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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 AA

EXHIBIT AA

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
BARBARA E. BUCKLEY, *Assemblywoman, Chair*
Lorne J. Malkiewich, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Gary L. Ghiggeri, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

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



PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6813
DONALD O. WILLIAMS, *Research Director* (775) 684-6825
BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830

February 23, 2006

Dino DiCianno
Nevada Tax Commission
1550 E. College Parkway, Suite 115
Carson City NV 89706-8302

Re: LCB File No. R196-05

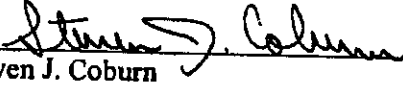
Dear Mr. DiCianno:

A 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,

Brenda J. Erdoes
Legislative Counsel

By 
Steven J. Coburn
Principal Deputy Legislative Counsel

SJC/sj

Enclosure



KENNY C. GUINN
Governor

THOMAS R. SHEETS
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION

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MEMORANDUM

Date: February 27, 2006
To: Administrator, State Library & Archives
From: Dino DiCianno
CC: Chuck Chinnock, Executive Director
Subject: Filing of Adopted Regulations by the Nevada Tax Commission

Attached are copies of regulations adopted by the Nevada Tax Commission, which relate to the Department's administration of statutes governing business license fees, modified business tax on general businesses, modified business tax on financial institutions, live entertainment tax, the excise tax on branch offices of banks, and the OHV certificate of operation program.

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



KENNY C. GUINN
Governor

THOMAS R. SHEETS
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK
Executive Director

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DEPARTMENT OF TAXATION

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

MEMORANDUM

Date: January 23, 2006

To: Brenda Erdoes, Legislative Counsel

Via: Debra Corp, Secretary to Legislative Counsel

From: Dino DiCianno, Deputy Executive Director - Compliance 

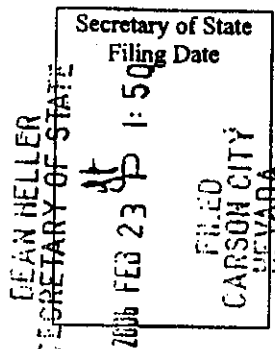
CC: Chuck Chinnock, Executive Director

Subject: Filing of an Adopted Permanent Regulations by the Nevada Tax Commission

Attached are copies of permanent regulations adopted by the Nevada Tax Commission on January 9, 2006, which relate to the Department's administration of taxes found in Title 32 of the Nevada Revised Statutes. More specifically, (1) LCB File No. R190-05-05, (2) LCB File No. R193-05, (3) LCB File No. R194-05, (4) LCB File No. R195-05, and (5) LCB File No. R196-05.

These regulations are submitted to you in accordance with NRS 233B.067 and we respectfully request that they be filed with the Secretary of State pursuant to NRS 233B.070.

Thank you.



Secretary of State
Filing Date

For Filing Administrative
Regulations

For Emergency
Regulations Only

Effective Date _____

Expiration Date _____

Governor's Signature _____

Agency NEVADA TAX COMMISSION

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 368A.140.

Notice Date: 12/7/05

Date of Adoption by Agency _____

Hearing Date: 1/9/06

1/9/06

Noticed proposed permanent amendments adopted:

NAC 368A Revising the provisions found in Chapter 368A of the Nevada Administrative Code relating to the tax on live entertainment, makes various changes to the provisions governing the administration of the tax, repealing certain superseded provisions; and other matters properly relating thereto based on statute changes made by the 2005 Legislature.

LCB File No. R196-05.

Chuck Chinnock, Executive Director

January 23, 2006

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R196-05

Effective February 23, 2006

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

AUTHORITY: §§1-7, NRS 360.090 and 368A.140.

A REGULATION relating to the tax on live entertainment; making various changes to the provisions governing the administration of the tax; repealing certain superseded provisions; and providing other matters properly relating thereto.

Section 1. NAC 368A.010 is hereby amended to read as follows:

368A.010 As used in NAC 368A.010 to 368A.170, inclusive, unless the context otherwise requires, the words and terms defined in NAC ~~{368A.020}~~ *368A.030* to 368A.090, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NAC 368A.070 is hereby amended to read as follows:

368A.070 "Nonprofit organization" means any organization described in *paragraph (a) of subsection 2 of NRS 368A.200 or* paragraph (b) of subsection 5 of ~~{NRS 368A.200}~~ *that section.*

Sec. 3. NAC 368A.100 is hereby amended to read as follows:

368A.100 For the purposes of chapter 368A of NRS, the Commission will interpret the term:

-1--

Adopted Regulation R196-05

- ~~— (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~~
- ~~— (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;~~

Sec. 4. NAC 368A.110 is hereby amended to read as follows:

368A.110 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 with the provisions of this chapter and chapter 368A of NRS.

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,}~~ *Nevada Gaming Commission*.

Sec. 5. NAC 368A.130 is hereby amended to read as follows:

368A.130 For the purposes of paragraph (c) of subsection ~~{6}~~ 7 of 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}~~ 200 persons and less than 7,500 ~~{}~~ persons. 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.}~~ 200 persons or at least 7,500 persons. 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. 6. NAC 368A.160 is hereby amended to read as follows:

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Adopted Regulation R196-05

TEXT OF REPEALED SECTIONS

368A.020 "Board" defined. (NRS 360.090, 368A.140) "Board" means the State Gaming Control Board.

368A.050 "Executive Director" defined. (NRS 360.090, 368A.140) "Executive Director" means the Executive Director of the Department.

INFORMATIONAL STATEMENT
Permanent Regulation of the Nevada Tax Commission

LCB File No. R196-05

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 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; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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 January 9, 2006 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) 684-2096 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 January 5, 2006. Thus, the proposed regulation, for practical purposes, was discussed at one workshop 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: 41
- (b) Testified at the hearing: 1
- (c) Submitted to the Tax Commission written comments: No written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission.

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 240 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.

The proposed regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes 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. There may be some beneficial economic effects to certain taxpayers which are the subject of the adopted regulation. Those anticipated benefits are not quantifiable at this time.

(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 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 Nevada's live entertainment tax, which is 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.

Secretary of State
Filing Date

For Filing Administrative
Regulations

For Emergency
Regulations Only

Effective Date _____

Expiration Date _____

Governor's Signature _____

Agency NEVADA TAX COMMISSION

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 368A.140.

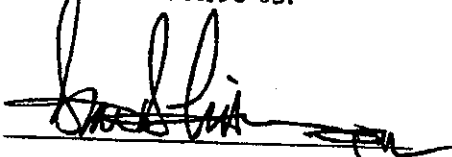
Notice Date: 12/7/05 Date of Adoption by Agency _____

Hearing Date: 1/9/06 1/9/06

Noticed proposed permanent amendments adopted:

NAC 368A Revising the provisions found in Chapter 368A of the Nevada Administrative Code relating to the tax on live entertainment, makes various changes to the provisions governing the administration of the tax, repealing certain superseded provisions; and other matters properly relating thereto based on statute changes made by the 2005 Legislature.

LCB File No. R196-05.



Chuck Chinnock, Executive Director

January 23, 2006

INFORMATIONAL STATEMENT
Permanent Regulation of the Nevada Tax Commission

LCB File No. R196-05

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 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; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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 January 9, 2006 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) 684-2096 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 January 5, 2006. Thus, the proposed regulation, for practical purposes, was discussed at one workshop 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:** 41
- (b) Testified at the hearing:** 1
- (c) Submitted to the Tax Commission written comments:** No written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission.

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 240 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.

The proposed regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes 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. There may be some beneficial economic effects to certain taxpayers which are the subject of the adopted regulation. Those anticipated benefits are not quantifiable at this time.

(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 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 Nevada's live entertainment tax, which is 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.

PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION

LCB File No. R196-05

January 5, 2006

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

AUTHORITY: §§1-7, NRS 360.090 and 368A.140.

A REGULATION relating to the tax on live entertainment; making various changes to the provisions governing the administration of the tax; repealing certain superseded provisions; and providing other matters properly relating thereto.

Section 1. NAC 368A.010 is hereby amended to read as follows:

368A.010 As used in NAC 368A.010 to 368A.170, inclusive, unless the context otherwise requires, the words and terms defined in NAC ~~[368A.020]~~ *368A.030* to 368A.090, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NAC 368A.070 is hereby amended to read as follows:

368A.070 "Nonprofit organization" means any organization described in *paragraph (a) of subsection 2 of NRS 368A.200 or* paragraph (b) of subsection 5 of ~~NRS 368A.200~~ *that section.*

Sec. 3. NAC 368A.100 is hereby amended to read as follows:

368A.100 For the purposes of chapter 368A of NRS, the Commission will interpret the term:

--1--

LCB Draft of Proposed Regulation R196-05

~~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.~~

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

~~{3. "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.~~

~~—4.] 2. "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.~~

~~{5. "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;~~

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LCB Draft of Proposed Regulation R196-05

- ~~— (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~~
- ~~— (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 6 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 licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the 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.~~
- ~~6. "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.~~
- ~~7. "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.~~

Sec. 4. NAC 368A.110 is hereby amended to read as follows:

368A.110 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 with the provisions of this chapter and chapter 368A of NRS.

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,}~~ *Nevada Gaming Commission*.

Sec. 5. NAC 368A.130 is hereby amended to read as follows:

368A.130 For the purposes of paragraph (c) of subsection ~~{6}~~ 7 of 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}~~ *200 persons* and less than 7,500 ~~{}~~ *persons*. 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,}~~ *200 persons or at least 7,500 persons*. 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. 6. NAC 368A.160 is hereby amended to read as follows:

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LCB Draft of Proposed Regulation R196-05

368A.160 Any person who claims to be a nonprofit organization exempt from the provisions of 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 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 *who claims to be a nonprofit organization* or the organization for whose benefit the person provided live entertainment {meets} :~~

1. Meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto {;} ;

2. Has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or

3. Is organized or existing under the provisions of chapter 82 of NRS.

Sec. 7. NAC 368A.020 and 368A.050 are hereby repealed.

TEXT OF REPEALED SECTIONS

368A.020 "Board" defined. (NRS 360.090, 368A.140) "Board" means the State Gaming Control Board.

368A.050 "Executive Director" defined. (NRS 360.090, 368A.140) "Executive Director" means the Executive Director of the Department.

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R196-05

Effective February 23, 2006

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

AUTHORITY: §§1-7, NRS 360.090 and 368A.140.

A REGULATION relating to the tax on live entertainment; making various changes to the provisions governing the administration of the tax; repealing certain superseded provisions; and providing other matters properly relating thereto.

Section 1. NAC 368A.010 is hereby amended to read as follows:

368A.010 As used in NAC 368A.010 to 368A.170, inclusive, unless the context otherwise requires, the words and terms defined in NAC ~~[368A.020]~~ *368A.030* to 368A.090, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NAC 368A.070 is hereby amended to read as follows:

368A.070 "Nonprofit organization" means any organization described in *paragraph (a) of subsection 2 of NRS 368A.200 or* paragraph (b) of subsection 5 of ~~[NRS 368A.200]~~ *that section.*

Sec. 3. NAC 368A.100 is hereby amended to read as follows:

368A.100 For the purposes of chapter 368A of NRS, the Commission will interpret the term:

--1--

Adopted Regulation R196-05

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.~~

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

~~3. "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.~~

~~4.]~~ 2. "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.

~~5. "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~~
- ~~— (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 6 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 licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the 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.~~
- ~~— 6. "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.~~
- ~~— 7. "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.~~

Sec. 4. NAC 368A.110 is hereby amended to read as follows:

368A.110 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 with the provisions of this chapter and chapter 368A of NRS.

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,}~~ *Nevada Gaming Commission*.

Sec. 5. NAC 368A.130 is hereby amended to read as follows:

368A.130 For the purposes of paragraph (c) of subsection ~~{6}~~ 7 of 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}~~ *200 persons* and less than 7,500 ~~{-}~~ *persons*. 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,}~~ *200 persons or at least 7,500 persons*. 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. 6. NAC 368A.160 is hereby amended to read as follows:

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Adopted Regulation R196-05

368A.160 Any person who claims to be a nonprofit organization exempt from the provisions of 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 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 *who claims to be a nonprofit organization* or the organization for whose benefit the person provided live entertainment ~~{meets}~~ :

1. *Meets* the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto ~~{+}~~ ;

2. *Has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or*

3. *Is organized or existing under the provisions of chapter 82 of NRS.*

Sec. 7. NAC 368A.020 and 368A.050 are hereby repealed.

TEXT OF REPEALED SECTIONS

368A.020 "Board" defined. (NRS 360.090, 368A.140) "Board" means the State Gaming Control Board.

368A.050 "Executive Director" defined. (NRS 360.090, 368A.140) "Executive Director" means the Executive Director of the Department.



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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POSTED 12/7/05

**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 January 9, 2006 commencing at 9:00 a.m. Via Video Conference 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. The Nevada Tax Commission will receive testimony from all interested persons and consider and take action on the following proposed 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.

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

- First:** Revising the provisions found in Chapter 360 of the Nevada Administrative Code relating to the payment and administration of the business license fee, repealing certain provisions relating to the payment and administration of the business license fee; and other matters properly relating thereto based on statute changes made by the 2005 Legislative Session. LCB File No. R0193-05
- Second:** Revising the provisions found in Chapter 363A of the Nevada Administrative Code relating to the payment and administration of the excise tax on bank branch offices in excess of one in any county in this State; repealing certain provisions relating to the payment and administration of the modified business tax on financial institutions; and providing other matters properly relating thereto based on statute changes made by the 2005 Legislative Session. LCB File No. R194-05
- Third:** Repealing certain regulations found in Chapter 363B of the Nevada Administrative Code relating to the payment and administration of the modified business tax insofar as said regulations have been superseded by statute based on changes made by the 2005 Legislative Session; and providing other matters properly relating thereto. LCB File No. R195-05
- Fourth:** Revising the provisions found in Chapter 368A of the Nevada Administrative Code relating to the payment and administration of the tax on live entertainment; and providing other matters properly relating thereto based on statute changes made by the 2005 Legislative Session. LCB File No. R196-05

(2)

~~Adding~~ new provisions to Chapter 300 of the Nevada Administrative Code relating to the administration of the off-highway vehicle certificate of operation sticker program; and providing other matters properly relating thereto associated with Senate Bill 400 of the 2005 Legislative Session. LCB File No. R190-05

Sixth: Adding new provisions to Chapter 370 of the Nevada Administrative Code relating to the administration of tobacco licensing and taxes; repealing certain provisions found in Chapter 370A of the Nevada Administrative Code; and providing other matters properly relating thereto associated with Assembly Bill 436 of the 2005 Legislative Session. LCB File No. R191-05

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 permanent 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 minor 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 L, Suite 235, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation - 2550 Paseo Verde Parkway, Suite 180, Henderson, 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.

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Under NRS 233B.004(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
December 7, 2005

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 775-684-2096 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 1, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Suite 1300, Las Vegas, Nevada; Department of Taxation - 2550 Paseo Verde Parkway, Suite 180, Henderson, 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 Street, Carson City, Nevada.

(4)

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
BARBARA B. BUCKLEY, *Assemblywoman, Chair*
Lorne J. Malkiewicz, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Gary L. Obiggeri, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

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

PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825
BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830

January 5, 2006

Dino DiCianno
Department of Taxation
1550 college Parkway, Suite 115
Carson City, Nevada 89706-8302

Re: LCB File Nos. R190-05, R191-05, R194-05, R195-05 and R196-05

Dear Mr. DiCianno:

The above proposed regulations of the Nevada Tax Commission have been examined pursuant to NRS 233B.063 and are returned in revised form.

We invite you to discuss with us any questions which you may have concerning the review. Please make reference to our file numbers in all further correspondence relating to each regulation.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By 
Steven J. Coburn
Principal Deputy Legislative Counsel

SJC/dlc

Enclosure

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R196-05

January 5, 2006

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

AUTHORITY: §§1-7, NRS 360.090 and 368A.140.

A REGULATION relating to the tax on live entertainment; making various changes to the provisions governing the administration of the tax; repealing certain superseded provisions; and providing other matters properly relating thereto.

Section 1. NAC 368A.010 is hereby amended to read as follows:

368A.010 As used in NAC 368A.010 to 368A.170, inclusive, unless the context otherwise requires, the words and terms defined in NAC ~~{368A.020}~~ *368A.030* to 368A.090, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NAC 368A.070 is hereby amended to read as follows:

368A.070 "Nonprofit organization" means any organization described in *paragraph (a) of subsection 2 of NRS 368A.200* or paragraph (b) of subsection 5 of ~~[NRS 368A.200.]~~ *that section.*

Sec. 3. NAC 368A.100 is hereby amended to read as follows:

368A.100 For the purposes of chapter 368A of NRS, the Commission will interpret the term:

-1-

LCB Draft of Proposed Regulation R196-05

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.~~

~~—2.} “Boxing contest or exhibition” to have the meaning ascribed in NRS 467.0107 to the term “unarmed combat.”~~

~~{3. “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.~~

~~—4.} 2. “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.~~

~~{5. “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) Aerobatics or stunts provided by one or more professional or amateur aerobats, 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~~

~~— (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 6 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 licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the 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.~~
- ~~— 6. "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.~~
- ~~— 7. "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.]~~

Sec. 4. NAC 368A.110 is hereby amended to read as follows:

368A.110 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 with the provisions of this chapter and chapter 368A of NRS.

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,}~~ *Nevada Gaming Commission*.

Sec. 5. NAC 368A.130 is hereby amended to read as follows:

368A.130 For the purposes of paragraph (c) of subsection ~~{6}~~ 7 of 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}~~ 200 persons and less than 7,500 ~~{}~~ persons. 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,}~~ 200 persons or at least 7,500 persons. 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. 6. NAC 368A.160 is hereby amended to read as follows:

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LCB Draft of Proposed Regulation R196-05

368A.160 Any person who claims to be a nonprofit organization exempt from the provisions of 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 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 *who claims to be a nonprofit organization* or the organization for whose benefit the person provided live entertainment {meets} :~~

1. Meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto ~~+~~ ;

2. Has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or

3. Is organized or existing under the provisions of chapter 82 of NRS.

Sec. 7. NAC 368A.020 and 368A.050 are hereby repealed.

TEXT OF REPEALED SECTIONS

368A.020 "Board" defined. (NRS 360.090, 368A.140) "Board" means the State Gaming Control Board.

368A.050 "Executive Director" defined. (NRS 360.090, 368A.140) "Executive Director" means the Executive Director of the Department.



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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PUBLIC NOTICE

TO: To All Interested Parties
FROM: Dino DiCianno, Deputy Executive Director - Compliance
DATE: November 23, 2005
RE: Workshop on Proposed Tax Regulations

We will hold a meeting to receive input on proposed language changes to the Nevada Administrative Code (NAC) 363B.120 and 363B.160 to repeal certain regulations relating to the payment and administration of the modified business tax; NAC 363A relating to the payment and administration of the excise tax on bank branch offices and the modified business tax on financial institutions; NAC 360 relating to the payment and administration of the business license fee; and NAC 368 relating to the payment and administration of the tax on live entertainment at the following locations:

Carson City – Monday, December 12, 2005

**Nevada Legislative Building
401 S. Carson Street, Room 2134
Carson City, Nevada**

Las Vegas – Via Video Conference

**Legislative Counsel Bureau
Grant Sawyer State Office Building
555 E. Washington Ave, Room 4406
Las Vegas, Nevada**

The meeting will start at 9:00 a.m. 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 drafts of the regulations will be available on our web-site for your informational 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.

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. _____

October __, 2005

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

AUTHORITY: NRS 360.090, 360.093, 368A.140

A REGULATION relating to taxation; revising the provisions relating to the payment and administration of the tax on live entertainment; and providing other matters properly relating thereto.

Section 1. Chapter 368 of NAC is hereby amended as provided in sections 2, 3 and 4 of this regulation.

Sec. 2. NAC 368A.100 is hereby amended to read as follows:

368A.100 For the purposes of chapter 368A of NRS, 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.]~~

~~[2.]~~ 1. "Boxing contest or exhibition" to have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."

~~[3. "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.]~~

[4.] 2. "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.

[5. ~~"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~~

~~— (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 6 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 licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the 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.~~

~~— 6. "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.~~

~~— 7. "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.]~~

Sec. 3. NAC 368A.130 is hereby amended to read as follows:

368A.130 For the purposes of paragraph (c) of subsection 6 of 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] 200 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] 200 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. 4. NAC 368A.160 is hereby amended to read as follows:

368A.160 Any person who claims to be a nonprofit organization exempt from the provisions of 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 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 has qualified as a tax exempt organization pursuant to 26 U.S.C. 501(c), meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto[.], or is organized or existing under the provisions of chapter 82 of NRS.

EXHIBIT BB

EXHIBIT BB

**MINUTES OF THE
SENATE COMMITTEE ON TAXATION**

**Seventy-third Session
June 5, 2005**

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 8:10 p.m. on Sunday, June 5, 2005, on the Senate Floor of the Legislative Building, Carson City, Nevada. There was no Agenda. There was no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chair
Senator Sandra J. Tiffany, Vice Chair
Senator Randolph J. Townsend
Senator Dean A. Rhoads
Senator Bob Coffin
Senator Terry Care
Senator John Lee

STAFF MEMBERS PRESENT:

Chris Janzen, Deputy Fiscal Analyst
Mavis Scarff, Committee Secretary

Chair McGinness requested a motion to rescind the Committee's previous action on Assembly Bill (A.B.) 554 changing the live entertainment maximum seating capacity from 300 to zero.

ASSEMBLY BILL 554 (2nd Reprint): Makes various changes to provisions governing taxation. (BDR 32-1344)

**SENATOR TIFFANY MOVED TO RESCIND THE PREVIOUS ACTION
TAKEN ON A.B. 554 TO CHANGE THE MAXIMUM SEATING CAPACITY
FOR LIVE ENTERTAINMENT TO ZERO.**

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senate Committee on Taxation
June 5, 2005
Page 2

Chair McGinness then requested an amendment changing the maximum seating capacity for live entertainment from zero to 200.

SENATOR TIFFANY MOVED TO REQUEST AN AMENDMENT TO
A.B. 554 TO CHANGE THE MAXIMUM SEATING CAPACITY FOR LIVE
ENTERTAINMENT FROM ZERO TO 200.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair McGinness adjourned the floor meeting at 8:15 p.m.

RESPECTFULLY SUBMITTED:

Mavis Scarff,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: _____

CHAPTER.....

AN ACT relating to taxation; clarifying the definition of "employer" for the purpose of the tax on business; revising the provisions governing the applicability and administration of the tax on live entertainment; clarifying the provisions governing the administration of the use taxes on certain personal property acquired free of charge at public events; expanding the exemptions from the taxes on the transfer of real property; revising the provisions governing the application of sales and use taxes to retail sales of vehicles for which used vehicles are taken in trade; revising the provisions governing the application of sales and use taxes to retail sales of farm machinery and equipment; providing for the submission to the voters of the question whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption from the tax for sales of vehicles for which used vehicles are taken in trade and for farm machinery and equipment; providing exemptions from certain analogous taxes; and providing other matters properly relating thereto.

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

Section 1. NRS 363B.030 is hereby amended to read as follows:

363B.030 "Employer" means any employer who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter, except a financial institution, an Indian tribe, a nonprofit organization, ~~for~~ a political subdivision ~~or~~ or any person who does not supply a product or service, but who only consumes a service. For the purposes of this section:

1. "Financial institution" has the meaning ascribed to it in NRS 363A.050.

2. "Indian tribe" includes any entity described in subsection 10 of NRS 612.055.

