Holds the branch office open for business to the public at any time during the immediately succeeding 5 regular banking days for the bank.**

**4. As used in this section, the words and terms defined in section 10.5 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 136 (NRS 363A.120), have the meanings ascribed to them in that section.**

**INFORMATIONAL STATEMENT**  
**Permanent Regulation of the Nevada Tax Commission**

**LCB File No. R152-03**

**RECEIVED**

OCT 10 2003

**BY LCB - LEGAL**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 363.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on October 6, 2003 video conferenced between the Nevada Legislative Building, 401 S. Carson Street, Room 3138, Carson City, Nevada and the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on October 1, 2003. Thus, the proposed regulation, for practical purposes, was discussed at two workshops and has been heard and considered at one

public hearing of the Nevada Tax Commission.

2. **The number of persons who:**
- (a) **Attended the hearing:** 55
  - (b) **Testified at the hearing:** 1
  - (c) **Submitted to the Tax Commission written comments:** Written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission from various banking institutions, the Fiscal & Legal Division's of the Legislative Counsel Bureau and the Nevada Taxpayers Association.

3. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 250 interested businesses and persons on the Department of Taxation's mailing list.

4. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Paragraph (b) of Subsection 3 of Section 1 of the proposed regulation was modified to adopt the proposed alternative language provided by LCB – Legal, due to issues raised by the Department of Taxation, the Attorney General and the members of the Nevada Tax Commission. The remaining sections of the proposed regulation were not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, the Attorney General or Tax Commission members, and the Tax Commission believed no changes other than those made were necessary.

5. **The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.**

- (a) **Adverse and beneficial effects.**

The proposed regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public.

- (b) **Immediate and long-term effects.**



Same as #5(a) above.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

The proposed regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some minor initial administrative costs for the Department, which are not quantifiable at this time.

**7. A description of any regulations of other state or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The proposed regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

**8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

There are no known federal regulations pertaining to the excise tax on bank branch offices procedure, which are the subject of the proposed regulation.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulation does not provide a new fee or increase an existing fee.