3. "Nonprofit organization" means a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

4. "Political subdivision" means any entity described in subsection 9 of NRS 612.055.

Sec. 2. Chapter 368A of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. "Casual assemblage" includes, without limitation:

1. Participants in conventions, business meetings or tournaments governed by chapter 463 of NRS, and their guests; or

2. *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. 4. *"Shopping mall" includes 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.*

Sec. 5. *"Trade show" means 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.*

Sec. 6. NRS 368A.010 is hereby amended to read as follows:
368A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.110, inclusive, and sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.

Sec. 7. NRS 368A.020 is hereby amended to read as follows:
368A.020 "Admission charge" means the total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live entertainment is provided. *The term includes, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.*

Sec. 8. NRS 368A.060 is hereby amended to read as follows:
368A.060 1. "Facility" means:
{1-} (a) 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 if the live entertainment is provided at:
{(a)} (1) An establishment that is not a licensed gaming establishment; or
{(b)} (2) 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.
{2-} (b) Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

2. *"Facility" encompasses, if live entertainment is provided at a licensed gaming establishment that is licensed for:*

(a) *Less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, any area or premises where the 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; or

(b) At least 51 slot machines or at least 6 games, any designated area on the premises of the licensed gaming establishment within which the live entertainment is provided.

Sec. 9. NRS 368A.090 is hereby amended to read as follows:

368A.090 1. "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.

2. The term:

(a) Includes, 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 (7), inclusive; and

(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) Excludes, 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, selling 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 6 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 licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the 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;

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

(8) An occasional activity, including, without limitation, dancing, that:

(I) Does not constitute a performance;

(II) Is not advertised as entertainment to the public;

(III) Primarily serves to provide ambience to the facility;

and
(IV) Is conducted by an employee whose primary job function is not that of an entertainer.

Sec. 10. NRS 368A.200 is hereby amended to read as follows:
368A.200 1. Except as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in this State where live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.

(b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

5. The tax imposed by subsection 1 does not apply to:

(a) Live entertainment that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c) (1) or a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS.

(c) Any boxing contest or exhibition governed by the provisions of chapter 467 of NRS.

(d) Live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum seating capacity of less than ~~300~~ 200.

(e) Live entertainment that is provided at 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, if the facility in which the live entertainment is provided has a maximum seating capacity of less than ~~300~~ 200.

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

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

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

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

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

(k) *Live entertainment that is incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction. For the purposes of this paragraph, live entertainment shall be deemed to be incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction if the live entertainment is:*

(1) Not the predominant element of the attraction; and

(2) Not the primary purpose for which the public rides, attends or otherwise participates in the attraction.

(l) Live entertainment that is provided to the public in an outdoor area, without any requirements for the payment of an admission charge or the purchase of any food, refreshments or merchandise.

(m) An outdoor concert, unless the concert is provided on the premises of a licensed gaming establishment.

(n) Beginning July 1, 2007, race events scheduled at a race track in this State as a part of the National Association for Stock Car Auto Racing Nextel Cup Series, or its successor racing series, and all races associated therewith.

(o) Live entertainment provided in a restaurant which is incidental to any other activities conducted in the restaurant or which only serves as ambience so long as there is no charge to the patrons for that entertainment.

6. The Nevada Gaming Commission may adopt regulations establishing a procedure whereby a taxpayer that is a licensed gaming establishment may request an exemption from the tax pursuant to paragraph (o) of subsection 5. The regulations must require the taxpayer to seek an administrative ruling from the Chairman of the Board, provide a procedure for appealing that ruling to the Nevada Gaming Commission and further describe the forms of incidental or ambient entertainment exempted pursuant to that paragraph.

7. As used in this section, "maximum seating capacity" means, in the following order of priority:

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

- (b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or
- (c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

Sec. 11. NRS 368A.220 is hereby amended to read as follows:
368A.220 1. Except as otherwise provided in this section:

- (a) Each taxpayer who is a licensed gaming establishment shall file with the Board, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month ~~+~~ *or the month in which the taxable events occurred*. The report must be in a form prescribed by the Board.
- (b) All other taxpayers shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.

2. The Board or the Department, if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by NRS 368A.200, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

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

Sec. 12. Chapter 372 of NRS is hereby amended by adding thereto a new section to read as follows:

In its administration of the use tax imposed by NRS 372.185, the Department shall not consider the storage, use or other consumption in this State of tangible personal property which is:

1. *Worth \$100 or less; and*
2. *Acquired free of charge at a convention, trade show or other public event.*

Sec. 13. NRS 372.7263 is hereby amended to read as follows:
372.7263 1. In administering the provisions of NRS 372.335,

the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

- (a) The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;
- (b) The sale of farm machinery and equipment to a nonresident who submits proof to the vendor that the farm machinery and

equipment will be delivered out of State not later than 15 days after the sale; and

(c) The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

2. As used in this section:

(a) ~~"Agricultural use" has the meaning ascribed to it in NRS 361A.030.~~

~~(b)~~ "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for ~~the agricultural use of real property.~~

~~(c)~~ *agricultural purposes.*

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

~~(d)~~ (c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 14. NRS 372.7263 is hereby amended to read as follows:
372.7263 ~~{1}~~ In administering the provisions of NRS 372.335, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

~~{(a)}~~ 1. The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;

~~{(b)}~~ 2. The sale of farm machinery and equipment, as defined in section 30 of this act, to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and

~~{(c)}~~ 3. The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

~~{2}~~ As used in this section:

~~(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:~~

~~(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or~~

~~(2) Machinery or equipment only incidentally employed for agricultural purposes.~~

~~(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.~~

~~(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.~~

Sec. 15. Chapter 374 of NRS is hereby amended by adding thereto the provisions set forth as sections 16 and 17 of this act.

Sec. 16. In its administration of the use tax imposed by NRS 374.190, the Department shall not consider the storage, use or other consumption in a county of tangible personal property which is:

1. Worth \$100 or less; and
2. Acquired free of charge at a convention, trade show or other public event.

Sec. 17. 1. There are exempted from the taxes imposed by this chapter the gross receipts from the sale, storage, use or other consumption in a county of farm machinery and equipment.

2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 18. NRS 374.030 is hereby amended to read as follows:

374.030 1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of

retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Department may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the county or has paid the use tax with respect to the property, and has resold the property before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(c) The cost of transportation of the property before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The sale price of property returned by customers when the full sale price is refunded either in cash or credit, but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

~~(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.~~

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Department that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Sec. 19. NRS 374.070 is hereby amended to read as follows:

374.070 1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money

or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of the materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property before its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded in cash or credit, except that this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
- (c) The amount charged for labor or services rendered in installing or applying the property sold.
- (d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.
- (e) The amount of any tax imposed by the State of Nevada upon or with respect to the storage, use or other consumption of tangible personal property purchased from any retailer.
- (f) The amount of any allowance against the selling price given by a retailer for the value of a used ~~{vehicle or}~~ vessel which is taken in trade on the purchase of another ~~{vehicle or}~~ vessel.

Sec. 20. NRS 375.090 is hereby amended to read as follows:

375.090 The taxes imposed by NRS 375.020, 375.023 and 375.026 do not apply to:

- 1. A mere change in identity, form or place of organization, such as a transfer between a corporation and its parent corporation, a subsidiary or an affiliated corporation if the affiliated corporation has identical common ownership.
- 2. A transfer of title to the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.
- 3. A transfer of title recognizing the true status of ownership of the real property.
- 4. A transfer of title without consideration from one joint tenant or tenant in common to one or more remaining joint tenants or tenants in common.

5. A transfer of title between spouses, including gifts, or to effect a property settlement agreement or between former spouses in compliance with a decree of divorce.
6. A transfer of title to or from a trust without consideration if a certificate of trust is presented at the time of transfer.
7. Transfers, assignments or conveyances of unpatented mines or mining claims.
8. A transfer, assignment or other conveyance of real property to a corporation or other business organization if the person conveying the property owns 100 percent of the corporation or organization to which the conveyance is made.
9. A transfer, assignment or other conveyance of real property if the owner of the property is related to the person to whom it is conveyed within the first degree of *lineal* consanguinity or affinity.
10. A conveyance of real property by deed which becomes effective upon the death of the grantor pursuant to NRS 111.109.
11. The making, delivery or filing of conveyances of real property to make effective any plan of reorganization or adjustment:
 - (a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C. §§ 101 et seq.;
 - (b) Approved in an equity receivership proceeding involving a railroad, as defined in the Bankruptcy Act; or
 - (c) Approved in an equity receivership proceeding involving a corporation, as defined in the Bankruptcy Act,
if the making, delivery or filing of instruments of transfer or conveyance occurs within 5 years after the date of the confirmation, approval or change.
12. The making or delivery of conveyances of real property to make effective any order of the Securities and Exchange Commission if:
 - (a) The order of the Securities and Exchange Commission in obedience to which the transfer or conveyance is made recites that the transfer or conveyance is necessary or appropriate to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79k;
 - (b) The order specifies and itemizes the property which is ordered to be transferred or conveyed; and
 - (c) The transfer or conveyance is made in obedience to the order.
13. A transfer to an educational foundation. As used in this subsection, "educational foundation" has the meaning ascribed to it in subsection 3 of NRS 388.750.
14. A transfer to a university foundation. As used in this subsection, "university foundation" has the meaning ascribed to it in subsection 3 of NRS 396.405.

Sec. 21. NRS 374.265 is hereby amended to read as follows:
374.265 "Exempted from the taxes imposed by this chapter,"
as used in NRS 374.265 to 374.355, inclusive, *and section 17 of
this act* means exempted from the computation of the amount of
taxes imposed.

Sec. 22. NRS 374.286 is hereby amended to read as follows:
374.286 1. There are exempted from the taxes imposed by
this chapter the gross receipts from the sale, ~~{of, and the}~~ storage,
use or other consumption in a county of ~~{,}~~ farm machinery and
equipment. ~~{employed for the agricultural use of real property.}~~

2. As used in this section:

(a) ~~"Agricultural use" has the meaning ascribed to it in
NRS 361A.030.~~

~~(b)}~~ "Farm machinery and equipment" means a farm tractor,
implement of husbandry, piece of equipment used for irrigation, or a
part used in the repair or maintenance of farm machinery and
equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the
provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for
~~{the agricultural use of real property.~~

~~(c)}~~ *agricultural purposes.*

(b) "Farm tractor" means a motor vehicle designed and used
primarily for drawing an implement of husbandry.

~~(d)}~~ (c) "Implement of husbandry" means a vehicle that is
designed, adapted or used for agricultural purposes, including,
without limitation, a plow, machine for mowing, hay baler,
combine, piece of equipment used to stack hay, till, harvest, handle
agricultural commodities or apply fertilizers, or other heavy,
movable equipment designed, adapted or used for agricultural
purposes.

Sec. 23. NRS 374.7273 is hereby amended to read as follows:
374.7273 1. In administering the provisions of NRS 374.340,
the Department shall apply the exemption for the sale of tangible
personal property delivered by the vendor to a forwarding agent for
shipment out of State to include:

(a) The sale of a vehicle to a nonresident to whom a special
movement permit has been issued by the Department of Motor
Vehicles pursuant to subsection 1 of NRS 482.3955;

(b) The sale of farm machinery and equipment to a nonresident
who submits proof to the vendor that the farm machinery and
equipment will be delivered out of State not later than 15 days after
the sale; and

(c) The sale of a vessel to a nonresident who submits proof to
the vendor that the vessel will be delivered out of State not later than
15 days after the sale.

2. As used in this section:

~~(a) "Agricultural use" has the meaning ascribed to it in NRS 361A.030.~~

~~(b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:~~

~~(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or~~

~~(2) Machinery or equipment only incidentally employed for the agricultural use of real property.~~

~~(c) agricultural purposes.~~

~~(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.~~

~~(d) (c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.~~

Sec. 24. NRS 374.7273 is hereby amended to read as follows:

374.7273 ~~(1)~~ In administering the provisions of NRS 374.340, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

~~(a) 1.~~ The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;

~~(b) 2.~~ The sale of farm machinery and equipment, as defined in section 30 of this act, to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and

~~(c) 3.~~ The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

~~2. As used in this section:~~

~~(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:~~

~~(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or~~

~~(2) Machinery or equipment only incidentally employed for agricultural purposes.~~

~~(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.~~

~~(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.~~

Sec. 25. Section 64 of Chapter 400, Statutes of Nevada 2003, at page 2374, is hereby amended to read as follows:

Sec. 64. NRS 374.070 is hereby amended to read as follows:

374.070 1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of the materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property before its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit; but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
- (c) The amount charged for labor or services rendered in installing or applying the property sold.
- (d) The amount of any tax, ~~not including~~ ~~however,~~ any manufacturers' or importers' excise tax, ~~not~~ imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.
- (e) The amount of any tax imposed by the State of Nevada upon or with respect to the storage, use or other consumption of tangible personal property purchased from any retailer.

(f) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.

~~{4. For the purpose of a sale of a vehicle by a seller who is not required to be registered with the Department of Taxation, the sales price is the value established in the manner set forth in NRS 374.112.}~~

Sec. 26. Section 138 of Chapter 400, Statutes of Nevada 2003, at page 2409, is hereby amended to read as follows:

Sec. 138. NRS ~~{374.107,}~~ 374.112, 374.113, 374.286, 374.291, 374.2911, 374.322 and 374.323 are hereby repealed.

Sec. 27. Section 139 of Chapter 400, Statutes of Nevada 2003, at page 2409, is hereby amended to read as follows:

Sec. 139. 1. This section and section 102 of this act become effective upon passage and approval.

2. Sections 103 to 135, inclusive, of this act become effective on July 1, 2003.

3. Sections 1 to 29, inclusive, 32 to 38, inclusive, 40 to 50, inclusive, 52 to 57, inclusive, 66, 67, 69 to 72, inclusive, 74 to 80, inclusive, 83, 84, 85, 87 to 92, inclusive, 94 to 101, inclusive, 136 and 137 of this act become effective:

(a) Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2006, for all other purposes.

4. Sections 30 and 39 of this act become effective on January 1, 2006, only if the proposal submitted pursuant to sections 103 to 107, inclusive, of this act is approved by the voters at the General Election on November 2, 2004.

5. Sections 31, 51, ~~{58}~~ 60 to 65, inclusive, 68, 73, 81, 82, 86, 93 and 138 of this act become effective on January 1, 2006, only if the proposal submitted pursuant to sections 103 to 107, inclusive, of this act is not approved by the voters at the General Election on November 2, 2004.

Sec. 28. At the General Election on November 7, 2006, a proposal must be submitted to the registered voters of this State to amend the Sales and Use Tax Act, which was enacted by the 47th session of the Legislature of the State of Nevada and approved by the Governor in 1955, and subsequently approved by the people of this State at the General Election held on November 6, 1956.

Sec. 29. At the time and in the manner provided by law, the Secretary of State shall transmit the proposed Act to the several county clerks, and the county clerks shall cause it to be published and posted as provided by law.

Sec. 30. The proclamation and notice to the voters given by the county clerks pursuant to law must be in substantially the following form:

Notice is hereby given that at the General Election on November 7, 2006, a question will appear on the ballot for the adoption or rejection by the registered voters of the State of the following proposed Act:

AN ACT to amend an Act entitled "An Act to provide revenue for the State of Nevada; providing for sales and use taxes; providing for the manner of collection; defining certain terms; providing penalties for violation, and other matters properly relating thereto." approved March 29, 1955, as amended.

THE PEOPLE OF THE STATE OF NEVADA
DO ENACT AS FOLLOWS:

Section 1. The above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto a new section to be designated as section 18.2, immediately following section 18.1, to read as follows:

Sec. 18.2. *"Vehicle" has the meaning ascribed to it in NRS 482.135.*

Sec. 2. The above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto a new section to be designated section 55.5, immediately following section 55 to read as follows:

Sec. 55.5. 1. *There are exempted from the taxes imposed by this Act the gross receipts from the sale, storage, use or other consumption in a county of farm machinery and equipment.*

2. *As used in this section:*

(a) *"Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:*

(1) *A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or*

(2) *Machinery or equipment only incidentally employed for agricultural purposes.*

(b) *"Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.*

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 3. Section 11 of the above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 764, is hereby amended to read as follows:

Sec. 11. 1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property ~~to~~ before its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit ~~to~~, except that this exclusion ~~shall~~ does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The amount charged for labor or services rendered in installing or applying the property sold.

(d) The amount of any tax, ~~to~~ not including ~~to~~ however, any manufacturers' or importers' excise tax, ~~to~~ imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount of any allowance against the selling price given by a retailer for the value of a used

vehicle which is taken in trade on the purchase of another vehicle.

Sec. 4. Section 12 of the above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 764, is hereby amended to read as follows:

Sec. 12. 1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property ~~{prior to}~~ before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses ~~{}~~ or any other expense.

(c) The cost of transportation of the property ~~{prior to}~~ before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits ~~{}~~ and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" ~~{do}~~ does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) ~~{Sale}~~ The sale price of property returned by customers when the full sale price is refunded either in cash or credit, ~~{}~~ but this exclusion ~~{shall}~~ does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, ~~but~~ not including ~~but~~ however, any manufacturers' or importers' excise tax, ~~but~~ imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) *The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.*

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Sec. 5. This Act becomes effective on January 1, 2007.

Sec. 31. The ballot page assemblies and the paper ballots to be used in voting on the question must present the question in substantially the following form:

Shall the Sales and Use Tax Act of 1955 be amended to exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of any used vehicle taken in trade on the purchase of another vehicle and to exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of farm machinery and equipment?

Yes ☐ No ☐

Sec. 32. The explanation of the question which must appear on each paper ballot and sample ballot and in every publication and posting of notice of the question must be in substantially the following form:

(Explanation of Question)

The proposed amendment to the Sales and Use Tax Act of 1955 would exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of any used vehicle taken in trade on the purchase of another vehicle and the value of farm machinery and equipment. The Legislature has amended the Local School Support Tax Law and the City-County Relief Tax Law to provide the same exemption for farm machinery and equipment if this proposal is adopted.

Sec. 33. If a majority of the votes cast on the question submitted to the voters is yes, the amendment to the Sales and Use Tax Act of 1955 becomes effective on January 1, 2007. If less than a majority of votes cast on the question submitted to the voters is yes, the question fails and the amendment to the Sales and Use Tax Act of 1955 does not become effective.

Sec. 34. All general election laws not inconsistent with this act are applicable.

Sec. 35. Any informalities, omissions or defects in the content or making of the publications, proclamations or notices provided for in this act and by the general election laws under which this election is held must be so construed as not to invalidate the adoption of the act by a majority of the registered voters voting on the question if it can be ascertained with reasonable certainty from the official returns transmitted to the Office of the Secretary of State whether the proposed amendment was adopted by a majority of those registered voters.

Sec. 36. 1. NRS 368A.130 and 368A.210 are hereby repealed.

2. NRS 374.107 is hereby repealed.

3. Sections 58 and 59 of Chapter 400, Statutes of Nevada 2003, at page 2371, are hereby repealed.

Sec. 37. 1. This section becomes effective upon passage and approval.

2. Section 22 of this act:

(a) Becomes effective upon passage and approval for the purpose of adopting regulations and on July 1, 2005, for all other purposes; and

(b) Expires by limitation on December 21, 2005.

3. Sections 1 to 12, inclusive, 15, 16, 20 and subsection 1 of section 36 of this act become effective on July 1, 2005.

4. Sections 25 to 35, inclusive, and subsection 3 of section 36 of this act become effective on October 1, 2005.

5. Sections 13 and 23 of this act become effective on January 1, 2006.

6. Sections 14, 17, 21 and 24 of this act become effective on January 1, 2007, only if the proposal submitted pursuant to sections 28 to 35, inclusive, of this act is approved by the voters at the General Election on November 7, 2006.

- 22 -

7. Sections 18, 19 and subsection 2 of section 36 of this act become effective on January 1, 2007, only if the proposal submitted pursuant to sections 28 to 35, inclusive, of this act is not approved by the voters at the General Election on November 7, 2006.

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(Reprinted with amendments adopted on April 22, 2005)

FIRST REPRINT

S.B. 247

SENATE BILL NO. 247-SENATOR TITUS

MARCH 21, 2005

Referred to Committee on Taxation

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

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to taxation; revising the provisions governing the applicability, imposition, collection and administration of the tax on live entertainment; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes a tax on an admission charge to any facility where live entertainment, including live adult entertainment, is provided. (NRS 368A.200) The tax is administered by the State Gaming Control Board with respect to taxpayers who are licensed gaming establishments and by the Department of Taxation with respect to all other taxpayers. (NRS 368A.140)

This bill repeals the provisions of the existing law applicable to a facility that does not hold a nonrestricted gaming license and provides for the separate taxation of any facility where live adult entertainment is provided. This bill imposes a tax on live adult entertainment at the rate of 10 percent of any admission charge to such a facility, plus 10 percent of any amounts paid for food, refreshments, alcoholic beverages and merchandise purchased at the facility. This bill excludes houses of prostitution and facilities for which a nonrestricted gaming license has been issued from the tax on live adult entertainment, and provides for the administration of the tax solely by the Department of Taxation.

This bill also amends the existing law to provide for the separate taxation of a facility for which a nonrestricted gaming license has been issued. This bill does not change the application or rate of the tax on live entertainment currently in effect for such facilities, except that sporting events are exempted from taxation. This bill provides for the administration of the tax solely by the State Gaming Control Board.

This bill provides that if the provisions of this bill concerning the tax on live adult entertainment are held to be unconstitutional, the tax on all forms of live



23 entertainment will be reinstated as currently set forth in the provisions of Chapter
24 368A of NRS.

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

1 Section 1. Chapter 368A of NRS is hereby amended by
2 adding thereto the provisions set forth as sections 2 to 32, inclusive,
3 of this act.

4 Sec. 2. *As used in sections 2 to 32, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 10, inclusive, of this act have the meanings*
7 *ascribed to them in those sections.*

8 Sec. 3. "Admission charge" means the total amount,
9 expressed in terms of money, of consideration paid for the right or
10 privilege to have access to a facility where live adult entertainment
11 is provided.

12 Sec. 4. "Business" means any activity engaged in or caused
13 to be engaged in by a business entity with the object of gain,
14 benefit or advantage, either direct or indirect, to any person or
15 governmental entity.

16 Sec. 5. 1. "Business entity" includes:

17 (a) A corporation, partnership, proprietorship, limited-liability
18 company, business association, joint venture, limited-liability
19 partnership, business trust and their equivalents organized under
20 the laws of this State or another jurisdiction and any other type of
21 entity that engages in business.

22 (b) A natural person engaging in a business if the person is
23 required to file with the Internal Revenue Service a Schedule C
24 (Form 1040), Profit or Loss From Business Form, or its
25 equivalent or successor form, or a Schedule E (Form 1040),
26 Supplemental Income and Loss Form, or its equivalent or
27 successor form, for the business.

28 2. The term does not include a governmental entity.

29 Sec. 6. 1. "Facility" means, except as otherwise provided in
30 subsection 2, any area or premises where live adult entertainment
31 is provided and for which consideration is collected for the right
32 or privilege of entering that area or those premises.

33 2. The term does not include any portion of:

34 (a) A licensed gaming establishment; or

35 (b) A house of prostitution.

36 Sec. 7. "Licensed gaming establishment" has the meaning
37 ascribed to it in NRS 368A.080.



1 Sec. 8. "Live adult entertainment" means any activity
2 provided for pleasure, enjoyment, recreation, relaxation, diversion
3 or other similar purpose which includes the exposure of one or
4 more personal anatomical features by a person or persons who are
5 physically present when providing that activity to a patron or
6 group of patrons who are physically present.

7 Sec. 9. "Personal anatomical feature" means any portion of
8 the:

- 9 1. Genitals, pubic region, anus or perineum of any human
10 person; or
- 11 2. Areola of any female human breast or of any male human
12 breast which has been surgically altered to appear as a female
13 human breast.

14 Sec. 10. "Taxpayer" means:

15 1. Except as otherwise provided in subsection 2, the owner or
16 operator of the facility where the live adult entertainment is
17 provided.

18 2. If live adult entertainment that is taxable under sections 2
19 to 32, inclusive, of this act is provided at a publicly owned facility
20 or on public land, the person who collects the taxable receipts.

21 Sec. 11. 1. There is hereby imposed an excise tax on
22 admission to any facility in this State where live adult
23 entertainment is provided at the rate of 10 percent of any
24 admission charge to the facility plus 10 percent of any amounts
25 paid for food, refreshments, alcoholic beverages and merchandise
26 purchased at the facility.

27 2. Amounts paid for gratuities directly or indirectly remitted
28 to persons employed at a facility where live adult entertainment is
29 provided or for service charges, including those imposed in
30 connection with the use of credit cards or debit cards, which are
31 collected and retained by persons other than the taxpayer are not
32 taxable pursuant to this section.

33 3. A business entity that collects any amount that is taxable
34 pursuant to subsection 1 is liable for the tax imposed, but is
35 entitled to collect reimbursement from any person paying that
36 amount.

37 4. Any ticket for live adult entertainment must state whether
38 the tax imposed by this section is included in the price of the ticket.
39 If the ticket does not include such a statement, the taxpayer shall
40 pay the tax based on the face amount of the ticket.

41 Sec. 12. A taxpayer shall hold the amount of all taxes for
42 which he is liable pursuant to sections 2 to 32, inclusive, of this act
43 in a separate account in trust for the State.



1 Sec. 13. 1. The Department shall:

2 (a) Collect the tax imposed by section 11 of this act; and

3 (b) Adopt such regulations as are necessary to carry out the
4 provisions of paragraph (a), including, without limitation,
5 regulations providing for a more detailed definition of "live adult
6 entertainment" consistent with the general definition set forth in
7 section 8 of this act for use in determining whether an activity is a
8 taxable activity under the provisions of sections 2 to 32, inclusive,
9 of this act.

10 2. For the purposes of subsection 1, the provisions of chapter
11 360 of NRS relating to the payment, collection, administration and
12 enforcement of taxes, including, without limitation, any provisions
13 relating to the imposition of penalties and interest, shall be
14 deemed to apply to the payment, collection, administration and
15 enforcement of the taxes imposed by sections 2 to 32, inclusive, of
16 this act to the extent that the provisions of chapter 360 of NRS do
17 not conflict with the provisions of sections 2 to 32, inclusive, of
18 this act.

19 Sec. 14. 1. Except as otherwise provided in this section,
20 each taxpayer shall file with the Department, on or before the last
21 day of each month, a report showing the amount of all taxable
22 receipts for the preceding month. The report must be in a form
23 prescribed by the Department.

24 2. The Department, if it deems it necessary to ensure payment
25 to or facilitate the collection by the State of the tax imposed by
26 section 11 of this act, may require reports to be filed not later than
27 10 days after the end of each calendar quarter.

28 3. Each report required to be filed by this section must be
29 accompanied by the amount of the tax that is due for the period
30 covered by the report.

31 4. The Department shall deposit all taxes, interest and
32 penalties it receives pursuant to sections 2 to 32, inclusive, of this
33 act in the State Treasury for credit to the State General Fund.

34 Sec. 15. Upon written application made before the date on
35 which payment must be made, the Department may, for good
36 cause, extend by 30 days the time within which a taxpayer is
37 required to pay the tax imposed by section 11 of this act. If the tax
38 is paid during the period of extension, no penalty or late charge
39 may be imposed for failure to pay at the time required, but the
40 taxpayer shall pay interest at the rate of 1 percent per month from
41 the date on which the amount would have been due without the
42 extension until the date of payment, unless otherwise provided in
43 NRS 360.232 or 360.320.



1 Sec. 16. 1. Each person responsible for maintaining the
2 records of a taxpayer shall:

3 (a) Keep such records as may be necessary to determine the
4 amount of the liability of the taxpayer pursuant to the provisions
5 of sections 2 to 32, inclusive, of this act;

6 (b) Preserve those records for at least 4 years or until any
7 litigation or prosecution pursuant to sections 2 to 32, inclusive, of
8 this act is finally determined, whichever is longer; and

9 (c) Make the records available for inspection by the
10 Department upon demand at reasonable times during regular
11 business hours.

12 2. The Department may by regulation specify the types of
13 records which must be kept to determine the amount of the
14 liability of a taxpayer.

15 3. Any agreement that is entered into, modified or extended
16 after July 1, 2005, for the lease, assignment or transfer of any
17 premises upon which any activity subject to the tax imposed by
18 section 11 of this act is, or thereafter may be, conducted shall be
19 deemed to include a provision that the taxpayer who is required to
20 pay the tax must be allowed access to, upon demand, all books,
21 records and financial papers held by the lessee, assignee or
22 transferee which must be kept pursuant to this section. Any person
23 conducting activities subject to the tax imposed by section 11 of
24 this act who fails to maintain or disclose his records pursuant to
25 this subsection is liable to the taxpayer for any penalty paid by the
26 taxpayer for the late payment or nonpayment of the tax caused by
27 the failure to maintain or disclose records.

28 4. A person who violates any provision of this section is guilty
29 of a misdemeanor.

30 Sec. 17. 1. To verify the accuracy of any report filed or, if
31 no report is filed by a taxpayer, to determine the amount of tax
32 required to be paid, the Department, or any person authorized in
33 writing by the Department, may examine the books, papers and
34 records of any person who may be liable for the tax imposed by
35 section 11 of this act.

36 2. Any person who may be liable for the tax imposed by
37 section 11 of this act and who keeps outside of this State any
38 books, papers and records relating thereto shall pay to the
39 Department an amount equal to the allowance provided for state
40 officers and employees generally while traveling outside of the
41 State for each day or fraction thereof during which an employee
42 of the Department is engaged in examining those documents, plus
43 any other actual expenses incurred by the employee while he is



1 absent from his regular place of employment to examine those
2 documents.

3 Sec. 18. 1. Except as otherwise provided in this section and
4 NRS 360.250, the records and files of the Department concerning
5 the administration of sections 2 to 32, inclusive, of this act are
6 confidential and privileged. The Department and any employee of
7 the Department engaged in the administration of sections 2 to 32,
8 inclusive, of this act or charged with the custody of any such
9 records or files shall not disclose any information obtained from
10 the records or files of the Department or from any examination,
11 investigation or hearing authorized by the provisions of sections 2
12 to 32, inclusive, of this act. The Department and any employee of
13 the Department may not be required to produce any of the records,
14 files and information for the inspection of any person or for use in
15 any action or proceeding.

16 2. The records and files of the Department concerning the
17 administration of sections 2 to 32, inclusive, of this act are not
18 confidential and privileged in the following cases:

19 (a) Testimony by a member or employee of the Department
20 and production of records, files and information on behalf of the
21 Department or a taxpayer in any action or proceeding pursuant to
22 the provisions of sections 2 to 32, inclusive, of this act if that
23 testimony or the records, files or information, or the facts shown
24 thereby, are directly involved in the action or proceeding.

25 (b) Delivery to a taxpayer or his authorized representative of a
26 copy of any report or other document filed by the taxpayer
27 pursuant to sections 2 to 32, inclusive, of this act.

28 (c) Publication of statistics so classified as to prevent the
29 identification of a particular person or document.

30 (d) Exchanges of information with the Internal Revenue
31 Service in accordance with compacts made and provided for in
32 such cases.

33 (e) Disclosure in confidence to the Governor or his agent in
34 the exercise of the Governor's general supervisory powers, or to
35 any person authorized to audit the accounts of the Department in
36 pursuance of an audit, or to the Attorney General or other legal
37 representative of the State in connection with an action or
38 proceeding pursuant to sections 2 to 32, inclusive, of this act, or to
39 any agency of this or any other state charged with the
40 administration or enforcement of laws relating to taxation.

41 Sec. 19. 1. If the Department determines that a taxpayer is
42 taking any action with intent to defraud the State or to evade the
43 payment of the tax or any part of the tax imposed by section 11 of



1 this act, the Department shall establish an amount upon which
2 that tax must be based.

3 2. The amount established by the Department pursuant to
4 subsection 1 must be based upon the tax liability of business
5 entities that are deemed comparable by the Department to that of
6 the taxpayer.

7 Sec. 20. 1. If a taxpayer:

8 (a) Is unable to collect all or part of an admission charge or
9 charges for food, refreshments, alcoholic beverages and
10 merchandise which were included in the taxable receipts reported
11 for a previous reporting period; and

12 (b) Has taken a deduction on his federal income tax return
13 pursuant to 26 U.S.C. § 166(a) for the amount which he is unable
14 to collect,

15 he is entitled to receive a credit for the amount of tax paid on
16 account of that uncollected amount. The credit may be used
17 against the amount of tax that the taxpayer is subsequently
18 required to pay pursuant to sections 2 to 32, inclusive, of this act.

19 2. If the Internal Revenue Service disallows a deduction
20 described in paragraph (b) of subsection 1 and the taxpayer
21 claimed a credit on a return for a previous reporting period
22 pursuant to subsection 1, the taxpayer shall include the amount of
23 that credit in the amount of taxes reported pursuant to sections 2
24 to 32, inclusive, of this act in the first return filed with the
25 Department after the deduction is disallowed.

26 3. If a taxpayer collects all or part of an admission charge or
27 charges for food, refreshments, alcoholic beverages and
28 merchandise for which he claimed a credit on a return for a
29 previous reporting period pursuant to subsection 2, he shall
30 include:

31 (a) The amount collected in the charges reported pursuant to
32 paragraph (a) of subsection 1; and

33 (b) The tax payable on the amount collected in the amount of
34 taxes reported,
35 in the first return filed with the Department after that
36 collection.

37 4. Except as otherwise provided in subsection 5, upon
38 determining that a taxpayer has filed a return which contains one
39 or more violations of the provisions of this section, the Department
40 shall:

41 (a) For the first return of any taxpayer that contains one or
42 more violations, issue a letter of warning to the taxpayer which
43 provides an explanation of the violation or violations contained in
44 the return.



1 (b) For the first or second return, other than a return
2 described in paragraph (a), in any calendar year which contains
3 one or more violations, assess a penalty equal to the amount of the
4 tax which was not reported.

5 (c) For the third and each subsequent return in any calendar
6 year which contains one or more violations, assess a penalty of
7 three times the amount of the tax which was not reported.

8 5. For the purposes of subsection 4, if the first violation of
9 this section by any taxpayer was determined by the Department
10 through an audit which covered more than one return of the
11 taxpayer, the Department shall treat all returns which were
12 determined through the same audit to contain a violation or
13 violations in the manner provided in paragraph (a) of
14 subsection 4.

15 Sec. 21. The remedies of the State provided for in sections 2
16 to 32, inclusive, of this act are cumulative, and no action taken by
17 the Department or the Attorney General constitutes an election by
18 the State to pursue any remedy to the exclusion of any other
19 remedy for which provision is made in sections 2 to 32, inclusive,
20 of this act.

21 Sec. 22. If the Department determines that any tax, penalty
22 or interest has been paid more than once or has been erroneously
23 or illegally collected or computed, the Department shall set forth
24 that fact in its records and shall certify to the State Board of
25 Examiners the amount collected in excess of the amount legally
26 due and the person from whom it was collected or by whom it was
27 paid. If approved by the State Board of Examiners, the excess
28 amount collected or paid must be credited on any amounts then
29 due from the person under sections 2 to 32, inclusive, of this act
30 and the balance refunded to the person or his successors in
31 interest.

32 Sec. 23. 1. Except as otherwise provided in NRS 360.235
33 and 360.395:

34 (a) No refund may be allowed unless a claim for it is filed with
35 the Department. A claim must be filed within 3 years after the last
36 day of the month following the reporting period for which the
37 overpayment was made.

38 (b) No credit may be allowed after the expiration of the period
39 specified for filing claims for refund unless a claim for credit is
40 filed with the Department within that period.

41 2. Each claim must be in writing and must state the specific
42 grounds upon which the claim is founded.



1 3. Failure to file a claim within the time prescribed in
2 subsection 1 constitutes a waiver of any demand against the State
3 on account of overpayment.

4 4. Within 30 days after rejecting any claim in whole or in
5 part, the Department shall serve notice of its action on the
6 claimant in the manner prescribed for service of notice of a
7 deficiency determination.

8 Sec. 24. 1. Except as otherwise provided in this section and
9 NRS 360.320, interest must be paid upon any overpayment of any
10 amount of the tax imposed by section 11 of this act in accordance
11 with the provisions of section 13 of this act. The interest must be
12 paid:

13 (a) In the case of a refund, to the last day of the calendar
14 month following the date upon which the person making the
15 overpayment, if he has not already filed a claim, is notified by the
16 Department that a claim may be filed or the date upon which
17 the claim is certified to the State Board of Examiners, whichever is
18 earlier.

19 (b) In the case of a credit, to the same date as that to which
20 interest is computed on the tax or amount against which the credit
21 is applied.

22 2. If the Department determines that any overpayment has
23 been made intentionally or by reason of carelessness, the
24 Department shall not allow any interest on the overpayment.

25 Sec. 25. 1. No injunction, writ of mandate or other legal or
26 equitable process may issue in any suit, action or proceeding in
27 any court against this State or against any officer of the State to
28 prevent or enjoin the collection under sections 2 to 32, inclusive,
29 of this act of the tax imposed by section 11 of this act or any
30 amount of tax, penalty or interest required to be collected.

31 2. No suit or proceeding may be maintained in any court for
32 the recovery of any amount alleged to have been erroneously or
33 illegally determined or collected unless a claim for refund or credit
34 has been filed.

35 Sec. 26. 1. Within 90 days after a final decision upon a
36 claim filed pursuant to sections 2 to 32, inclusive, of this act is
37 rendered by the Nevada Tax Commission, the claimant may bring
38 an action against the Department on the grounds set forth in the
39 claim.

40 2. An action brought pursuant to subsection 1 must be
41 brought in a court of competent jurisdiction in Carson City, the
42 county of this State where the claimant resides or maintains his
43 principal place of business or a county in which any relevant
44 proceedings were conducted by the Department, for the recovery



1 of the whole or any part of the amount with respect to which the
2 claim has been disallowed.

3 3. Failure to bring an action within the time specified
4 constitutes a waiver of any demand against the State on account of
5 alleged overpayments.

6 Sec. 27. 1. If the Department fails to mail notice of action
7 on a claim within 6 months after the claim is filed, the claimant
8 may consider the claim disallowed and file an appeal with the
9 Nevada Tax Commission within 30 days after the last day of the
10 6-month period.

11 2. If the claimant is aggrieved by the decision of the Nevada
12 Tax Commission rendered on appeal, the claimant may, within 90
13 days after the decision is rendered, bring an action against the
14 Department on the grounds set forth in the claim for the recovery
15 of the whole or any part of the amount claimed as an
16 overpayment.

17 3. If judgment is rendered for the plaintiff, the amount of the
18 judgment must first be credited towards any tax due from the
19 plaintiff.

20 4. The balance of the judgment must be refunded to the
21 plaintiff.

22 Sec. 28. In any judgment, interest must be allowed at the rate
23 of 6 percent per annum upon the amount found to have been
24 illegally collected from the date of payment of the amount to the
25 date of allowance of credit on account of the judgment, or to a
26 date preceding the date of the refund warrant by not more than 30
27 days. The date must be determined by the Department.

28 Sec. 29. A judgment may not be rendered in favor of the
29 plaintiff in any action brought against the Department to recover
30 any amount paid when the action is brought by or in the name of
31 an assignee of the person paying the amount or by any person
32 other than the person who paid the amount.

33 Sec. 30. 1. The Department may recover a refund or any
34 part thereof which is erroneously made and any credit or part
35 thereof which is erroneously allowed in an action brought in a
36 court of competent jurisdiction in Carson City or Clark County in
37 the name of the State of Nevada.

38 2. The action must be tried in Carson City or Clark County
39 unless the court, with the consent of the Attorney General, orders
40 a change of place of trial.

41 3. The Attorney General shall prosecute the action, and the
42 provisions of NRS, the Nevada Rules of Civil Procedure and the
43 Nevada Rules of Appellate Procedure relating to service of



1 summons, pleadings, proofs, trials and appeals are applicable to
2 the proceedings.

3 Sec. 31. 1. If any amount in excess of \$25 has been
4 illegally determined, either by the person filing the return or by the
5 Department, the Department shall certify this fact to the State
6 Board of Examiners, and the latter shall authorize the
7 cancellation of the amount upon the records of the Department.

8 2. If an amount not exceeding \$25 has been illegally
9 determined, either by the person filing a return or by the
10 Department, the Department, without certifying this fact to the
11 State Board of Examiners, shall authorize the cancellation of
12 the amount upon the records of the Department.

13 Sec. 32. 1. A person shall not:

14 (a) Make, cause to be made or permit to be made any false or
15 fraudulent return or declaration or false statement in any report
16 or declaration, with intent to defraud the State or to evade
17 payment of the tax or any part of the tax imposed by section 11 of
18 this act.

19 (b) Make, cause to be made or permit to be made any false
20 entry in books, records or accounts with intent to defraud the State
21 or to evade the payment of the tax or any part of the tax imposed
22 by section 11 of this act.

23 (c) Keep, cause to be kept or permit to be kept more than one
24 set of books, records or accounts with intent to defraud the State
25 or to evade the payment of the tax or any part of the tax imposed
26 by section 11 of this act.

27 2. Any person who violates the provisions of subsection 1 is
28 guilty of a gross misdemeanor.

29 Sec. 33. NRS 368A.010 is hereby amended to read as follows:

30 368A.010 As used in ~~this chapter~~ NRS 368A.010 to
31 368A.370, inclusive, unless the context otherwise requires, the
32 words and terms defined in NRS 368A.020 to 368A.110, inclusive,
33 have the meanings ascribed to them in those sections.

34 Sec. 34. NRS 368A.050 is hereby amended to read as follows:

35 368A.050 1. "Business entity" includes:

36 (a) A corporation, partnership, proprietorship, limited-liability
37 company, business association, joint venture, limited-liability
38 partnership, business trust and their equivalents organized under the
39 laws of this State or another jurisdiction and any other type of entity
40 that engages in business.

41 (b) A natural person engaging in a business if ~~he is deemed to~~
42 ~~be a business entity pursuant to NRS 368A.120~~ the person is
43 required to file with the Internal Revenue Service a Schedule C
44 (Form 1040), Profit or Loss From Business Form, or its



1 *equivalent or successor form, or a Schedule E (Form 1040),*
2 *Supplemental Income and Loss Form, or its equivalent or*
3 *successor form, for the business.*

4 2. The term does not include a governmental entity.

5 Sec. 35. NRS 368A.060 is hereby amended to read as follows:
6 368A.060 "Facility" means:

7 1. Any area or premises where live entertainment is provided
8 and for which consideration is collected for the right or privilege of
9 entering that area or those premises if the live entertainment is
10 provided at ~~it~~.

11 ~~(a) An establishment that is not a licensed gaming~~
12 ~~establishment; or~~

13 ~~(b) A~~ a licensed gaming establishment that is licensed for less
14 than 51 slot machines, less than six games, or any combination of
15 slot machines and games within those respective limits.

16 2. Any area or premises where live entertainment is provided if
17 the live entertainment is provided at any other licensed gaming
18 establishment.

19 Sec. 36. NRS 368A.080 is hereby amended to read as follows:

20 368A.080 "Licensed gaming establishment" ~~has the meaning~~
21 ~~ascribed to it in NRS 463.0169;~~ means any premises for which a
22 nonrestricted license has been issued pursuant to chapter 463 of
23 NRS.

24 Sec. 37. NRS 368A.110 is hereby amended to read as follows:

25 368A.110 "Taxpayer" means ~~it~~.

26 ~~1. If live entertainment that is taxable under this chapter is~~
27 ~~provided at a licensed gaming establishment, the person licensed to~~
28 ~~conduct gaming at that establishment.~~

29 ~~2. Except as otherwise provided in subsection 3, if live~~
30 ~~entertainment that is taxable under this chapter is not provided at a~~
31 ~~licensed gaming establishment, the owner or operator of the facility~~
32 ~~where the live entertainment is provided.~~

33 ~~3. If live entertainment that is taxable under this chapter is~~
34 ~~provided at a publicly owned facility or on public land, the person~~
35 ~~who collects the taxable receipts, a licensed gaming establishment~~
36 ~~where live entertainment is provided.~~

37 Sec. 38. NRS 368A.140 is hereby amended to read as follows:

38 368A.140 1. The Board shall:

39 (a) Collect the tax imposed by ~~this chapter from taxpayers who~~
40 ~~are licensed gaming establishments;~~ NRS 368A.200; and

41 (b) Adopt such regulations as are necessary to carry out the
42 provisions of paragraph (a) ~~it~~, including, without limitation,
43 regulations providing for a more detailed definition of "live
44 entertainment" consistent with the general definition set forth in



1 *NRS 368A.090 for use in determining whether an activity is a*
2 *taxable activity under the provisions of NRS 368A.010 to*
3 *368A.370, inclusive.* The regulations must be adopted in accordance
4 with the provisions of chapter 233B of NRS and must be codified in
5 the Nevada Administrative Code.
6 2. ~~{The Department shall:~~
7 ~~(a) Collect the tax imposed by this chapter from all other~~
8 ~~taxpayers; and~~
9 ~~(b) Adopt such regulations as are necessary to carry out the~~
10 ~~provisions of paragraph (a).~~
11 ~~3. For the purposes of {:~~
12 ~~(a) Subsection 1, the provisions of chapter 463 of~~
13 ~~NRS relating to the payment, collection, administration and~~
14 ~~enforcement of gaming license fees and taxes, including, without~~
15 ~~limitation, any provisions relating to the imposition of penalties and~~
16 ~~interest, shall be deemed to apply to the payment, collection,~~
17 ~~administration and enforcement of the taxes imposed by {this~~
18 ~~chapter} *NRS 368A.010 to 368A.370, inclusive,* to the extent that~~
19 ~~{these} the provisions of chapter 463 of NRS do not conflict with~~
20 ~~the provisions of {this chapter.~~
21 ~~(b) Subsection 2, the provisions of chapter 360 of NRS relating~~
22 ~~to the payment, collection, administration and enforcement of taxes,~~
23 ~~including, without limitation, any provisions relating to the~~
24 ~~imposition of penalties and interest, shall be deemed to apply to the~~
25 ~~payment, collection, administration and enforcement of the taxes~~
26 ~~imposed by this chapter to the extent that those provisions do not~~
27 ~~conflict with the provisions of this chapter.~~
28 ~~4. To ensure that the tax imposed by NRS 368A.200 is~~
29 ~~collected fairly and equitably, the Board and the Department shall:~~
30 ~~(a) Jointly, coordinate the administration and collection of that~~
31 ~~tax and the regulation of taxpayers who are liable for the payment of~~
32 ~~the tax.~~
33 ~~(b) Upon request, assist the other agency in the collection of that~~
34 ~~tax.} *NRS 368A.010 to 368A.370, inclusive.*~~
35 Sec. 39. NRS 368A.150 is hereby amended to read as follows:
36 368A.150 1. If {:
37 ~~(a) The} *the* Board determines that a taxpayer ~~{who is a licensed~~
38 ~~gaming establishment}~~ is taking any action with intent to defraud the
39 State or to evade the payment of the tax or any part of the tax
40 imposed by ~~{this chapter,} *NRS 368A.200,* the Board shall establish~~
41 ~~an amount upon which {the tax imposed by this chapter} that tax~~
42 ~~must be based.~~
43 ~~{(b) The Department determines that a taxpayer who is not a~~
44 ~~licensed gaming establishment is taking any action with intent to~~~~



1 defraud the State or to evade the payment of the tax or any part of
2 the tax imposed by this chapter, the Department shall establish an
3 amount upon which the tax imposed by this chapter must be based.

4 2. The amount established by the Board ~~for the Department~~
5 pursuant to subsection 1 must be based upon the tax liability of
6 business entities that are deemed comparable by the Board ~~for the~~
7 ~~Department~~ to that of the taxpayer.

8 Sec. 40. NRS 368A.160 is hereby amended to read as follows:

9 368A.160 1. Each person responsible for maintaining the
10 records of a taxpayer shall:

11 (a) Keep such records as may be necessary to determine the
12 amount of the liability of the taxpayer pursuant to the provisions of
13 ~~this chapter;~~ *NRS 368A.010 to 368A.370, inclusive;*

14 (b) Preserve those records for ~~for~~
15 ~~(1) At least 5 years if the taxpayer is a licensed gaming~~
16 ~~establishment or until any litigation or prosecution pursuant to this~~
17 ~~chapter NRS 368A.010 to 368A.370, inclusive, is finally~~
18 ~~determined, whichever is longer; for~~

19 ~~(2) At least 4 years if the taxpayer is not a licensed gaming~~
20 ~~establishment or until any litigation or prosecution pursuant to this~~
21 ~~chapter is finally determined, whichever is longer; and~~

22 (c) Make the records available for inspection by the Board ~~for~~
23 ~~the Department~~ upon demand at reasonable times during regular
24 business hours.

25 2. The Board ~~and the Department~~ may by regulation specify
26 the types of records which must be kept to determine the amount of
27 the liability of a taxpayer. ~~from whom they are required to collect~~
28 ~~the tax imposed by this chapter.~~

29 3. Any agreement that is entered into, modified or extended
30 after January 1, 2004, for the lease, assignment or transfer of any
31 premises upon which any activity subject to the tax imposed by ~~this~~
32 ~~chapter~~ *NRS 368A.200* is, or thereafter may be, conducted shall be
33 deemed to include a provision that the taxpayer required to pay the
34 tax must be allowed access to, upon demand, all books, records and
35 financial papers held by the lessee, assignee or transferee which
36 must be kept pursuant to this section. Any person conducting
37 activities subject to the tax imposed by NRS 368A.200 who fails to
38 maintain or disclose his records pursuant to this subsection is liable
39 to the taxpayer for any penalty paid by the taxpayer for the late
40 payment or nonpayment of the tax caused by the failure to maintain
41 or disclose records.

42 4. A person who violates any provision of this section is guilty
43 of a misdemeanor.



1 Sec. 41. NRS 368A.170 is hereby amended to read as follows:
2 368A.170 1. To verify the accuracy of any report filed or, if
3 no report is filed by a taxpayer, to determine the amount of tax
4 required to be paid ~~for~~
5 ~~—(a) The~~, the Board, or any person authorized in writing by the
6 Board, may examine the books, papers and records of any ~~licensed~~
7 ~~gaming establishment that~~ person who may be liable for the tax
8 imposed by ~~this chapter.~~
9 ~~—(b) The Department, or any person authorized in writing by the~~
10 ~~Department, may examine the books, papers and records of any~~
11 ~~other person who may be liable for the tax imposed by this chapter.~~
12 NRS 368A.200.
13 2. Any person who may be liable for the tax imposed by ~~this~~
14 ~~chapter~~ NRS 368A.200 and who keeps outside of this State any
15 books, papers and records relating thereto shall pay to the Board ~~for~~
16 ~~the Department~~ an amount equal to the allowance provided for state
17 officers and employees generally while traveling outside of the State
18 for each day or fraction thereof during which an employee of the
19 Board ~~for the Department~~ is engaged in examining those
20 documents, plus any other actual expenses incurred by the employee
21 while he is absent from his regular place of employment to examine
22 those documents.
23 Sec. 42. NRS 368A.180 is hereby amended to read as follows:
24 368A.180 1. ~~Except as otherwise provided in this section~~
25 ~~and NRS 360.250, the~~ The records and files of the Board ~~and the~~
26 ~~Department~~ concerning the administration of ~~this chapter~~ NRS
27 368A.010 to 368A.370, inclusive, are confidential and privileged.
28 The Board ~~for the Department~~ and any employee of the Board ~~for the~~
29 ~~Department~~ engaged in the administration of ~~this chapter~~ NRS
30 368A.010 to 368A.370, inclusive, or charged with the custody of
31 any such records or files shall not disclose any information obtained
32 from the records or files of the Board ~~for the Department~~ or from
33 any examination, investigation or hearing authorized by the
34 provisions of ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive.
35 The Board ~~for the Department~~ and any employee of the Board ~~for the~~
36 ~~Department~~ may not be required to produce any of the records, files
37 and information for the inspection of any person or for use in any
38 action or proceeding.
39 2. The records and files of the Board ~~and the Department~~
40 concerning the administration of ~~this chapter~~ NRS 368A.010 to
41 368A.370, inclusive, are not confidential and privileged in the
42 following cases:
43 (a) Testimony by a member or employee of the Board ~~for the~~
44 ~~Department~~ and production of records, files and information on



1 behalf of the Board ~~for the Department~~ or a taxpayer in any action
2 or proceeding pursuant to the provisions of ~~this chapter~~ NRS
3 368A.010 to 368A.370, inclusive, if that testimony or the records,
4 files or information, or the facts shown thereby, are directly
5 involved in the action or proceeding.

6 (b) Delivery to a taxpayer or his authorized representative of a
7 copy of any report or other document filed by the taxpayer pursuant
8 to ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive.

9 (c) Publication of statistics so classified as to prevent the
10 identification of a particular person or document.

11 (d) Exchanges of information with the Internal Revenue Service
12 in accordance with compacts made and provided for in such cases.

13 (e) Disclosure in confidence to the Governor or his agent in the
14 exercise of the Governor's general supervisory powers, or to any
15 person authorized to audit the accounts of the Board ~~for the~~
16 ~~Department~~ in pursuance of an audit, or to the Attorney General or
17 other legal representative of the State in connection with an action
18 or proceeding pursuant to ~~this chapter~~ NRS 368A.010 to
19 368A.370, inclusive, or to any agency of this or any other state
20 charged with the administration or enforcement of laws relating to
21 taxation.

22 Sec. 43. NRS 368A.200 is hereby amended to read as follows:

23 368A.200 1. Except as otherwise provided in this section,
24 there is hereby imposed an excise tax on admission to any facility in
25 this State where live entertainment is provided. If the live
26 entertainment is provided at a facility with a maximum seating
27 capacity of:

28 (a) Less than 7,500, the rate of the tax is 10 percent of the
29 admission charge to the facility plus 10 percent of any amounts paid
30 for food, refreshments and merchandise purchased at the facility.

31 (b) At least 7,500, the rate of the tax is 5 percent of the
32 admission charge to the facility.

33 2. Amounts paid for gratuities directly or indirectly remitted to
34 persons employed at a facility where live entertainment is provided
35 or for service charges, including those imposed in connection with
36 the use of credit cards or debit cards, which are collected and
37 retained by persons other than the taxpayer are not taxable pursuant
38 to this section.

39 3. A business entity that collects any amount that is taxable
40 pursuant to subsection 1 is liable for the tax imposed, but is entitled
41 to collect reimbursement from any person paying that amount.

42 4. Any ticket for live entertainment must state whether the tax
43 imposed by this section is included in the price of the ticket. If the



1 ticket does not include such a statement, the taxpayer shall pay the
2 tax based on the face amount of the ticket.

3 5. The tax imposed by subsection 1 does not apply to:

4 (a) Live entertainment that this State is prohibited from taxing
5 under the Constitution, laws or treaties of the United States or the
6 Nevada Constitution.

7 (b) Live entertainment that is provided by or entirely for the
8 benefit of a nonprofit religious, charitable, fraternal or other
9 organization that qualifies as a tax-exempt organization pursuant to
10 26 U.S.C. § 501(c).

11 (c) Any ~~boxing contest or exhibition governed by the~~
12 ~~provisions of chapter 467 of NRS.~~ *contest, game or other event*
13 *involving the athletic or physical skills of amateur or professional*
14 *athletes.*

15 (d) Live entertainment that is not provided at a licensed gaming
16 establishment. ~~{if the facility in which the live entertainment is~~
17 ~~provided has a maximum seating capacity of less than 300.}~~

18 (e) Live entertainment that is provided at a licensed gaming
19 establishment that is licensed for less than 51 slot machines, less
20 than six games, or any combination of slot machines and games
21 within those respective limits, if the facility in which the live
22 entertainment is provided has a maximum seating capacity of less
23 than 300.

24 (f) Merchandise sold outside the facility in which the live
25 entertainment is provided, unless the purchase of the merchandise
26 entitles the purchaser to admission to the entertainment.

27 (g) Live entertainment that is provided at a trade show.

28 (h) Music performed by musicians who move constantly
29 through the audience if no other form of live entertainment is
30 afforded to the patrons.

31 (i) Live entertainment that is provided at ~~{a licensed gaming~~
32 ~~establishment at}~~ private meetings or dinners attended by members
33 of a particular organization or by a casual assemblage if the purpose
34 of the event is not primarily for entertainment.

35 (j) Live entertainment that is provided in the common area of a
36 shopping mall, unless the entertainment is provided in a facility
37 located within the mall.

38 6. As used in this section, "maximum seating capacity" means,
39 in the following order of priority:

40 (a) The maximum occupancy of the facility in which live
41 entertainment is provided, as determined by the State Fire Marshal
42 or the local governmental agency that has the authority to determine
43 the maximum occupancy of the facility;



1 (b) If such a maximum occupancy has not been determined, the
2 maximum occupancy of the facility designated in any permit
3 required to be obtained in order to provide the live entertainment; or

4 (c) If such a permit does not designate the maximum occupancy
5 of the facility, the actual seating capacity of the facility in which the
6 live entertainment is provided.

7 Sec. 44. NRS 368A.210 is hereby amended to read as follows:
8 368A.210 A taxpayer shall hold the amount of all taxes for
9 which he is liable pursuant to ~~{this chapter}~~ *NRS 368A.010 to*
10 *368A.370, inclusive*, in a separate account in trust for the State.

11 Sec. 45. NRS 368A.220 is hereby amended to read as follows:

12 368A.220 1. Except as otherwise provided in this section ~~+~~
13 ~~(a) Each taxpayer who is a licensed gaming establishment,~~
14 *each taxpayer* shall file with the Board, on or before the 24th day of
15 each month, a report showing the amount of all taxable receipts for
16 the preceding month. The report must be in a form prescribed by the
17 Board.

18 ~~{(b) All other taxpayers shall file with the Department, on or~~
19 ~~before the last day of each month, a report showing the amount of~~
20 ~~all taxable receipts for the preceding month. The report must be in a~~
21 ~~form prescribed by the Department.}~~

22 2. The Board, ~~{for the Department,}~~ if it deems it necessary to
23 ensure payment to or facilitate the collection by the State of the tax
24 imposed by NRS 368A.200, may require reports to be filed not later
25 than 10 days after the end of each calendar quarter.

26 3. Each report required to be filed by this section must be
27 accompanied by the amount of the tax that is due for the period
28 covered by the report.

29 4. The Board ~~{and the Department}~~ shall deposit all taxes,
30 interest and penalties it receives pursuant to ~~{this chapter}~~ *NRS*
31 *368A.010 to 368A.370, inclusive*, in the State Treasury for credit to
32 the State General Fund.

33 Sec. 46. NRS 368A.230 is hereby amended to read as follows:

34 368A.230 Upon written application made before the date on
35 which payment must be made, the Board ~~{for the Department}~~ may,
36 for good cause, extend by 30 days the time within which a taxpayer
37 is required to pay the tax imposed by ~~{this chapter}~~ *NRS 368A.200*.
38 If the tax is paid during the period of extension, no penalty or late
39 charge may be imposed for failure to pay at the time required, but
40 the taxpayer shall pay interest at the rate of 1 percent per month
41 from the date on which the amount would have been due without the
42 extension until the date of payment. ~~{, unless otherwise provided in~~
43 ~~NRS 360.232 or 360.320.}~~



1 Sec. 47. NRS 368A.240 is hereby amended to read as follows:
2 368A.240 1. If a taxpayer:

3 (a) Is unable to collect all or part of an admission charge or
4 charges for food, refreshments and merchandise which were
5 included in the taxable receipts reported for a previous reporting
6 period; and

7 (b) Has taken a deduction on his federal income tax return
8 pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to
9 collect,

10 he is entitled to receive a credit for the amount of tax paid on
11 account of that uncollected amount. The credit may be used against
12 the amount of tax that the taxpayer is subsequently required to pay
13 pursuant to ~~{this chapter}~~ *NRS 368A.010 to 368A.370, inclusive*.

14 2. If the Internal Revenue Service disallows a deduction
15 described in paragraph (b) of subsection 1 and the taxpayer claimed
16 a credit on a return for a previous reporting period pursuant to
17 subsection 1, the taxpayer shall include the amount of that credit in
18 the amount of taxes reported pursuant to ~~{this chapter}~~ *NRS*
19 *368A.010 to 368A.370, inclusive*, in the first return filed with the
20 Board ~~for the Department~~ after the deduction is disallowed.

21 3. If a taxpayer collects all or part of an admission charge or
22 charges for food, refreshments and merchandise for which he
23 claimed a credit on a return for a previous reporting period pursuant
24 to subsection 2, he shall include:

25 (a) The amount collected in the charges reported pursuant to
26 paragraph (a) of subsection 1; and

27 (b) The tax payable on the amount collected in the amount of
28 taxes reported,
29 in the first return filed with the Board ~~for the Department~~ after
30 that collection.

31 4. Except as otherwise provided in subsection 5, upon
32 determining that a taxpayer has filed a return which contains one or
33 more violations of the provisions of this section, the Board ~~for the~~
34 ~~Department~~ shall:

35 (a) For the first return of any taxpayer that contains one or more
36 violations, issue a letter of warning to the taxpayer which provides
37 an explanation of the violation or violations contained in the return.

38 (b) For the first or second return, other than a return described in
39 paragraph (a), in any calendar year which contains one or more
40 violations, assess a penalty equal to the amount of the tax which was
41 not reported.

42 (c) For the third and each subsequent return in any calendar year
43 which contains one or more violations, assess a penalty of three
44 times the amount of the tax which was not reported.



1 5. For the purposes of subsection 4, if the first violation of this
2 section by any taxpayer was determined by the Board ~~for the~~
3 ~~Department~~ through an audit which covered more than one return
4 of the taxpayer, the Board ~~for the Department~~ shall treat all returns
5 which were determined through the same audit to contain a violation
6 or violations in the manner provided in paragraph (a) of
7 subsection 4.

8 Sec. 48. NRS 368A.260 is hereby amended to read as follows:
9 368A.260 1. ~~Except as otherwise provided in NRS 360.235~~
10 ~~and 360.295:~~

11 ~~(a)~~ No refund may be allowed unless a claim for it is filed with
12 ~~+~~

13 ~~(1) The Board, if the taxpayer is a licensed gaming~~
14 ~~establishment, or~~

15 ~~(2) The Department, if the taxpayer is not a licensed gaming~~
16 ~~establishment, the Board. A claim must be filed within 3 years~~
17 ~~after the last day of the month following the reporting period for~~
18 ~~which the overpayment was made.~~

19 ~~(b)~~ No credit may be allowed after the expiration of the period
20 specified for filing claims for refund unless a claim for credit is filed
21 with the Board ~~for the Department~~ within that period.

22 2. Each claim must be in writing and must state the specific
23 grounds upon which the claim is founded.

24 3. Failure to file a claim within the time prescribed in ~~this~~
25 ~~chapter~~ *subsection 1* constitutes a waiver of any demand against
26 the State on account of overpayment.

27 4. Within 30 days after rejecting any claim in whole or in part,
28 the Board ~~for the Department~~ shall serve notice of its action on the
29 claimant in the manner prescribed for service of notice of a
30 deficiency determination.

31 Sec. 49. NRS 368A.270 is hereby amended to read as follows:

32 368A.270 1. Except as otherwise provided in this section,
33 ~~and NRS 360.220,~~ interest must be paid upon any overpayment of
34 any amount of the tax imposed by ~~this chapter~~ *NRS 368A.200* in
35 accordance with the provisions of NRS 368A.140.

36 2. ~~If the overpayment is paid to the Department, the interest~~
37 ~~must be paid;~~

38 ~~(a) In the case of a refund, to the last day of the calendar month~~
39 ~~following the date upon which the person making the overpayment,~~
40 ~~if he has not already filed a claim, is notified by the Department that~~
41 ~~a claim may be filed or the date upon which the claim is certified to~~
42 ~~the State Board of Examiners, whichever is earlier.~~



1 ~~(b) In the case of a credit, to the same date as that to which~~
2 ~~interest is computed on the tax or amount against which the credit is~~
3 ~~applied.~~

4 ~~3. If the Board for the Department determines that any~~
5 ~~overpayment has been made intentionally or by reason of~~
6 ~~carelessness, the Board for the Department shall not allow any~~
7 ~~interest on the overpayment.~~

8 Sec. 50. NRS 368A.280 is hereby amended to read as follows:

9 368A.280 1. No injunction, writ of mandate or other legal or
10 equitable process may issue in any suit, action or proceeding in any
11 court against this State or against any officer of the State to prevent
12 or enjoin the collection under ~~this chapter~~ NRS 368A.010 to
13 368A.370, inclusive, of the tax imposed by ~~this chapter~~ NRS
14 368A.200 or any amount of tax, penalty or interest required to be
15 collected.

16 2. No suit or proceeding may be maintained in any court for
17 the recovery of any amount alleged to have been erroneously or
18 illegally determined or collected unless a claim for refund or credit
19 has been filed.

20 Sec. 51. NRS 368A.290 is hereby amended to read as follows:

21 368A.290 1. Within 90 days after a final decision upon a
22 claim filed pursuant to ~~this chapter~~ NRS 368A.010 to 368A.370,
23 inclusive, is rendered by ~~it~~

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

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

29 2. An action brought pursuant to subsection 1 must be brought
30 in a court of competent jurisdiction in Carson City, the county of
31 this State where the claimant resides or maintains his principal place
32 of business or a county in which any relevant proceedings were
33 conducted by the Board, ~~for the Department,~~ for the recovery of
34 the whole or any part of the amount with respect to which the claim
35 has been disallowed.

36 3. Failure to bring an action within the time specified
37 constitutes a waiver of any demand against the State on account of
38 alleged overpayments.

39 Sec. 52. NRS 368A.300 is hereby amended to read as follows:

40 368A.300 1. If the Board fails to mail notice of action on a
41 claim within 6 months after the claim is filed, the claimant may
42 consider the claim disallowed and file an appeal with the Nevada
43 Gaming Commission within 30 days after the last day of the 6-
44 month period.

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1 2. ~~If the Department fails to mail notice of action on a claim~~
2 ~~within 6 months after the claim is filed, the claimant may consider~~
3 ~~the claim disallowed and file an appeal with the Nevada Tax~~
4 ~~Commission within 30 days after the last day of the 6 month period.~~
5 ~~—3. If the claimant is aggrieved by the decision of the~~
6 ~~—(a) The Nevada Gaming Commission rendered on appeal,~~
7 ~~the claimant may, within 90 days after the decision is rendered,~~
8 ~~bring an action against the Board on the grounds set forth in the~~
9 ~~claim for the recovery of the whole or any part of the amount~~
10 ~~claimed as an overpayment.~~
11 ~~—(b) The Nevada Tax Commission rendered on appeal, the~~
12 ~~claimant may, within 90 days after the decision is rendered, bring an~~
13 ~~action against the Department on the grounds set forth in the claim~~
14 ~~for the recovery of the whole or any part of the amount claimed as~~
15 ~~an overpayment.~~
16 ~~—4. 3. If judgment is rendered for the plaintiff, the amount of~~
17 ~~the judgment must first be credited towards any tax due from the~~
18 ~~plaintiff.~~
19 ~~—5. 4. The balance of the judgment must be refunded to the~~
20 ~~plaintiff.~~
21 Sec. 53. NRS 368A.310 is hereby amended to read as follows:
22 368A.310 In any judgment, interest must be allowed at the rate
23 of 6 percent per annum upon the amount found to have been
24 illegally collected from the date of payment of the amount to the
25 date of allowance of credit on account of the judgment, or to a date
26 preceding the date of the refund warrant by not more than 30 days.
27 The date must be determined by the Board. ~~for the Department.~~
28 Sec. 54. NRS 368A.320 is hereby amended to read as follows:
29 368A.320 A judgment may not be rendered in favor of the
30 plaintiff in any action brought against the Board ~~for the Department~~
31 to recover any amount paid when the action is brought by or in the
32 name of an assignee of the person paying the amount or by any
33 person other than the person who paid the amount.
34 Sec. 55. NRS 368A.330 is hereby amended to read as follows:
35 368A.330 1. The Board ~~for the Department~~ may recover a
36 refund or any part thereof which is erroneously made and any credit
37 or part thereof which is erroneously allowed in an action brought in
38 a court of competent jurisdiction in Carson City or Clark County in
39 the name of the State of Nevada.
40 2. The action must be tried in Carson City or Clark County
41 unless the court, with the consent of the Attorney General, orders a
42 change of place of trial.
43 3. The Attorney General shall prosecute the action, and the
44 provisions of NRS, the Nevada Rules of Civil Procedure and the



1 Nevada Rules of Appellate Procedure relating to service of
2 summons, pleadings, proofs, trials and appeals are applicable to the
3 proceedings.

4 Sec. 56. NRS 368A.340 is hereby amended to read as follows:

5 368A.340 1. If any amount in excess of \$25 has been
6 illegally determined, either by the person filing the return or by the
7 Board, ~~for the Department,~~ the Board ~~for the Department,~~ shall
8 certify this fact to the State Board of Examiners, and the latter shall
9 authorize the cancellation of the amount upon the records of the
10 Board. ~~for the Department.~~

11 2. If an amount not exceeding \$25 has been illegally
12 determined, either by the person filing a return or by the Board, ~~for~~
13 ~~the Department,~~ the Board, ~~for the Department,~~ without certifying
14 this fact to the State Board of Examiners, shall authorize the
15 cancellation of the amount upon the records of the Board. ~~for the~~
16 ~~Department.~~

17 Sec. 57. NRS 368A.350 is hereby amended to read as follows:

18 368A.350 1. A person shall not:

19 (a) Make, cause to be made or permit to be made any false or
20 fraudulent return or declaration or false statement in any report or
21 declaration, with intent to defraud the State or to evade payment of
22 the tax or any part of the tax imposed by ~~this chapter.~~
23 *NRS 368A.200.*

24 (b) Make, cause to be made or permit to be made any false entry
25 in books, records or accounts with intent to defraud the State or to
26 evade the payment of the tax or any part of the tax imposed by ~~this~~
27 ~~chapter.~~ *NRS 368A.200.*

28 (c) Keep, cause to be kept or permit to be kept more than one set
29 of books, records or accounts with intent to defraud the State or to
30 evade the payment of the tax or any part of the tax imposed by ~~this~~
31 ~~chapter.~~ *NRS 368A.200.*

32 2. Any person who violates the provisions of subsection 1 is
33 guilty of a gross misdemeanor.

34 Sec. 58. NRS 368A.370 is hereby amended to read as follows:

35 368A.370 The remedies of the State provided for in ~~this~~
36 ~~chapter.~~ *NRS 368A.010 to 368A.370, inclusive,* are cumulative, and
37 no action taken by the Board ~~for the Department,~~ or the Attorney
38 General constitutes an election by the State to pursue any remedy to
39 the exclusion of any other remedy for which provision is made in
40 ~~this chapter.~~ *NRS 368A.010 to 368A.370, inclusive.*

41 Sec. 59. NRS 368A.120, 368A.130 and 368A.250 are hereby
42 repealed.

43 Sec. 60. This act becomes effective on July 1, 2005, and
44 expires by limitation on the last day of the month in which a court of



- 1 competent jurisdiction enters a final order declaring unconstitutional
- 2 or invalid any of the provisions of sections 2 to 32, inclusive, of this
- 3 act which differ from the provisions of chapter 368A of NRS, as that
- 4 chapter existed on June 30, 2005.

TEXT OF REPEALED SECTIONS

368A.120 Natural persons who are deemed to be business entities. A natural person engaging in a business shall be deemed to be a business entity that is subject to the provisions of this chapter if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

368A.130 Adoption by Department of regulations for determining whether activity is taxable. The Department shall provide by regulation for a more detailed definition of "live entertainment" consistent with the general definition set forth in NRS 368A.090 for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.

368A.250 Certification of excess amount collected; credit and refund. If the Department determines that any tax, penalty or interest it is required to collect has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person or his successors in interest.

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**MINUTES OF THE
SENATE COMMITTEE ON TAXATION**

**Seventy-third Session
June 5, 2005**

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 2:05 p.m. on Sunday, June 5, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chair
Senator Sandra J. Tiffany, Vice Chair
Senator Randolph J. Townsend
Senator Dean A. Rhoads
Senator Bob Coffin
Senator Terry Care
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblyman David R. Parks, Assembly District No. 41

STAFF MEMBERS PRESENT:

Chris Janzen, Deputy Fiscal Analyst
Ardyss Johns, Committee Secretary
Tanya Morrison, Committee Secretary

OTHERS PRESENT:

Anthony F. Sanchez, Las Vegas Motor Speedway
George W. Treat Flint, Nevada Brothel Owners Association
Charles Chinnock, Executive Director, Department of Taxation
William Bible, Nevada Resort Association

CHAIR MCGINNESS:

We will open the hearing on Assembly Bill (A.B.) 554. The bill has not been officially received and we are unable to take a motion on it, but we will take testimony and hold a Committee meeting on the Senate Floor to consider a motion.

ASSEMBLY BILL 554 (2nd Reprint): Makes various changes to provisions governing taxation. (BDR 32-1344)

Senate Committee on Taxation
June 5, 2005
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ANTHONY F. SANCHEZ (Las Vegas Motor Speedway):
You have before you an issue previously heard by this Committee. It was Senator Titus's bill, Senate Bill (S.B.) 247.

SENATE BILL 247 (1st Reprint): Revises provisions governing tax on live entertainment. (BDR 32-680)

MR. SANCHEZ:

Due to the lack of progress on S.B. 247, we have been working to add a provision in A.B. 554. This was passed out of the Assembly this morning.

The bottom of Page 6 has an exemption regarding the National Association for Stock Car Auto Racing (NASCAR). The way it is currently written indicates if there are two or more races in a calendar year, the second race is exempt. The concern on the part of the Las Vegas Motor Speedway is due to an administrative inefficiency. The track sells its tickets all at the same time, so the Speedway would have to tax all races except the second one.

We have worked with and spoken to leadership in the Assembly as well as the Senate and are proposing an amendment (Exhibit C) which would delete the second race exemption and propose both races be exempt for the next biennium. The first race that would impact would probably be a March 2008 race.

CHAIR MCGINNESS:

Will this take effect July 2007?

MR. SANCHEZ:

It would take effect now, but they would not avail themselves of this until March 2008. I am not sure if it would affect a race in the fall of 2007.

SENATOR RHOADS:

How much would the fiscal impact be on this State?

Senate Committee on Taxation
June 5, 2005
Page 3

MR. SANCHEZ:

The money raised in March 2005 was between \$1.5 million and \$1.8 million. In Exhibit C, the race had a 20-percent jump in economic impact in the southern Nevada economy, even over last year. It is approximately \$167million. In 2004, it was \$143 million, so it is continuing to grow. That is why we are hoping to send a loud signal to NASCAR that Las Vegas deserves a second car race.

SENATOR RHOADS:

What would the fiscal impact be on this State?

MR. SANCHEZ:

It would be between \$1.5 million and \$1.9 million.

SENATOR RHOADS:

Do they generate \$167 million?

MR. SANCHEZ:

That is correct.

SENATOR RHOADS:

Are most NASCAR racetracks throughout the country exempt?

MR. SANCHEZ:

California and Arizona do not have live entertainment taxes. Those are the markets we compete against.

SENATOR RHOADS:

Do other states impose entertainment taxes like this one?

MR. SANCHEZ:

Some of them do. I believe Tennessee does. I am trying to remember when this issue was before you in the last Session. That was when the 5 percent was first imposed. Tennessee and South Carolina had entertainment taxes at that time. The only way to get a second NASCAR race is through Bruton Smith, the owner of the Las Vegas Motor Speedway. He owns several tracks around the country. The only way to get another race in Las Vegas is for him to buy another facility which has an existing race and bring that race to Las Vegas. That is a \$200-million-plus investment because there are so few.

Senate Committee on Taxation
June 5, 2005
Page 4

SENATOR COFFIN:

Does this bill contain anything about the topless clubs?

MR. SANCHEZ:

Assembly Bill 554 does have live entertainment aspects, but more to entertainment places inside casinos.

SENATOR COFFIN:

Does A.B. 554 include everything but the topless clubs?

MR. SANCHEZ:

There was a lot more in S.B. 247 not contained in A.B. 554 which is much more streamlined and condensed. It has less information than S.B. 247.

SENATOR COFFIN:

Where are the topless clubs in this bill?

GEORGE W. TREAT FLINT (Nevada Brothel Owners Association):
I have an intimate relationship with this bill and its verbiage since the last Session. On page 6 of A.B. 554, the topless clubs would be covered under lines 1 through 3, unless they have an occupancy capacity of less than 300. The major men's cabarets are covered under that section. I have been told by the Department of Taxation that the major places create approximately \$7 million a year. Most of the smaller clubs could probably be brought into A.B. 554 if you amend the section to read a total occupancy of 200 rather than 300. To protect my client, I do not want you to bring the occupancy number down too much lower than 200 or you will have my clients back in this tax law.

SENATOR COFFIN:

It is my understanding that some of the topless clubs get out of being taxed by removing a few seats. We should consider the possibility of reducing the seating capacity so these highly profitable, legitimate businesses could help pay their share of the budget. Has there been any discussion about that?

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):

Assembly Bill 554 was heard in the Assembly Committee on Commerce and Labor. As far as specific numbers and discussion on the number of seats, I am not sure there was any detailed discussion on that issue.

Senate Committee on Taxation
June 5, 2005
Page 5

CHAIR MCGINNESS:

Is the Assembly agreeable to proposed changes by NASCAR representatives?

MR. PARKS:

I have not had a full briefing on what they are proposing. In general, I am aware there has been a request for a change on that part of the bill.

CHAIR MCGINNESS:

Mr. Sanchez, will there be no fiscal impact if we make the effective date July 1, 2007?

MR. SANCHEZ:

We are fine with that date. We would not be prepared to have that race by that time anyway.

SENATOR RHOADS:

Mr. Sanchez, does this bill have any affect on the National Finals Rodeo?

MR. SANCHEZ:

No, it does not. The National Finals Rodeo is held on the university property.

SENATOR CARE:

How will this bill affect the Nextel Cup Series? Do they have a long-term contract for the spring race?

MR. SANCHEZ:

The contract is with Bruton Smith, owner of the raceway and NASCAR.

SENATOR CARE:

How long does that contract run?

MR. SANCHEZ:

They are currently in negotiations for that contract. I am not sure about the length of the contract, but I can get that information for you.

Senate Committee on Taxation
June 5, 2005
Page 6

SENATOR CARE:

In negotiations for the second race, are you at liberty to discuss whether the subject of the tax impact of an entertainment tax has come up in these negotiations? Is anybody posturing about having a second race?

MR. SANCHEZ:

Mr. Smith owns five tracks around the country, and if he gets the rights to another race, he could put it in California, Arizona or wherever. He is looking for the best economic portfolio for him to place it in. This bill is a sign the State of Nevada wants another race.

SENATOR COFFIN:

I would like to ask Charles Chinnock from the Tax Department a few questions on this legislation. Mr. Chinnock, what happened after the last Session with regard to the men's cabarets?

CHARLES CHINNOCK (Executive Director, Department of Taxation):

Many jurisdictions, whether fire marshals or the building code departments that oversee these facilities, found increased safety concerns with the 300-seating capacity. From the building and safety officials' standpoint, they would much rather see less occupancy than greater occupancy. If you had 300 or greater seating capacity, they were willing to adjust that seating capacity from the standpoint it was a safer venue to reduce that capacity. It became an easy issue for them to reduce the seating capacity.

SENATOR COFFIN:

Are you saying they reduced the seating number to avoid the tax in the interest of safety?

MR. CHINNOCK:

Yes, it was in the interest of safety.

SENATOR COFFIN:

If we changed the language to lower the amount, would we unintentionally include entities we do not want to tax?

Senate Committee on Taxation
June 5, 2005
Page 7

MR. CHINNOCK:

I do not know how to answer that. We did not do a study of a breaking point below the 300-seating capacity. The other bills were all or nothing with respect to adult entertainment.

SENATOR COFFIN:

If we are going to take action on A.B. 554 on the Senate Floor, would it be possible to amend it at that time to lower the 300-seat capacity to 200?

WILLIAM BIBLE (Nevada Resort Association):

I really cannot assist you with this issue because the taxes would apply to venues associated with gaming. The seating capacity in A.B. 554 is for areas not on gaming premises.

SENATOR TOWNSEND:

With regard to the 300 seating and the budget, the lower we make it, the more revenue we would generate as opposed to having an effect on them. There should be no fiscal note. My limited knowledge of this corresponds with Senator Coffin. This puts our Department of Taxation and the auditors in a tough situation. We have to remember, at the end of the day, we have those individuals who will be responsible for implementing this law. Senator Coffin's proposal meets the original intent of what this Committee and the Assembly debated. Obviously, we do not want to create a problem for Mr. Flint's clients. That was never the issue.

MR. FLINT:

This is not official, but I spoke with someone in the Department of Taxation, and I do not have Mr. Chinnock's permission to say this on the record. I was told if you brought this number down to 200, you may pick up those who are avoiding or evading this at the moment. I have been in enough of these places to know there are very few with less than 200 seats. There is a wide area you would pick up at 200, and you will still keep me harmless at that number.

SENATOR LEE:

I would like to go on record saying we have a \$1-billion machine called the Speedway. We seem to be doing quite well because of this. I am not for the second taxation; though in talking with Mr. Sanchez, it has no merit now. In the future I am going to work to see that does not happen, and we continue to work toward removing that law and enticing these individuals to come to our community for the next race. I would be supportive of Bruton Smith bringing that other race to us, and I will do what I can to see it gets here.

CHAIR MCGINNESS:

Mr. Sanchez, please come forward and clarify your proposed amendment which would take effect July 1, 2007, and remove the tax from the Speedway. Am I correct in saying that?

MR. SANCHEZ:

Yes, that is correct. Some of the language would be used, but it would just indicate the beginning to be July 1, 2007. This would clarify NASCAR races in Nevada would be exempt. It does not necessarily have to be Las Vegas Motor Speedway; although, that is the only facility we currently have to accommodate this type of race. The speedways understand they have the drag racing championships there also, and this would not apply to them.

SENATOR TOWNSEND:

I did not understand the issue of the date. The proposal would be in effect July 1, 2007, for the removal of the tax. Then it would be the intention of the Speedway to have both races after that so neither one would be affected. Is that my understanding?

MR. SANCHEZ:

That is correct, Senator Townsend.

Senate Committee on Taxation
June 5, 2005
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CHAIR MCGINNESS:

We will close the hearing on A.B. 554. The Senate Committee on Taxation is adjourned at 2:27 p.m.

RESPECTFULLY SUBMITTED:

Tanya Morrison,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: _____

**MINUTES OF THE
SENATE COMMITTEE ON TAXATION**

**Seventy-third Session
June 5, 2005**

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 4:01 p.m. on Sunday, June 5, 2005, on the Senate Floor of the Legislative Building, Carson City, Nevada. There was no Agenda. There was no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chair
Senator Sandra J. Tiffany, Vice Chair
Senator Randolph J. Townsend
Senator Dean A. Rhoads
Senator Bob Coffin
Senator Terry Care
Senator John Lee

GUEST LEGISLATORS PRESENT:

Senator Maggie Carlton, Clark County Senatorial District No. 2
Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Chris Janzen, Deputy Fiscal Analyst
Mavis Scarff, Committee Secretary

Chair McGinness requested an amendment to Assembly Bill (A.B.) 554 to change the effective date for the National Association for Stock Car Auto Racing (NASCAR) Nextel Cup Series to July 1, 2007, and to change the maximum seating capacity for live entertainment from 300 to 200.

ASSEMBLY BILL 554 (2nd Reprint): Makes various changes to provisions governing taxation. (BDR 32-1344)

SENATOR COFFIN MOVED TO REQUEST AN AMENDMENT TO A.B. 554 TO CHANGE THE EFFECTIVE DATE FOR THE NASCAR RACE TO JULY 1, 2007, AND TO REDUCE THE MAXIMUM SEATING CAPACITY FOR LIVE ENTERTAINMENT FROM 300 TO 200.

Senate Committee on Taxation
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SENATOR TOWNSEND SECONDED THE MOTION.

Senator Titus indicated there was no longer a need to include a maximum seating capacity, and it could be zeroed out.

Senator Coffin agreed to change his motion to reflect the seating capacity would be zero. Senator Townsend agreed to the change.

SENATOR COFFIN MOVED TO MODIFY THE AMENDMENT REQUEST FOR A.B. 554 TO REFLECT THE MAXIMUM SEATING CAPACITY FOR LIVE ENTERTAINMENT WOULD BE ZERO.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair McGinness adjourned the floor meeting at 4:05 p.m.

RESPECTFULLY SUBMITTED:

Mavis Scarff,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: _____

SENATE BILL NO. 247—SENATOR TITUS

MARCH 21, 2005

Referred to Committee on Taxation

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

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to taxation; revising the provisions governing the applicability, imposition, collection and administration of the tax on live entertainment; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law imposes a tax on an admission charge to any facility where live
- 2 entertainment, including live adult entertainment, is provided. (NRS 368A.200)
- 3 This bill repeals the existing law and imposes the tax only on a facility where
- 4 live adult entertainment is provided and removes the tax on all other forms of live
- 5 entertainment. This bill imposes a tax on live adult entertainment at the rate of 10
- 6 percent of any admission charge to such a facility, plus 10 percent of any amounts
- 7 paid for food, refreshments, alcoholic beverages and merchandise purchased at the
- 8 facility.
- 9 This bill provides that if the provisions of this bill concerning the tax on live
- 10 adult entertainment are held to be unconstitutional, the tax on all forms of live
- 11 entertainment will be reinstated as currently set forth in the provisions of Chapter
- 12 368A of NRS.

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

- 1 **Section 1.** Chapter 368A of NRS is hereby amended by
- 2 adding thereto the provisions set forth as sections 2 to 37, inclusive,
- 3 of this act.
- 4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
- 5 *requires, the words and terms defined in sections 3 to 13,*



1 inclusive, of this act have the meanings ascribed to them in those
2 sections.

3 Sec. 3. "Admission charge" means the total amount,
4 expressed in terms of money, of consideration paid for the right or
5 privilege to have access to a facility where live adult entertainment
6 is provided.

7 Sec. 4. "Board" means the State Gaming Control Board.

8 Sec. 5. "Business" means any activity engaged in or caused
9 to be engaged in by a business entity with the object of gain,
10 benefit or advantage, either direct or indirect, to any person or
11 governmental entity.

12 Sec. 6. 1. "Business entity" includes:

13 (a) A corporation, partnership, proprietorship, limited-liability
14 company, business association, joint venture, limited-liability
15 partnership, business trust and their equivalents organized under
16 the laws of this State or another jurisdiction and any other type of
17 entity that engages in business.

18 (b) A natural person engaging in a business if the person is
19 required to file with the Internal Revenue Service a Schedule C
20 (Form 1040), Profit or Loss From Business Form, or its
21 equivalent or successor form, or a Schedule E (Form 1040),
22 Supplemental Income and Loss Form, or its equivalent or
23 successor form, for the business.

24 2. The term does not include a governmental entity.

25 Sec. 7. "Facility" means:

26 1. Any area or premises where live adult entertainment is
27 provided and for which consideration is collected for the right or
28 privilege of entering that area or those premises if the live adult
29 entertainment is provided at:

30 (a) An establishment that is not a licensed gaming
31 establishment; or

32 (b) A licensed gaming establishment that is licensed for less
33 than 51 slot machines, less than six games, or any combination of
34 slot machines and games within those respective limits.

35 2. Any area or premises where live adult entertainment is
36 provided if the live adult entertainment is provided at any other
37 licensed gaming establishment.

38 Sec. 8. "Game" has the meaning ascribed to it in
39 NRS 463.0152.

40 Sec. 9. "Licensed gaming establishment" has the meaning
41 ascribed to it in NRS 463.0169.

42 Sec. 10. "Live adult entertainment" means any activity
43 provided for pleasure, enjoyment, recreation, relaxation, diversion
44 or other similar purpose which includes the exposure of one or



1 more personal anatomical features by a person or persons who are
2 physically present when providing that activity to a patron or
3 group of patrons who are physically present.

4 Sec. 11. "Personal anatomical feature" means any portion of
5 the:

6 1. Genitals, pubic region, anus or perineum of any human
7 person; or

8 2. Areola of any female human breast or of any male human
9 breast which has been surgically altered to appear as a female
10 human breast.

11 Sec. 12. "Slot machine" has the meaning ascribed to it in
12 NRS 463.0191.

13 Sec. 13. "Taxpayer" means:

14 1. If live adult entertainment that is taxable under this
15 chapter is provided at a licensed gaming establishment, the person
16 licensed to conduct gaming at that establishment.

17 2. Except as otherwise provided in subsection 3, if live adult
18 entertainment that is taxable under this chapter is not provided at
19 a licensed gaming establishment, the owner or operator of the
20 facility where the live adult entertainment is provided.

21 3. If live adult entertainment that is taxable under this
22 chapter is provided at a publicly owned facility or on public land,
23 the person who collects the taxable receipts.

24 Sec. 14. The Department shall provide by regulation for a
25 more detailed definition of "live adult entertainment" consistent
26 with the general definition set forth in section 10 of this act for use
27 by the Board and the Department in determining whether an
28 activity is a taxable activity under the provisions of this chapter.

29 Sec. 15. 1. There is hereby imposed an excise tax on
30 admission to any facility in this State where live adult
31 entertainment is provided at the rate of 10 percent of any
32 admission charge to the facility plus 10 percent of any amounts
33 paid for food, refreshments, alcoholic beverages and merchandise
34 purchased at the facility.

35 2. Amounts paid for gratuities directly or indirectly remitted
36 to persons employed at a facility where live adult entertainment is
37 provided or for service charges, including those imposed in
38 connection with the use of credit cards or debit cards, which are
39 collected and retained by persons other than the taxpayer are not
40 taxable pursuant to this section.

41 3. A business entity that collects any amount that is taxable
42 pursuant to subsection 1 is liable for the tax imposed, but is
43 entitled to collect reimbursement from any person paying that
44 amount.



1 4. Any ticket for live adult entertainment must state whether
2 the tax imposed by this section is included in the price of the ticket.
3 If the ticket does not include such a statement, the taxpayer shall
4 pay the tax based on the face amount of the ticket.

5 Sec. 16. A taxpayer shall hold the amount of all taxes for
6 which he is liable pursuant to this chapter in a separate account in
7 trust for the State.

8 Sec. 17. 1. The Board shall:

9 (a) Collect the tax imposed by this chapter from taxpayers who
10 are licensed gaming establishments; and

11 (b) Adopt such regulations as are necessary to carry out the
12 provisions of paragraph (a). The regulations must be adopted in
13 accordance with the provisions of chapter 233B of NRS and must
14 be codified in the Nevada Administrative Code.

15 2. The Department shall:

16 (a) Collect the tax imposed by this chapter from all other
17 taxpayers; and

18 (b) Adopt such regulations as are necessary to carry out the
19 provisions of paragraph (a).

20 3. For the purposes of:

21 (a) Subsection 1, the provisions of chapter 463 of NRS relating
22 to the payment, collection, administration and enforcement of
23 gaming license fees and taxes, including, without limitation, any
24 provisions relating to the imposition of penalties and interest, shall
25 be deemed to apply to the payment, collection, administration and
26 enforcement of the taxes imposed by this chapter to the extent that
27 those provisions do not conflict with the provisions of this chapter.

28 (b) Subsection 2, the provisions of chapter 360 of NRS relating
29 to the payment, collection, administration and enforcement of
30 taxes, including, without limitation, any provisions relating to the
31 imposition of penalties and interest, shall be deemed to apply to
32 the payment, collection, administration and enforcement of the
33 taxes imposed by this chapter to the extent that those provisions do
34 not conflict with the provisions of this chapter.

35 4. To ensure that the tax imposed by section 15 of this act is
36 collected fairly and equitably, the Board and the Department
37 shall:

38 (a) Jointly, coordinate the administration and collection of
39 that tax and the regulation of taxpayers who are liable for the
40 payment of the tax.

41 (b) Upon request, assist the other agency in the collection of
42 that tax.

43 Sec. 18. 1. Except as otherwise provided in this section:

44 (a) Each taxpayer who is a licensed gaming establishment
45 shall file with the Board, on or before the 24th day of each month,



1 a report showing the amount of all taxable receipts for the
2 preceding month. The report must be in a form prescribed by the
3 Board.

4 (b) All other taxpayers shall file with the Department, on or
5 before the last day of each month, a report showing the amount of
6 all taxable receipts for the preceding month. The report must be in
7 a form prescribed by the Department.

8 2. The Board or the Department, if it deems it necessary to
9 ensure payment to or facilitate the collection by the State of the tax
10 imposed by section 15 of this act, may require reports to be filed
11 not later than 10 days after the end of each calendar quarter.

12 3. Each report required to be filed by this section must be
13 accompanied by the amount of the tax that is due for the period
14 covered by the report.

15 4. The Board and the Department shall deposit all taxes,
16 interest and penalties it receives pursuant to this chapter in the
17 State Treasury for credit to the State General Fund.

18 Sec. 19. Upon written application made before the date on
19 which payment must be made, the Board or the Department may,
20 for good cause, extend by 30 days the time within which a
21 taxpayer is required to pay the tax imposed by this chapter. If the
22 tax is paid during the period of extension, no penalty or late
23 charge may be imposed for failure to pay at the time required, but
24 the taxpayer shall pay interest at the rate of 1 percent per month
25 from the date on which the amount would have been due without
26 the extension until the date of payment, unless otherwise provided
27 in NRS 360.232 or 360.320.

28 Sec. 20. 1. Each person responsible for maintaining the
29 records of a taxpayer shall:

30 (a) Keep such records as may be necessary to determine the
31 amount of the liability of the taxpayer pursuant to the provisions
32 of this chapter;

33 (b) Preserve those records for:

34 (1) At least 5 years if the taxpayer is a licensed gaming
35 establishment or until any litigation or prosecution pursuant to
36 this chapter is finally determined, whichever is longer; or

37 (2) At least 4 years if the taxpayer is not a licensed gaming
38 establishment or until any litigation or prosecution pursuant to
39 this chapter is finally determined, whichever is longer; and

40 (c) Make the records available for inspection by the Board or
41 the Department upon demand at reasonable times during regular
42 business hours.

43 2. The Board and the Department may by regulation specify
44 the types of records which must be kept to determine the amount



1 of the liability of a taxpayer from whom they are required to
2 collect the tax imposed by this chapter.

3 3. Any agreement that is entered into, modified or extended
4 after July 1, 2005, for the lease, assignment or transfer of any
5 premises upon which any activity subject to the tax imposed by this
6 chapter is, or thereafter may be, conducted shall be deemed to
7 include a provision that the taxpayer who is required to pay the tax
8 must be allowed access to, upon demand, all books, records and
9 financial papers held by the lessee, assignee or transferee which
10 must be kept pursuant to this section. Any person conducting
11 activities subject to the tax imposed by section 15 of this act who
12 fails to maintain or disclose his records pursuant to this subsection
13 is liable to the taxpayer for any penalty paid by the taxpayer for
14 the late payment or nonpayment of the tax caused by the failure to
15 maintain or disclose records.

16 4. A person who violates any provision of this section is guilty
17 of a misdemeanor.

18 Sec. 21. 1. To verify the accuracy of any report filed or, if
19 no report is filed by a taxpayer, to determine the amount of tax
20 required to be paid:

21 (a) The Board, or any person authorized in writing by the
22 Board, may examine the books, papers and records of any licensed
23 gaming establishment that may be liable for the tax imposed by
24 this chapter.

25 (b) The Department, or any person authorized in writing by
26 the Department, may examine the books, papers and records of
27 any other person who may be liable for the tax imposed by this
28 chapter.

29 2. Any person who may be liable for the tax imposed by this
30 chapter and who keeps outside of this State any books, papers and
31 records relating thereto shall pay to the Board or the Department
32 an amount equal to the allowance provided for state officers and
33 employees generally while traveling outside of the State for each
34 day or fraction thereof during which an employee of the Board or
35 the Department is engaged in examining those documents, plus
36 any other actual expenses incurred by the employee while he is
37 absent from his regular place of employment to examine those
38 documents.

39 Sec. 22. 1. Except as otherwise provided in this section and
40 NRS 360.250, the records and files of the Board and the
41 Department concerning the administration of this chapter are
42 confidential and privileged. The Board, the Department and any
43 employee of the Board or the Department engaged in the
44 administration of this chapter or charged with the custody of any
45 such records or files shall not disclose any information obtained



1 from the records or files of the Board or the Department or from
2 any examination, investigation or hearing authorized by the
3 provisions of this chapter. The Board, the Department and any
4 employee of the Board or the Department may not be required to
5 produce any of the records, files and information for the
6 inspection of any person or for use in any action or proceeding.

7 2. The records and files of the Board and the Department
8 concerning the administration of this chapter are not confidential
9 and privileged in the following cases:

10 (a) Testimony by a member or employee of the Board or the
11 Department and production of records, files and information on
12 behalf of the Board or the Department or a taxpayer in any action
13 or proceeding pursuant to the provisions of this chapter if that
14 testimony or the records, files or information, or the facts shown
15 thereby, are directly involved in the action or proceeding.

16 (b) Delivery to a taxpayer or his authorized representative of a
17 copy of any report or other document filed by the taxpayer
18 pursuant to this chapter.

19 (c) Publication of statistics so classified as to prevent the
20 identification of a particular person or document.

21 (d) Exchanges of information with the Internal Revenue
22 Service in accordance with compacts made and provided for in
23 such cases.

24 (e) Disclosure in confidence to the Governor or his agent in
25 the exercise of the Governor's general supervisory powers, or to
26 any person authorized to audit the accounts of the Board or the
27 Department in pursuance of an audit, or to the Attorney General
28 or other legal representative of the State in connection with an
29 action or proceeding pursuant to this chapter, or to any agency of
30 this or any other state charged with the administration or
31 enforcement of laws relating to taxation.

32 Sec. 23. 1. If:

33 (a) The Board determines that a taxpayer who is a licensed
34 gaming establishment is taking any action with intent to defraud
35 the State or to evade the payment of the tax or any part of the tax
36 imposed by this chapter, the Board shall establish an amount upon
37 which the tax imposed by this chapter must be based.

38 (b) The Department determines that a taxpayer who is not a
39 licensed gaming establishment is taking any action with intent to
40 defraud the State or to evade the payment of the tax or any part of
41 the tax imposed by this chapter, the Department shall establish an
42 amount upon which the tax imposed by this chapter must be
43 based.

44 2. The amount established by the Board or the Department
45 pursuant to subsection 1 must be based upon the tax liability of



1 business entities that are deemed comparable by the Board or the
2 Department to that of the taxpayer.

3 Sec. 24. 1. If a taxpayer:

4 (a) Is unable to collect all or part of an admission charge or
5 charges for food, refreshments, alcoholic beverages and
6 merchandise which were included in the taxable receipts reported
7 for a previous reporting period; and

8 (b) Has taken a deduction on his federal income tax return
9 pursuant to 26 U.S.C. § 166(a) for the amount which he is unable
10 to collect,

11 he is entitled to receive a credit for the amount of tax paid on
12 account of that uncollected amount. The credit may be used
13 against the amount of tax that the taxpayer is subsequently
14 required to pay pursuant to this chapter.

15 2. If the Internal Revenue Service disallows a deduction
16 described in paragraph (b) of subsection 1 and the taxpayer
17 claimed a credit on a return for a previous reporting period
18 pursuant to subsection 1, the taxpayer shall include the amount of
19 that credit in the amount of taxes reported pursuant to this chapter
20 in the first return filed with the Board or the Department after the
21 deduction is disallowed.

22 3. If a taxpayer collects all or part of an admission charge or
23 charges for food, refreshments, alcoholic beverages and
24 merchandise for which he claimed a credit on a return for a
25 previous reporting period pursuant to subsection 2, he shall
26 include:

27 (a) The amount collected in the charges reported pursuant to
28 paragraph (a) of subsection 1; and

29 (b) The tax payable on the amount collected in the amount of
30 taxes reported,

31 in the first return filed with the Board or the Department after
32 that collection.

33 4. Except as otherwise provided in subsection 5, upon
34 determining that a taxpayer has filed a return which contains one
35 or more violations of the provisions of this section, the Board or
36 the Department shall:

37 (a) For the first return of any taxpayer that contains one or
38 more violations, issue a letter of warning to the taxpayer which
39 provides an explanation of the violation or violations contained in
40 the return.

41 (b) For the first or second return, other than a return
42 described in paragraph (a), in any calendar year which contains
43 one or more violations, assess a penalty equal to the amount of the
44 tax which was not reported.



1 (c) For the third and each subsequent return in any calendar
2 year which contains one or more violations, assess a penalty of
3 three times the amount of the tax which was not reported.

4 5. For the purposes of subsection 4, if the first violation of
5 this section by any taxpayer was determined by the Board or the
6 Department through an audit which covered more than one return
7 of the taxpayer, the Board or the Department shall treat all returns
8 which were determined through the same audit to contain a
9 violation or violations in the manner provided in paragraph (a) of
10 subsection 4.

11 Sec. 25. The remedies of the State provided for in this
12 chapter are cumulative, and no action taken by the Board, the
13 Department or the Attorney General constitutes an election by the
14 State to pursue any remedy to the exclusion of any other remedy
15 for which provision is made in this chapter.

16 Sec. 26. If the Department determines that any tax, penalty
17 or interest it is required to collect has been paid more than once or
18 has been erroneously or illegally collected or computed, the
19 Department shall set forth that fact in its records and shall certify
20 to the State Board of Examiners the amount collected in excess of
21 the amount legally due and the person from whom it was collected
22 or by whom it was paid. If approved by the State Board of
23 Examiners, the excess amount collected or paid must be credited
24 on any amounts then due from the person under this chapter, and
25 the balance refunded to the person or his successors in interest.

26 Sec. 27. 1. Except as otherwise provided in NRS 360.235
27 and 360.395:

28 (a) No refund may be allowed unless a claim for it is filed
29 with:

30 (1) The Board if the taxpayer is a licensed gaming
31 establishment; or

32 (2) The Department if the taxpayer is not a licensed gaming
33 establishment.

34 A claim must be filed within 3 years after the last day of the
35 month following the reporting period for which the overpayment
36 was made.

37 (b) No credit may be allowed after the expiration of the period
38 specified for filing claims for refund unless a claim for credit is
39 filed with the Board or the Department within that period.

40 2. Each claim must be in writing and must state the specific
41 grounds upon which the claim is founded.

42 3. Failure to file a claim within the time prescribed in this
43 chapter constitutes a waiver of any demand against the State on
44 account of overpayment.



1 4. Within 30 days after rejecting any claim in whole or in
2 part, the Board or the Department shall serve notice of its action
3 on the claimant in the manner prescribed for service of notice of a
4 deficiency determination.

5 Sec. 28. 1. Except as otherwise provided in this section and
6 NRS 360.320, interest must be paid upon any overpayment of any
7 amount of the tax imposed by this chapter in accordance with the
8 provisions of section 17 of this act.

9 2. If the overpayment is paid to the Department, the interest
10 must be paid:

11 (a) In the case of a refund, to the last day of the calendar
12 month following the date upon which the person making the
13 overpayment, if he has not already filed a claim, is notified by
14 the Department that a claim may be filed or the date upon which
15 the claim is certified to the State Board of Examiners, whichever is
16 earlier.

17 (b) In the case of a credit, to the same date as that to which
18 interest is computed on the tax or amount against which the credit
19 is applied.

20 3. If the Board or the Department determines that any
21 overpayment has been made intentionally or by reason of
22 carelessness, the Board or the Department shall not allow any
23 interest on the overpayment.

24 Sec. 29. 1. No injunction, writ of mandate or other legal or
25 equitable process may issue in any suit, action or proceeding in
26 any court against this State or against any officer of the State to
27 prevent or enjoin the collection under this chapter of the tax
28 imposed by this chapter or any amount of tax, penalty or interest
29 required to be collected.

30 2. No suit or proceeding may be maintained in any court for
31 the recovery of any amount alleged to have been erroneously or
32 illegally determined or collected unless a claim for refund or credit
33 has been filed.

34 Sec. 30. 1. Within 90 days after a final decision upon a
35 claim filed pursuant to this chapter is rendered by:

36 (a) The Nevada Gaming Commission, the claimant may bring
37 an action against the Board on the grounds set forth in the claim.

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

41 2. An action brought pursuant to subsection 1 must be
42 brought in a court of competent jurisdiction in Carson City, the
43 county of this State where the claimant resides or maintains his
44 principal place of business or a county in which any relevant
45 proceedings were conducted by the Board or the Department, for



1 the recovery of the whole or any part of the amount with respect to
2 which the claim has been disallowed.

3 3. Failure to bring an action within the time specified
4 constitutes a waiver of any demand against the State on account of
5 alleged overpayments.

6 Sec. 31. 1. If the Board fails to mail notice of action on a
7 claim within 6 months after the claim is filed, the claimant may
8 consider the claim disallowed and file an appeal with the Nevada
9 Gaming Commission within 30 days after the last day of the
10 6-month period.

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

16 3. If the claimant is aggrieved by the decision of:

17 (a) The Nevada Gaming Commission rendered on appeal, the
18 claimant may, within 90 days after the decision is rendered, bring
19 an action against the Board on the grounds set forth in the claim
20 for the recovery of the whole or any part of the amount claimed as
21 an overpayment.

22 (b) The Nevada Tax Commission rendered on appeal, the
23 claimant may, within 90 days after the decision is rendered, bring
24 an action against the Department on the grounds set forth in the
25 claim for the recovery of the whole or any part of the amount
26 claimed as an overpayment.

27 4. If judgment is rendered for the plaintiff, the amount of the
28 judgment must first be credited towards any tax due from the
29 plaintiff.

30 5. The balance of the judgment must be refunded to the
31 plaintiff.

32 Sec. 32. In any judgment, interest must be allowed at the rate
33 of 6 percent per annum upon the amount found to have been
34 illegally collected from the date of payment of the amount to the
35 date of allowance of credit on account of the judgment, or to a
36 date preceding the date of the refund warrant by not more than 30
37 days. The date must be determined by the Board or the
38 Department.

39 Sec. 33. A judgment may not be rendered in favor of the
40 plaintiff in any action brought against the Board or the
41 Department to recover any amount paid when the action is
42 brought by or in the name of an assignee of the person paying the
43 amount or by any person other than the person who paid the
44 amount.



1 Sec. 34. 1. The Board or the Department may recover a
2 refund or any part thereof which is erroneously made and any
3 credit or part thereof which is erroneously allowed in an action
4 brought in a court of competent jurisdiction in Carson City or
5 Clark County in the name of the State of Nevada.

6 2. The action must be tried in Carson City or Clark County
7 unless the court, with the consent of the Attorney General, orders
8 a change of place of trial.

9 3. The Attorney General shall prosecute the action, and the
10 provisions of NRS, the Nevada Rules of Civil Procedure and the
11 Nevada Rules of Appellate Procedure relating to service of
12 summons, pleadings, proofs, trials and appeals are applicable to
13 the proceedings.

14 Sec. 35. 1. If any amount in excess of \$25 has been
15 illegally determined, either by the person filing the return or by the
16 Board or the Department, the Board or the Department shall
17 certify this fact to the State Board of Examiners, and the latter
18 shall authorize the cancellation of the amount upon the records of
19 the Board or the Department.

20 2. If an amount not exceeding \$25 has been illegally
21 determined, either by the person filing a return or by the Board or
22 the Department, the Board or the Department, without certifying
23 this fact to the State Board of Examiners, shall authorize the
24 cancellation of the amount upon the records of the Board or the
25 Department.

26 Sec. 36. Any licensed gaming establishment liable for the
27 payment of the tax imposed by section 15 of this act who willfully
28 fails to report, pay or truthfully account for the tax is subject to the
29 revocation of his gaming license by the Nevada Gaming
30 Commission.

31 Sec. 37. 1. A person shall not:

32 (a) Make, cause to be made or permit to be made any false or
33 fraudulent return or declaration or false statement in any report
34 or declaration, with intent to defraud the State or to evade
35 payment of the tax or any part of the tax imposed by this chapter.

36 (b) Make, cause to be made or permit to be made any false
37 entry in books, records or accounts with intent to defraud the State
38 or to evade the payment of the tax or any part of the tax imposed
39 by this chapter.

40 (c) Keep, cause to be kept or permit to be kept more than one
41 set of books, records or accounts with intent to defraud the State
42 or to evade the payment of the tax or any part of the tax imposed
43 by this chapter.

44 2. Any person who violates the provisions of subsection 1 is
45 guilty of a gross misdemeanor.



1 **Sec. 38.** NRS 233B.039 is hereby amended to read as follows:
2 233B.039 1. The following agencies are entirely exempted
3 from the requirements of this chapter:
4 (a) The Governor.
5 (b) The Department of Corrections.
6 (c) The University and Community College System of Nevada.
7 (d) The Office of the Military.
8 (e) Except as otherwise provided in ~~NRS 368A.140,~~ *section 17*
9 *of this act*, the State Gaming Control Board.
10 (f) The Nevada Gaming Commission.
11 (g) The Welfare Division of the Department of Human
12 Resources.
13 (h) The Division of Health Care Financing and Policy of the
14 Department of Human Resources.
15 (i) The State Board of Examiners acting pursuant to chapter 217
16 of NRS.
17 (j) Except as otherwise provided in NRS 533.365, the Office of
18 the State Engineer.
19 (k) The Division of Industrial Relations of the Department of
20 Business and Industry acting to enforce the provisions of
21 NRS 618.375.
22 (l) The Administrator of the Division of Industrial Relations of
23 the Department of Business and Industry in establishing and
24 adjusting the schedule of fees and charges for accident benefits
25 pursuant to subsection 2 of NRS 616C.260.
26 (m) The Board to Review Claims in adopting resolutions to
27 carry out its duties pursuant to NRS 590.830.
28 2. Except as otherwise provided in subsection 5 and NRS
29 391.323, the Department of Education, the Board of the Public
30 Employees' Benefits Program and the Commission on Professional
31 Standards in Education are subject to the provisions of this chapter
32 for the purpose of adopting regulations but not with respect to any
33 contested case.
34 3. The special provisions of:
35 (a) Chapter 612 of NRS for the distribution of regulations by
36 and the judicial review of decisions of the Employment Security
37 Division of the Department of Employment, Training and
38 Rehabilitation;
39 (b) Chapters 616A to 617, inclusive, of NRS for the
40 determination of contested claims;
41 (c) Chapter 703 of NRS for the judicial review of decisions of
42 the Public Utilities Commission of Nevada;
43 (d) Chapter 91 of NRS for the judicial review of decisions of the
44 Administrator of the Securities Division of the Office of the
45 Secretary of State; and



1 (e) NRS 90.800 for the use of summary orders in contested
2 cases,

3 → prevail over the general provisions of this chapter.

4 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and
5 233B.126 do not apply to the Department of Human Resources in
6 the adjudication of contested cases involving the issuance of letters
7 of approval for health facilities and agencies.

8 5. The provisions of this chapter do not apply to:

9 (a) Any order for immediate action, including, but not limited
10 to, quarantine and the treatment or cleansing of infected or infested
11 animals, objects or premises, made under the authority of the State
12 Board of Agriculture, the State Board of Health, or any other agency
13 of this State in the discharge of a responsibility for the preservation
14 of human or animal health or for insect or pest control;

15 (b) An extraordinary regulation of the State Board of Pharmacy
16 adopted pursuant to NRS 453.2184; or

17 (c) A regulation adopted by the State Board of Education
18 pursuant to NRS 392.644 or 394.1694.

19 6. The State Board of Parole Commissioners is subject to the
20 provisions of this chapter for the purpose of adopting regulations but
21 not with respect to any contested case.

22 Sec. 39. NRS 463.0136 is hereby amended to read as follows:
23 463.0136 "Associated equipment" means:

24 1. Any equipment or mechanical, electromechanical or
25 electronic contrivance, component or machine used remotely or
26 directly in connection with gaming, any game, race book or sports
27 pool that would not otherwise be classified as a gaming device,
28 including dice, playing cards, links which connect to progressive
29 slot machines, equipment which affects the proper reporting of gross
30 revenue, computerized systems of betting at a race book or sports
31 pool, computerized systems for monitoring slot machines and
32 devices for weighing or counting money; or

33 2. A computerized system for recordation of sales for use in an
34 area subject to the tax imposed pursuant to ~~NRS 368A.200.~~
35 *section 15 of this act.*

36 Sec. 40. NRS 463.270 is hereby amended to read as follows:

37 463.270 1. Subject to the power of the Commission to deny,
38 revoke, suspend, condition or limit licenses, any state license in
39 force may be renewed by the Commission for the next succeeding
40 license period upon proper application for renewal and payment of
41 state license fees and taxes as required by law and the regulations of
42 the Commission.

43 2. All state gaming licenses are subject to renewal on the first
44 day of each January and all quarterly state gaming licenses on the
45 first day of each calendar quarter thereafter.



1 3. Application for renewal must be filed with the Commission,
2 and all state license fees and taxes required by law, including,
3 without limitation, NRS ~~368A.200,~~ 463.370, 463.373 to 463.3855,
4 inclusive, 463.660, 464.015 and 464.040, *and section 15 of this act*,
5 must be paid to the Board on or before the dates respectively
6 provided by law for each fee or tax.

7 4. Application for renewal of licenses for slot machines only
8 must be made by the operators of the locations where such machines
9 are situated.

10 5. Any person failing to pay any state license fees or taxes due
11 at the times respectively provided shall pay in addition to such
12 license fees or taxes a penalty of not less than \$50 or 25 percent of
13 the amount due, whichever is the greater, but not more than \$1,000
14 if the fees or taxes are less than 10 days late and in no case in excess
15 of \$5,000. The penalty must be collected as are other charges,
16 license fees and penalties under this chapter.

17 6. Any person who operates, carries on or exposes for play any
18 gambling game, gaming device or slot machine or who
19 manufactures, sells or distributes any gaming device, equipment,
20 material or machine used in gaming after his license becomes
21 subject to renewal, and thereafter fails to apply for renewal as
22 provided in this section, is guilty of a misdemeanor and, in addition
23 to the penalties provided by law, is liable to the State of Nevada for
24 all license fees, taxes and penalties which would have been due
25 upon application for renewal.

26 7. If any licensee or other person fails to renew his license as
27 provided in this section, the Commission may order the immediate
28 closure of all his gaming activity until the license is renewed by the
29 payment of the necessary fees, taxes, interest and any penalties.
30 Except for a license for which fees are based on the gross revenue of
31 the licensee, failure to renew a license within 30 days after the date
32 required by this chapter shall be deemed a surrender of the license.

33 8. The voluntary surrender of a license by a licensee does not
34 become effective until accepted in the manner provided in the
35 regulations of the Commission. The surrender of a license does not
36 relieve the former licensee of any penalties, fines, fees, taxes or
37 interest due.

38 Sec. 41. NRS 463.408 is hereby amended to read as follows:
39 463.408 1. As used in this section, "holidays or special
40 events" refers to periods during which the influx of tourist activity
41 in this State or any area thereof may require additional or alternative
42 industry accommodation as determined by the Board.

43 2. Any licensee holding a valid license under this chapter may
44 apply to the Board, on application forms prescribed by the Board,
45 for a holiday or special event permit to:



1 (a) Increase the licensee's game operations during holidays or
2 special events; or

3 (b) Provide persons who are attending a special event with
4 gaming in an area of the licensee's establishment to which access by
5 the general public may be restricted.

6 3. The application must be filed with the Board at least 15 days
7 before the date of the holiday or special event.

8 4. If the Board approves the application, ~~the~~ *the Board* shall
9 issue to the licensee a permit to operate presently existing games or
10 any additional games in designated areas of the licensee's
11 establishment. The number of additional games must not exceed 50
12 percent of the number of games operated by the licensee at the time
13 the application is filed. The permit must state the period for which it
14 is issued and the number, if any, of additional games allowed. For
15 purposes of computation, any fractional game must be counted as
16 one full game. The licensee shall present any such permit on the
17 demand of any inspecting agent of the Board or *the* Commission.

18 5. Before issuing any permit, the Board shall charge and collect
19 from the licensee a fee of \$14 per game per day for each day the
20 permit is effective. The fees are in lieu of the fees required under
21 NRS 463.380, 463.383 and 463.390.

22 6. The additional games allowed under a permit must not be
23 counted in computing the tax imposed by ~~NRS 368A.200~~ *section*
24 *15 of this act*.

25 7. If any such additional games are not removed at the time the
26 permit expires, the licensee is immediately subject to the fees
27 provided for in this chapter.

28 Sec. 42. NRS 368A.010, 368A.020, 368A.030, 368A.040,
29 368A.050, 368A.060, 368A.070, 368A.080, 368A.090, 368A.100,
30 368A.110, 368A.120, 368A.130, 368A.140, 368A.150, 368A.160,
31 368A.170, 368A.180, 368A.200, 368A.210, 368A.220, 368A.230,
32 368A.240, 368A.250, 368A.260, 368A.270, 368A.280, 368A.290,
33 368A.300, 368A.310, 368A.320, 368A.330, 368A.340, 368A.350,
34 368A.360 and 368A.370 are hereby repealed.

35 Sec. 43. This act becomes effective on July 1, 2005, and
36 expires by limitation on the last day of the month in which a court of
37 competent jurisdiction enters a final order declaring unconstitutional
38 or invalid any of the provisions of sections 2 to 37, inclusive, of this
39 act which differ from the provisions of chapter 368A of NRS, as that
40 chapter existed on June 30, 2005.



LEADLINES OF REPEALED SECTIONS

- 368A.010 Definitions.
368A.020 "Admission charge" defined.
368A.030 "Board" defined.
368A.040 "Business" defined.
368A.050 "Business entity" defined.
368A.060 "Facility" defined.
368A.070 "Game" defined.
368A.080 "Licensed gaming establishment" defined.
368A.090 "Live entertainment" defined.
368A.100 "Slot machine" defined.
368A.110 "Taxpayer" defined.
368A.120 Natural persons who are deemed to be business entities.
368A.130 Adoption by Department of regulations for determining whether activity is taxable.
368A.140 Duties of Board and Department; applicability of chapters 360 and 463 of NRS.
368A.150 Establishment of amount of tax liability when Board or Department determines that taxpayer is acting with intent to defraud State or to evade payment of tax.
368A.160 Maintenance and availability of records for determining liability of taxpayer; liability to taxpayer of lessee, assignee or transferee of certain premises; penalty.
368A.170 Examination of records by Board or Department; payment of expenses of Board or Department for examination of records outside State.
368A.180 Confidentiality of records and files of Board and Department.
368A.200 Imposition and amount of tax; liability and reimbursement for payment; ticket for live entertainment must indicate whether tax is included in price of ticket; exemptions from tax.
368A.210 Taxpayer to hold taxes in separate account.
368A.220 Filing of reports and payment of tax; deposit of amounts received in State General Fund.
368A.230 Extension of time for payment; payment of interest during period of extension.
368A.240 Credit for amount of tax paid on account of certain charges taxpayer is unable to collect; violations.



368A.250 Certification of excess amount collected; credit and refund.

368A.260 Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim.

368A.270 Interest on overpayments; disallowance of interest.

368A.280 Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund.

368A.290 Action for refund: Period for commencement; venue; waiver.

368A.300 Rights of claimant upon failure of Board or Department to mail notice of action on claim; allocation of judgment for claimant.

368A.310 Allowance of interest in judgment for amount illegally collected.

368A.320 Standing to recover.

368A.330 Action for recovery of erroneous refund: Jurisdiction; venue; prosecution.

368A.340 Cancellation of illegal determination.

368A.350 Prohibited acts; penalty.

368A.360 Revocation of gaming license for failure to report, pay or truthfully account for tax.

368A.370 Remedies of State are cumulative.

20



EXHIBIT CC

EXHIBIT CC

LIVE ENTERTAINMENT TAX

Effective January 1, 2004

LIVE ENTERTAINMENT TAX

Effective Date: January 1, 2004

- Passed by 20th Special Session of Nevada State Legislature, sections 64 to 100 of Senate Bill 8.
- Administered by two State Agencies:
 - Nevada Department of Taxation
 - Nevada Gaming Control Board

Live Entertainment Tax (LET)

- Effective Date: January 1, 2004
- Department of Taxation: Administers and collects LET outside of licensed gaming establishments. NRS 368A, Temporary Regulation per LCB File No. R212-03
- Gaming Control Board: Administers and collects LET for licensed gaming establishments. NRS ~~463~~, ~~Regulation 13~~

368A
LCB File No. 223-03

Live Entertainment Tax (LET)

- **Two Tiered Tax Rates:**
 - **10% tax rate applicable:**
 - **On admission and cover charges, food, refreshments and merchandise sales for Live Entertainment taking place at a facility with maximum seating capacity of at least 300 up to 7,499. LET is in addition to applicable sales tax on food, refreshments and merchandise sold.**
 - **5% tax rate applicable:**
 - **On admission and cover charges only for Live Entertainment taking place at a facility with maximum seating capacity of 7,500 or more.**

Live Entertainment Tax (LET)

- **Methods of Determining Maximum Seating Capacity:**
 - **1. Maximum occupancy of facility as established by State Fire Marshal or as determined by local governmental agency (county or city).**
 - **2. Maximum occupancy of facility as designated in permits required to provide live entertainment.**
 - **3. In the absence of official determination or permit designation, the actual seating capacity.**

Live Entertainment Tax EXEMPTIONS

- Live entertainment that is prohibited from taxing under the Constitution, laws & treaties of U.S. or Nevada Constitution.
- Events where proceeds from the admission or cover charges, sales of food, refreshments and merchandise during the event go entirely to a nonprofit organization.
- Events where the proceeds as described above are donated to a nonprofit organization by another person who is not a nonprofit organization, even if the event contract allows that person to sell goods and services at the live entertainment event.
- Boxing contests or exhibitions which can be defined as “unarmed combat” pursuant to NRS 467.0107.

Live Entertainment Tax Exemptions (cont.)

- Live entertainment taking place at a non-gaming facility with seating capacity of less than 300.
- Live entertainment taking place at a facility licensed for less than 51 slot machines, less than 6 table games, or combination of slot machines and table games within those respective limits with seating capacity of less than 300.
- Boxing contests or exhibitions which can be defined as “unarmed combat” pursuant to NRS 467.0107.
- Live Entertainment provided during a trade show.
- Live Entertainment provided in the form of strolling or background music either instrumental or vocal in restaurants, lounges etc.
- Live entertainment provided in the common area of a shopping mall.

Registration for LET

- **No registration fee required. Use NBR and Supplemental forms to register new taxpayers.**
- **Initial registration done through update form mailed to taxpayers registered in ACES with potential live entertainment liability.**
- **Information sheet mailed to all City, County and other nonprofit facilities that may be rented to providers of live entertainment. Copy of NBR and Supplemental included.**
- **Information sheet mailed to other possible providers of live entertainment not registered with ACES accounts. Included NBR and supplemental form.**

ADMINISTRATION OF LET

- Monthly filing for tax collected in preceding month.
- Penalty and Interest charges for failure to file and late filing apply pursuant to chapter 360. of NRS.
- Over-collections, credits and refunds requests refer to statutory procedures established in chapter 360 of NRS.
- Separate tax returns for each applicable LET tax rate 10% or 5%.
- Separate tax returns required for each facility location under common ownership.
- If unable to establish seating capacity of live entertainment event by methods listed above; the department will presume higher tax rate of 10% applies.
- Acceptable evidence for rebutting higher tax presumption: actual attendance, number of tickets sold or offered for sale, square footage of facility, physical needs or requirements for patrons in relation to the nature of the event or other pertinent evidence to establish actual seating capacity.

LET – important definitions and terms

- The following definitions and terms are listed in sections 3 through 7 of the regulation and should be reviewed to understand the full scope of the Department's portion of Live Entertainment Tax.
 - Live entertainment status
 - Nonprofit organization
 - Patron
 - Taxpayer
 - Admission charge
 - Boxing contest or exhibition
 - Facility
 - Live Entertainment
 - Shopping mall
 - Trade show
 - Casual Assemblage

EXHIBIT DD

EXHIBIT DD



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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PUBLIC NOTICE

TO: To All Interested Parties
FROM: Dino DiCianno, Deputy Executive Director *[Signature]*
DATE: September 26, 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 20th Special Session at the following locations.

Carson City -

Thursday, October 2, 2003 Room 2134 Nevada Legislative Building

Las Vegas - Via Video Conference -

Thursday, October 2, 2003 Room 4401 Grant Sawyer State Office Building

The October 2, 2003 meeting will start at 1:00 p.m.

AGENDA

1:00 p.m.

1. Sections 65 through 80 of Senate Bill 8 of the 20th Special Session concerning the Live Entertainment Tax (joint coordination of the administration and collection of the tax).

On or before 5:00 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 20th Special Session.

I. Priority and Timing for August, September, October and November Workshops:

FOURTH AMENDMENT **PRIORITY OF REGULATIONS** **Emergency Regulations***

1. Modified Business Tax on Financial Institutions: .8/14/03, 9/12/03, 9/25/03, 10/23/03,
11/14/03, 11/20/03 if needed
2. Modified Business Tax:8/14/03, 9/12/03, 9/25/03, 10/23/03,
11/14/03, 11/20/03 if needed
3. Live Entertainment Tax:8/27/03, 9/19/03, 10/2/03, 10/30/03,
11/20/03 if needed
4. Excise Tax on Banks:8/21/03, 9/4/03
5. Definition of a Business per SB 88/21/03, 9/4/03, 9/19/03
6. Other Emergency Regulations?Open for Discussion

II. Priority and Timing for Other Workshops:

FIRST AMENDMENT **PRIORITY OF REGULATIONS** **Regular Permanent Regulations**

1. Real Property Transfer Tax:Begin October 2003
2. Audit Selection Process:Begin October 2003
3. Electronic Filing and Payment of Taxes:Begin October 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

DRAFT REGULATIONS FOR DISCUSSION ON OCTOBER 2, 2003

Section 1. Title 32 of NAC is hereby amended by adding thereto a new chapter to consist of the provisions set forth as section 1 to 11, inclusive, of this regulation.

Section 2. As used in this chapter, unless the context otherwise requires:

1. "Ambient background music" means music or song provided for the enjoyment of patrons while they eat, drink or converse, so long as the music or song does not routinely rise to a volume that interferes with casual conversation or encourages patrons to watch rather than simply listen.

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

3. "Patron" means a person who pays an admission charge to have access to a facility where live entertainment is provided, and who receives no payment, reimbursement, remuneration or other form of consideration for providing entertainment at the facility.

Section 3. As used in sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20th Special Session, unless the context otherwise requires:

1. "Facility" means any area or premises located within the borders of a larger facility where:

(a) Live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises; and

(b) The live entertainment cannot reasonably be enjoyed by persons located outside of the physical boundaries or specified borders of that area or those premises.

2. "Facility" shall be construed to exclude:

(a) Any area or premises within the physical boundaries or specified borders of the facility if that area or those premises constitute a "facility" as defined in subsection 1; or

(b) Any area or premises where live entertainment may be broadcast via television, radio or internet, unless that area or those premises are confined by physical boundaries or specified borders.

3. "Live entertainment" shall be construed to include, 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. "Live entertainment" shall not be construed to include:

(a) Recorded music;

(b) Entertainment provided by patrons to other patrons;

(c) Entertainment generated or produced exclusively by a mechanical, robotic or electronic device;

(d) The presentation of recorded music, or the generation or production of entertainment through a mechanical, robotic or electronic device other than a musical instrument, if the person presenting the recorded music, or generating or producing the entertainment through such mechanical, robotic or electronic device, does not engage in a performance that constitutes live entertainment as defined in this section.

5. "Trade show" means an event of limited duration, not open to members of the general public, during which the merchandise and services of a particular trade or industry are exhibited and matters of interest to members of the trade or industry or discussed.

Section 4. For purposes of paragraph 4 (d) of section 3, a person who presents recorded music, or who provides entertainment through a mechanical, robotic or electronic device other than a musical instrument, does not engage in a performance that constitutes live entertainment so long as the person uses no public address or other voice amplification system, and performs no physical stunts, dances, pantomimes, or similar forms of visual entertainment.

Section 5. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session, live entertainment is deemed to be "provided by or entirely for the benefit of" a nonprofit organization if no more than twenty percent (20%) of the gross admission charges may, by contract, agreement or otherwise, inure 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 20th Special Session or this chapter, the Department shall assess and compute the excise tax in accordance with section 10.

Section 6. Subject to the provisions of section 5, 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.

Section 7. 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 8. 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 enter the facility for the primary purpose of viewing, hearing, or participating in the live entertainment. Patrons shall be deemed to enter a facility for a primary purpose other than viewing, listening, or participating in live entertainment if:

1. 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 section 9;

2. 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 section 9;

3. 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 section 9;

Section 9. To qualify under section 8 as a facility where patrons have entered for a primary purpose other than viewing, listening to, or participating in live entertainment, the facility must not host any form of live entertainment other than:

1. Inspirational, motivational, educational or informational speeches, *demonstrations* or lectures provided by one or more professional or amateur speakers, *instructors, trainers* or lecturers;

2. Consumer product demonstrations addressed to individuals or groups;

3. Samplings of food or beverages;

4. Ambient background music;

5. Live entertainment described in subsection 5 of Section 78 of Senate Bill No. 8 of the 20th Special Session; or,

6. Any combination of the above.

Section 10. In computing the amount of any excise tax due pursuant to subsection 1 of section 78 of Senate Bill No. 8 of the 20th 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 11. For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20th 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 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.



Serving the Citizens of Nevada since 1922

DATE: September 26, 2003

MEMO TO: Barbara Campbell, Chairwoman, Nevada Tax Commission (delivered via email)
Peter Bernhard, Chairman, Nevada Gaming Commission (delivered via fax)
Dennis Neilander, Chairman, Nevada Gaming Control Board (delivered via fax)

REFERENCE: Senate Bill 8 of the 20th Special Session - Live Entertainment Tax (LET),
Sections 75-100

I would like to extend my appreciation for the concerted effort that has been made by you, your fellow Commissioners and Board members and your respective staffs who have been working to achieve a seamless set of regulations within the constraints imposed by SB 8 on gaming and non-gaming businesses impacted by the LET.

On behalf of members of the Association who are and may be impacted by this tax, I would ask for your consideration on the following issues:

1. The qualification of "curb to curb" as it has been discussed with regards to the jurisdiction responsible for the collection of the tax; and
2. The functions of a non-profit held in a licensed gaming establishment or in conjunction with a gaming establishment.

1. While "curb to curb" has been referenced as the manner in which to define agency jurisdiction, there is nothing I read in SB 8 that clearly delineates the circumstances for determining which agency, gaming or taxation, has authority for collection of the LET. Following is my suggested language for qualifying agency jurisdiction.

The Gaming Commission/Control Board has jurisdiction for the administration and collection of the live entertainment tax when the venue of the live entertainment is located on the property of a licensed gaming establishment; and

- a. *The licensed gaming establishment has direct operational control or is responsible for the day to day operation of the venue in which live entertainment is performed; and*
- b. *All the employees of the venue are employees of the licensed gaming establishment. (Please note: If "All the employees" is considered too high a standard, a more acceptable standard might be "Over 50% of the employees".)*

Reasons: I believe this would assist in solving the issues raised concerning:

1. If "curb to curb", as it has been discussed the past two meetings, were qualified either as suggested above or by some similar wording, both the Department of Taxation and the Gaming Commission/Control Board have clear definition as to their jurisdiction with regards to the LET. I have been made aware that there is a Gaming Commission Regulation, 1.145 which for purposes of the entertainment tax provides a curb to curb definition. However, as the LET becomes a new tax under title 32, it becomes important to re-look at the jurisdictional issue.

Continued on page 2

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2. Those restaurants that are franchise operations located within licensed gaming establishments, but are not licensed as gaming establishments, have under 300 seats/occupancy, and provide live background music during all or part of their serving hours would not be subject to the tax.

Additionally, a regulation defining ambient/background music, and a provision addressing an area where entertainment is provided that is segregated from the restaurant area, should assure that all restaurants within a licensed gaming facility are similarly treated for the purpose of not having to charge the tax on food and drinks when seating/occupancy is less than 300.

3. This suggested language would also cover those restaurants or bars that provide entertainment and have leased space to a slot route operator, but have never been licensed as a gaming establishment. In this instance this category of bar and/or restaurant would remain under the existing jurisdiction of the Department of Taxation. Further, this assures the slot route operator who is only providing machines at a location that he is not responsible for the LET.

2. Non-Profits.

The following language is taken from SB 382 (page 4, lines 27-34) of the 72nd regular session and would clarify this exemption by providing specific criteria.

" Provided to a nonprofit organization that qualifies as a tax exempt organization pursuant to 26 U.S. C. 501(c) or to a person who remits to such a nonprofit organization at least 60 percent of the net revenue from the entertainment for which access is granted."

Reason: Hopefully, this language would address some of the concerns testified to at the first workshop on the LET by Joelle Hurns of the Laughlin Chamber of Commerce and the gentleman who testified for the Pioneer Theater in Reno.

Thank you again for the effort you have undertaken to resolve the ambiguities that exist regarding the LET.

Respectfully submitted,

s/Carole Vilardo

President

P.S. I have spoken to a member of the LCB fiscal staff who advised me that the revenue projections made in conjunction with the LET did not include revenue from food and drink at a restaurant or bar location that was not subject to the Casino Entertainment Tax; therefore, there would be no change in the revenue projection if "curb to curb" is not used for the LET.

CC: Charles Chinnock, Executive Director, Department of Taxation (delivered via email)
Dino DiCianno, Deputy Director, Department of Taxation (delivered via email)
Greg Zunino, Deputy Attorney General (delivered via email)
Linda Hartzell, Gaming Control Board (delivered via email)

LET



FAX TRANSMISSION COVER SHEET

TO: Dino DiCianno **FAX NO.:** (775) 687-5981
FROM: Bill Bible **FAX NO.:** (702) 735-4620
DATE: September 29, 2003 **TIME:** 3:30 p.m.
PAGES: 6 (including cover page)

COMMENTS:

■ 3773 HOWARD HUGHES PARKWAY #520 NORTH ■
■ LAS VEGAS, NEVADA 89109 ■
■ PHONE: (702) 733-4888 FAX: (702) 735-4620 ■



September 29, 2003

VIA FAX - (775) 687-5981

Mr. Dino DiCianno, Deputy Executive Director
Department of Taxation
1550 E. College Parkway, Suite 115
Carson City, Nevada 89706-7937

Dear Mr. DiCianno:

At the Department of Taxation's workshop on the Live Entertainment Tax scheduled for October 2, 2003, proposed draft regulations which include a definition of "Live Entertainment" will be considered.

In response to the Gaming Control Board/Nevada Gaming Commission's "Proposed Amendments to Regulation 13: Live Entertainment Tax" and a discussion document titled "Live Entertainment Tax ('The Handout')", I provided these gaming regulatory agencies with comments, by letter dated September 8, 2003, on the proposed definition of "live entertainment". Attached is a copy of this correspondence indicating, at the bottom of page 2 and the top of page 3, that neither dancing as a participatory activity between patrons nor the use of a disc jockey, unless the disc jockey is a focal point of the entertainment, should create a taxable event.

I would appreciate it if you would incorporate these comments with the record being created by the Department of Taxation as the definition of "live entertainment" for taxation purposes.

Sincerely,

William A. Bible
President

WAB:kd

Attachment

c: Keith Holmes 699-5123
Bob Faiss 383-8845
Harvey Whittemore 775-788-8682

■ 5773 HOWARD HUGHES PARKWAY #320 NORTH ■
■ LAS VEGAS, NEVADA 89109 ■
■ PHONE: (702) 739-4888 FAX: (702) 735-4620 ■



September 8, 2003

Mr. Peter Bernhard, Chairman
Nevada Gaming Commission
P.O. Box 8003
Carson City, Nevada 89702

Mr. Dennis Neillander, Chairman
State Gaming Control Board
P.O. Box 8003
Carson City, Nevada 89702

SUBJECT: Casino Entertainment Tax/Live Entertainment Tax

Dear Chairmen Bernhard and Neillander:

At the Department of Taxation's workshop on Wednesday, August 27, 2003, implementing regulations for the Live Entertainment Tax ("LET") that was enacted by SB 8 of the 20th Special Session were discussed. At this meeting Board staff discussed the existing Casino Entertainment Tax ("CET") and proposed amendments to Regulation 13, which would become effective January 1, 2004, to implement that portion of the newly enacted LET falling within the jurisdiction of the Board and Commission. The documents that were distributed, both at the meeting and on the Board/Commission Website, are titled "Proposed Amendments to Regulation 13: Live Entertainment Tax," dated 8/22/03, ("Proposed Regulations") and a discussion document, dated 8/27/03, titled "Live Entertainment Tax ('The Handout')."

While the workshop provided a substantial amount of useful information, there are still a number of important issues that need further clarification and consideration so that gaming licensees can fully comply with both the amended CET and the new LET. The issues which I have currently identified, which are not listed in any priority order, are as follows:

■ 3773 HOWARD HUGHES PARKWAY #320 NORTH ■
■ LAS VEGAS, NEVADA 89109 ■
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1. Procedural Issues – SB 8 substantially amended, effective September 1, 2003, the Casino Entertainment Tax which is codified in NRS 463.4001 through NRS 463.4006. These amendments are effective until January 1, 2004, when the Casino Entertainment Tax provisions are repealed in their entirety and a new Live Entertainment Tax, codified in Title 32 of NRS, is enacted. Do the Board and Commission intend to adopt amendments to Regulation 13 to reconcile it with the provisions of SB 8 and to provide licensees with guidance on any ambiguities which may exist in the newly enacted provisions of the CET? If the Board and Commission do not amend Regulation 13 prior to December 31, 2003, to what extent can licensees rely, for interpretive purposes, on the Proposed Regulations and the Handout that were distributed at the workshop? Alternatively, if licensees do not rely on the Proposed Regulations and rather rely on SB 8, presumably there would be no retroactive application to such licensee's conduct?

2. Substantive Questions – Some of the questions on the tax implication of a "casual assemblage" where the purpose of the entertainment "is not primarily for entertainment" have been addressed by the Board's September 5, 2003, "Clarification of Applicability" letter. As that letter recognized, both Sections 73 and 171 (5) of SB 8 provide identical definitions of "live entertainment" while Sections 78 (5)(f) and 171 (3)(g) indicate that the Live Entertainment Tax does not apply, at licensed gaming establishments, to entertainment provided "at private meetings or dinners attended by members of a particular organization or by a casual assemblage if the purpose of the event is not primarily for entertainment." Where entertainment is provided for ambiance and background, where no admission is charged for entrance to the facility, where the primary purpose of the event is something other than entertainment, and where the entertainment is not the focal point of the event, to what extent does the Live Entertainment Tax apply? Incorporating as many objective criteria as possible in the final Regulation would be helpful to licensees because it would establish clear standards to guide licensees on applicability questions and would save the Board's audit staff the time and effort of responding to a wide variety of oral and written "is this taxable or not" type questions from licensees.

Section 5 of the Proposed Regulations indicates that the term "live entertainment" does not include "recorded music if dancing is prohibited, there is no disc jockey, and there is no other form of entertainment offered." In reviewing the legislative history of the various iterations of

the Live Entertainment Tax, it is clear that the Legislature made a deliberative decision to exclude from LET taxation those activities that were participatory in nature, such as golf, swimming, and other forms of personal recreation while taxing those events that are nonparticipatory such as viewing a casino show, a concert or a car race. The discussion on page 3 of the Handout recognizes this distinction. Those statutory references to "dancing" that were included in the CET were repealed as of September 11, 2003, and I can find no further statutory provision making "dancing" a triggering event to cause a venue to become subject to the Live Entertainment Tax. Additionally, recorded music, whether played by an employee or a disc jockey, is not live entertainment and should not create a taxable event unless the disc jockey, because of his or her notoriety, is the focal point of the entertainment that motivates patrons to attend the event. This provision would best be rewritten to eliminate from taxation a participatory entertainment activity such as "dancing" and provide that a disc jockey, playing recorded music, becomes a triggering event for taxation purposes only if the disc jockey's notoriety and fame create an attraction that draws patrons.

*but FSL
TSC*

Subsections (a) (b) and (c) of Section 7 of the Proposed Regulations are identical to the statutory definitions of "maximum seating capacity" which trigger either a 10% or 5% tax rate, but Subsection (c) also extends the LET to outdoor locations where there is no established seating capacity and where "the maximum seating capacity of the facility shall be rebutably presumed to be at least 300 and less than 7500." This provision extends for taxation purposes, the LET to a number of outdoor areas, such as beaches, swimming pools, parking lots, garage structures, and other venues where there is not an occupancy established through a permit process or a fixed seating capacity. SB 8 creates a LET that is based on very specific occupancy and seating criteria as a determinant of both tax applicability and rate. In the absence of an express determination by the Legislature that these outdoor venues should be subject to the LET, this matter would be best dropped from the proposed regulation in order to avoid possible litigation that the Regulation imposes a tax where the Statute does not. The matter can certainly be presented to the 2005 Legislature for their consideration and guidance as to the application of the LET to outdoor venues without clearly established occupancy criteria.

Chairmen Bernhard and Neilander
Casino Entertainment Tax/Live Entertainment Tax
Page 4 of 4

I appreciate your consideration of these matters and hope that they can be clarified as rapidly as possible so that casino licensees do not incur tax liabilities because of misinterpretation of SB 8's CET/LET provisions.

Sincerely,



William A. Bible
President

WAB:kd

c: Taxation Committee
Lynda Hartzell

[REDACTED]
[REDACTED]
LAS VEGAS, NEVADA

• FAX [REDACTED]

DATE: September 29, 2003

MEMO TO: Barbara Campbell, Chairwoman, Nevada Tax Commission
Peter Bernhard, Chairman, Nevada Gaming Commission
Dennis Neilander, Chairman, Nevada Gaming Control Board

RE: Live Entertainment Tax

We have owned and operated a night club in Las Vegas known as [REDACTED]. We have reviewed the Live Entertainment Tax (LET) portions of SB8 and materials related to previous workshops. We are concerned that, if interpreted broadly it would result, in effect, in a 10% gross receipts tax. If that is the case we are concerned that this business will no longer be economically viable. We intend to participate in the workshops on October 2, but offer our concerns and thoughts in advance for your consideration.

Background

[REDACTED] is a two-story, mixed-use facility, comprising a sports bar with 22 gaming machines, a restaurant area, and party room on the upper floor, and a night club on the first floor. The entire facility (both floors) has an occupancy limit of [REDACTED] people, though it has less than [REDACTED] actual seats.

A disc jockey plays recorded music for those customers who wish to dance. Our bartenders and beverage servers are encouraged to interact with patrons to maintain a high energy level, and will occasionally dance or lip-synch a song. These activities are minor and, while important, are incidental to their primary function as servers.

An admission charge, or drink minimum, is imposed for non-local males. [REDACTED] is a very casual, late-night venue, and attracts numerous club-hoppers who have already visited one or more other night clubs before [REDACTED]. Our business generally peaks between 1:00- 3:00 A.M. An admission charge is essential for profitability, since many of these customers will wind down their evenings without purchasing additional food or beverage. The admission charge (generally about \$10), while essential to our business, is only paid by about one-quarter of the visitors. In addition, customers who wish to visit the gaming area are never charged admission, even during peak night club hours.

The Live Entertainment Tax

If applied to our business, the LET would essentially comprise a 10% gross receipts tax. In all probability, that would put us out of business. We believe that there are several other clubs similarly situated who are unaware of the consequences of this law.

Our Comments and Suggestions

1. In the vast majority of cases, disc jockeys do not constitute live entertainment of the type contemplated by SB8. People come to a club to see other people and listen to music, not to see or hear a disc jockey.

We propose the following concept and language for a regulation:

A disc jockey who plays recorded music for dancing or background music does not constitute live entertainment.

2. Cocktail servers and bartenders at [REDACTED] are hired for beverage and food service. They are not entertainers, and patrons of [REDACTED] do not come there to be entertained by service personnel. Nonetheless, we encourage them to interact with customers as time permits. This may involve occasional informal dancing. This type of activity surely was not contemplated to subject us to a 10% gross receipts tax. We propose:

Service personnel whose job responsibility is to serve food, refreshments or merchandise shall not be considered live entertainment if they engage in spontaneous and infrequent non-featured activities such as singing or dancing while performing their service duties.

3. We believe that there are a number of businesses, like ours, that charge admission to only a portion of customers. This occurs even on nights when a live person may be performing. To enact a tax on the food, beverage and merchandise purchased by all customers, when a minor portion have paid admission, would be an inequitable and unintended result. We propose:

If admission is charged to only a portion of persons entering a facility, the tax shall be imposed on all admission charges, and shall be imposed on sales of food, refreshments and merchandise, during the times admission is charged, in the proportion of persons charged admission to total persons admitted. (256)

4. The 22 slot machines at [REDACTED] are operated by [REDACTED], under a space lease. To the extent that activities at [REDACTED] may be subject to the LET, we doubt that [REDACTED] should have the burden of collecting and paying the tax, since they are unfamiliar with our business.

We appreciate the difficulties which the Commission and Board face in interpreting the LET law. Until the Legislature has an opportunity to clarify or modify it, we urge that it be construed in such a manner as to not place overwhelming burdens on businesses such as ours. We are happy to bear a fair share of the tax burden. However, the night club is our core business, not an attraction to bring customers in for gaming purposes. Our products and services are very price-sensitive, and we do not believe that we can pass a 10% increase on to the customers without a significant loss of business. If we are subject to a 10% gross receipts tax, we will probably not be able to survive until the next legislative session. We are sure that this was not an intended consequence of this legislation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DATE: September 30, 2003

To:	Fax Number:
Dino CiCianno	688-1303
Nevada Dept. of Taxation	
From:	Phone:
[REDACTED]	[REDACTED]
Pages (including this one):	Client/Matter:
3	V18773.007

Please see attached corres of even date.

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September 30, 2003

Dino DiCianno
Deputy Executive Director
Department of Taxation
1550 E. College Parkway
Suite 115
Carson City, NV 89706-7937

Re: *Proposed Live Entertainment Tax Regulations*

Dear Dino:

On behalf of the [REDACTED], I offer the following comments and questions concerning the proposed tax regulations for implementation of the live entertainment tax:

1. **Ambient Background Music:** The proposed definition does not create any known obstacle for the [REDACTED]. The background music used at the [REDACTED] (the [REDACTED]) is transmitted throughout its public spaces (e.g., concourses and hallways) at a low volume and for the passive enjoyment of its patrons.

2. **Definition of "Live Entertainment":** A trade show receives an exemption pursuant to Section 78(5)(g) of Senate Bill 8. However, "trade show" has not been specifically defined in the bill nor in the regulations. Often times an exempted trade show may contain an element of live entertainment, such as a cooking or product demonstration. Therefore, Section (A)(3)(h) of the proposed regulations may be inconsistent with the purpose of the exemption. Additionally, a trade show or convention may contain a kickoff party or closing event which contains live entertainment. How would such an event be treated?

3. **Admission Charges—"Facility":** The word "facility" used under the list of exempted activities under Section C of the proposed regulations should be clarified. Often times it is not the

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3773 HOWARD HUGHES PARKWAY, THIRD FLOOR SOUTH LAS VEGAS, NEVADA 89159 TEL (702) 943-2300 FAX (702) 987-7706

*LICENSED IN GEORGIA AND DISTRICT OF COLUMBIA ONLY

*LICENSED IN CALIFORNIA ONLY
*PETE CHAMBERLAIN IS AN EXECUTIVE EMPLOYEE NOT LICENSED TO PRACTICE LAW

Dino DiCianno
September 30, 2003
Page 2

public facility hosting those types of activities. Rather, it is a third party that has rented space in the facility. As long as subsection 2 is satisfied, the exemption should apply to no matter which party is hosting the activity.

4. Capacity: For purposes of Section D of the proposed regulations, it is again necessary to clarify "facility" as it relates to seating capacity. Often times a convention center may host several different events in different portions of its building.

5. Tax Liability—"Taxpayer": Under Section 75(3) of Senate Bill 8, the "taxpayer" for purposes of live entertainment provided at a public facility is the "person who collects the taxable receipts." Generally speaking, the [REDACTED] acts as landlord only and not as the box office. The space is rented to a promoter or organization which acts as the box office and collects the admission charges. Aside from contractual protection, is there any regulatory option to ensure that the public facility is protected when the third party in charge of the box office fails to pay the tax?

Thank you for allowing the [REDACTED] the opportunity to provide written comment on the proposed regulations. The foregoing are preliminary only, and the [REDACTED] respectfully reserves the right to provide additional comments and suggestions as this process moves forward and additional draft regulations are considered.

Sincerely,

[REDACTED]

BJS/kch

c:

[REDACTED]
Gregory L. Zunino, Esq.
[REDACTED]

*

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
 22-45 from the date on which the amount would have been due without
 23-1 the extension until the date of payment, unless otherwise provided
 23-2 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.

September 30, 2003


Ms. Lynda L. Hartzell, CPA
Chief Deputy Auditor
Audit Division
Nevada State Gaming Control Board
555 E. Washington Avenue
Suite 2600
Las Vegas, Nevada 89101

Re: 9/10/03 Draft of Proposed Amendments to Regulation 13

Dear Lynda:

I thank Chief Gregg Gale and you for the invitation to offer amendments to your 9/10/03 Draft of "Proposed Amendments to Regulation 13" ("9/10/03 Draft"). I write for that purpose.

This amendment would apply to those casino lounges and bars where the attraction consists of the products sold and the ambience provided. A part of the ambience of such facilities is the presentation of recorded music that is facilitated by a person. Such persons act merely as facilitators of the recorded music, determining which music is most appropriate to maintain the desired ambience for the facility throughout the evening.

In performing their duties, these music facilitators do not function as entertainers or "disc jockeys." Although it has become common to apply the term of "disc jockey" to anyone who provides recorded music, that application is inappropriate. According to the definitions of "disc jockey" I have read, that term applies only to persons who provide talk in conjunction with the recorded music. The term originally applied to radio personalities who provided comment to accompany records played over the air. Since then, use of the term has been expanded to include

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persons who provide recorded music in private and commercial settings in conjunction with talk and sometimes other entertaining activity. Some of these "disc jockeys" have achieved fame that attracts patrons to commercial facilities in which they appear.

Recorded music is not within the definition of "live entertainment" proposed for Regulation 13. The fact that someone merely facilitates the presentation of the recorded music by pushing buttons or turning knobs on electronic equipment does not make that person a performer.

Therefore, I propose that the following language replace the present language of Section 13.010(5)(b) of the 9/10/03 draft:

5. "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. The term does not include:

a. ...

b. The presentation of recorded music by a person, unless the manner of the presentation constitutes a performance or the identity of the person is the primary attraction of the facility.

The question of whether dancing by patrons is within the scope of "live entertainment," as raised in the letter of September 8, 2003, from William A. Bible, President of the Nevada Resort Association, is not impacted by adoption of this amendment.

In order for the presentation of recorded music to constitute "live entertainment," I submit there must be something related to the presenter that justifies such a determination. It is immaterial to such a determination whether dancing or any other activity is, or is not, inspired by the presentation.

As for dancing by patrons, I submit that the act of dancing itself must be found within the definition of "live entertainment" for it to be taxed, regardless of what inspires the dancing. However, the amendment proposed herein is independent of the question of taxation of dancing.

Please let me know if you have any questions or need anything further for the proper consideration of this proposal.

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Good luck to you, Chief Gale, Dep. A.G. Toni Cowan and the other members of the Regulation 13 team. I look forward to joining all of you and the representatives of the Nevada Tax Commission and the Department of Taxation on September 19.

Best wishes,

[REDACTED]

cc. Chairman Dennis Neilander
Chief Gregory Gale
Chief Steve Hixon
Toni Cowan, Esq.

Topics of Discussion Proposed by Board

Tuesday, September 30, 2003

Admission charge collected from some, but not all, patrons – We have been asked by some licensees if the tax would apply even if some patrons (for example, ladies or locals) did not have to pay. While they need only pay taxes on the actual admission charges collected, they cannot escape taxation on food, refreshments and merchandise just because some people will not have to pay an admission charge. This was clarified for our licensees in Regulation 13.010(4)(a).

Ambient music – We refer to ambient background music in Regulation 13.010(5)(e). We believe that the main distinguishing feature is the fact that it is not the primary attraction to the facility. Although we did use wording about volume and watching as well as listening in the Board's industry letter, we did not incorporate this guidance into the regulation.

Charitable Events – We have concluded after listening to Senator Townsend's testimony on September 19, 2003 that an approach similar to what you have taken should be incorporated into our regulation. Thus, the current wording of Regulation 13.030 reflects the position that the event as a whole will not be subject to the tax if all admission charges become the property of the charitable/nonprofit organization, even if a for-profit business sells the drinks and retains the profits. We propose allowing the taxpayer to recover its costs of putting on the event. Should your draft be interpreted to be restrictive as to the extent the taxpayer can recoup its costs? We are not entirely clear about what is meant by Section B(2).

Craft shows and similar events including forms of live entertainment – While the Board does not propose to call an event such as you have named in Section C(1)(b) live entertainment in and of itself, we are concerned that taxpayers could easily include some elements of the events you discuss in this section into a facility with entertainment, such as a live band, and escape taxation. Does C(2) address this issue? Most live bands would not be ambient background music [C(2)(d)]. If so, we believe our two regulations would be consistent.

Dancing - As we all know, Senator Townsend has twice stated that it was not his intent to stop taxing activities that were subject to the tax at the time SB 8 was adopted. Dancing constitutes a major activity subject to the old tax. Although we do not have numbers to reflect taxes related to dancing versus other forms of entertainment, we know that the loss of tax revenue would be substantial. We have addressed the taxability of facilities that have recorded music by adding additional words to Regulation 13.010(5).

DJs without dancing – Based upon comments from Bob Faiss, we propose to make DJs taxable under any one of the following 3 conditions:

1. The licensee does not prohibit dancing (see above);

-1-

For use by the Department of Taxation, Nevada Tax Commission, Gaming Control Board and Nevada Gaming Commission only. Not for distribution.

2. Dancing is not allowed but the DJ is a "name performer" who would be a draw to the facility; or
3. Dancing is not allowed but the manner in which the DJ does his job constitutes a performance (i.e., he interacts with the patrons, stirs up the crowd, tells jokes, etc.)

These policies are reflected in Regulation 13.050(5)(b).

Increased drink prices treated as admission charge – In Regulation 13.010(4)(a) and 13.025(3), we incorporate the concept that if a licensee increases their drink prices when entertainment is offered, they are in effect collecting consideration for the right to access the facility during entertainment. If we do not do this, many establishments may avoid taxation by increasing drink prices to compensate for admission charges they stopped charging in order to avoid paying the tax. We did not include this concept in the definition of "admission charges" because of the problems it would create in defining what they had to pay taxes on.

Shopping Malls – This remains an unresolved issue. We have incorporated into the latest draft of Regulation 13 the concept that if the licensee, or its affiliate, owns the shopping mall (even if it does it leases it to an unaffiliated company), the licensee should be the taxpayer and the rules applicable to licensed gaming establishments should apply. The major property excluded by this concept is the Aladdin, where the ownership of the mall property is an entirely unrelated company. In no way would the Aladdin be in a position to control what goes on in the mall. Conversely, Caesars Palace owns the land and buildings for the Forum Shops mall adjacent to their gaming property. They lease it to the Simon group. While they have no involvement in the management of the shops, they do participate in certain profits. We are open to discussing how something like the Caesars shopping mall situation should be taxed, but our current approach is that the mall should be treated as part of the gaming establishment. See Regulation 13.050(7).

Furthermore, we still need to find a way to ensure that taxpayers would not successfully evade taxation of entertainment events by setting up booths and calling the facility a shopping mall. In part, we address this issue by including in Regulation 13.010 (10) a definition of "shopping mall."

Proposed Amendments to

REGULATION 13

[CASINO] LIVE ENTERTAINMENT TAX

Purpose of Amendments: To bring Regulation 13 into conformity with the live entertainment provisions of Senate Bill 8, which was adopted during the 20th special session of the Nevada Legislature and signed into law on July 22, 2003 and is effective on January 1, 2004 at which time the casino entertainment tax laws are repealed.

Draft: 10/02/03 For Discussion Only

- 13.010 Definitions.
- 13.020 Applicability.
- 13.025 Exemptions.**
- 13.030 Charitable or nonprofit benefits.
- 13.040 Computation of tax.
- 13.050 Payment of tax.
- 13.055 Merchandise.
- 13.060 Records.
- 13.070 Penalty for willful evasion.
- 13.080 Violation of statute or regulation.
- 13.090 Claims for refund.**
- 13.100 Internal control.**

13.010 Definitions. As used in this regulation unless the context otherwise requires:

1. **"Admission charge" means the total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live entertainment is provided. This term includes, but is not limited to, any amount identified as an admission price, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.**
2. **"Boxing contest or exhibition" defined. For purposes of this regulation, the term "boxing contest or exhibition" shall have the meaning accorded to "unarmed combat" in NRS 467.0107.**
3. **"Chairman" means the chairman of the state gaming control board or his designee.**
4. **"Facility" defined.**
 - (a) **If the entertainment is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination within those**

respective limits, "facility" means any area or premises where live entertainment is provided and an admission charge or other consideration is collected from one or more persons for the right or privilege of entering that area or those premises.

An increase in the price of food, refreshments or merchandise during live entertainment shall be deemed to be other consideration paid for the right or privilege of entering the area or premises where live entertainment is provided.

- (b) If the entertainment is provided at a licensed gaming establishment that is licensed for at least 51 slot machines or at least six games, "facility" means any area or premises where live entertainment is provided.

5. "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. The term includes, without limitation, dancing, except as described below, to recorded music. The term does not include:

- (a) Educational, inspirational, motivational, political or informative presentations, speeches or seminars;

- (b) The presentation of recorded music by an individual, unless the manner of the presentation constitutes a performance, the identity of the individual presenting the recorded music is an attraction, or dancing is permitted.

- (c) Recorded music selected by patrons who operate a device, such as a jukebox, designed to play patron-specified music, whether or not dancing is permitted.

- (d) Entertainment offered in or near the gaming areas which is designed to provide ambience or to attract people to the gaming areas unless:

- i. Such entertainment takes place inside a bar, lounge or restaurant and is intended to benefit patrons who are seated therein; or

- ii. If the entertainment consists of live music, a dance floor or seating other than at slot machines or games is provided in the immediate vicinity of the area in which the live music is performed.

- (e) Instrumental ambient background music which is incidental to the primary attraction to the facility, or to the primary basis for the admission charge to the facility.

- (f) Brief songs sung by service personnel in restaurants or other facilities in honor of a special occasion being celebrated by patrons (e.g., birthday);

- (g) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.
- (h) Motion pictures;
- (i) Museum exhibits;
- (j) Animal exhibits;
- (k) Motion simulator rides if actors are not also involved, roller coasters or similar attractions;
- (l) Entertainment provided solely by mechanical, robotic or electronic devices; or
- (m) Any boxing contest or exhibition governed by the provisions of chapter 467 of NRS.

[1] 6. "[Casino] Live entertainment status" is that condition which renders the selling of food, refreshments or merchandise subject to the tax. [and commences either:

- (a) At the time taxable entertainment starts; or
- (b) At the time when any charge, such as admission, entertainment fee, minimum, cover, or similar charge attaches, whichever is earlier.]

7. "Maximum seating capacity" as used in this regulation means, in the following order of priority:

- (a) The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;
- (b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or
- (c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

For purposes of this regulation, if live entertainment is offered in an outdoor location and none of the criteria of subsections 7(a) through (c) can be satisfied, the maximum seating capacity of the facility shall be rebuttably presumed to be at least 300 and less than 7,500. To rebut this presumption, the licensee must establish, to the reasonable satisfaction of the Board, 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 Board shall consider all evidence provided by the licensee, 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 requirements) in relation to the nature of the live

entertainment provided, and any other evidence tending to establish the actual seating capacity of the facility.

[2] 8. "Package" is any aggregation of rights to rooms, food, refreshments, merchandise, entertainment, services or other items [rights] advertised to the public as a single unit and sold for a single price.

9. "Recorded music" defined. Recorded music includes, but is not limited to, music on cassette tapes, compact discs, phonograph albums, music videos and music on live television.

10. "Shopping Mall" means a shopping area featuring a variety of shops surrounding a concourse reserved for pedestrian traffic. For purposes of this regulation, the common area of the shopping mall shall mean the concourse reserved for pedestrian traffic.

11. "Trade show" means an event of limited duration, not open to members of the general public, during which the merchandise and services of a particular trade or industry are exhibited and matters of interest to members of the trade or industry are discussed. For purposes of this regulation, a trade show may include educational and motivational presentations that occur during the event.

(Adopted: 12/65. Amended: 10/1/95; 12/xx/03.)

13.020 Applicability.

1. Except as otherwise provided in this regulation, there is imposed an excise tax on admission to any facility in this state where live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

- (a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility during live entertainment status; or
- (b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility only.

[A casino entertainment tax in the amount of 10 percent of the taxable sale is levied upon each licensed gaming establishment in Nevada where music and dancing privileges or any other entertainment are afforded patrons in a cabaret, nightclub, cocktail lounge, or casino showroom in connection with selling of food, refreshment or merchandise except as provided in NRS chapter 463.]

[2. The tax is applicable even though the charge made for food, refreshments or merchandise is not increased by reason of the entertainment.

3. Where music, whether by an orchestra, a mechanical device, or otherwise, and a space in which the patrons may dance is furnished in the cabaret, nightclub, cocktail lounge, or casino showroom, or even if no

space is provided, dancing is permitted, the payments made for food, refreshment, and merchandise are subject to the tax.

4. Where a master of ceremonies, musician or other person is employed who joins in or conducts community singing, or where song sheets are provided, or where words to songs are flashed on a wall or screen to be sung by the patrons, the tax shall apply.]

2. Live entertainment status commences at the earlier of:

(a) The time taxable entertainment starts; or

(b) The time when any patrons are allowed to enter a facility by virtue of having paid an admission charge.

3. Live entertainment status ceases at the later of:

(a) The conclusion of the last performance; or

(b) The time when a facility that was restricted by admission is vacated by admitted patrons, or is opened to the general public.

4. [Charges collected prior to commencement of a performance are not taxable for that performance if the patron does not remain for any part of that performance. However, charges such as minimum or cover charges paid for the privilege of a performance are subject to the tax whether the customer remains or not.] Admission charges are taxable whether or not the patron remains for the live entertainment.

5. In facilities operating under a continual time schedule with no admission charge, charges for food, refreshments and merchandise ordered while the facility is in live entertainment status are taxable.

6. All sales made to patrons in a [cabaret, nightclub, cocktail lounge, or casino showroom] facility subject to the live [casino] entertainment tax during the intervals between performances [floor shows] shall be subject to the tax unless the licensed gaming establishment can account for [show] the volume of sales to persons who entered during an interval between performances [shows] and left before the commencement of the next performance [show]. [Sales made after the conclusion of the last show are not subject to the tax.]

7. There shall be no distinction made in a restaurant of a licensed gaming establishment as to a "dining period" and "entertainment period" when such restaurant is advertised as an operation of a "dinner show" and is not open on a continual time schedule.

[8. Casino entertainment status is attained either at the time the entertainment starts or at the time any charge for food, refreshment, or merchandise, or other charge, such as admission, cover, minimum, or other similar charge, is imposed upon the patrons which affords them the right to be present during the entertainment. Therefore, actual payment of the charges may be made before or after the time the cabaret, nightclub, cocktail lounge, or casino showroom is in casino entertainment status and still be subject to the tax.]

[9] 8. All sales of tickets which afford a patron the right to be present during entertainment [in a cabaret, nightclub, cocktail lounge, or casino showroom] shall be subject to the tax, unless the licensee can establish that a full refund has been made to the patron.

[10. The casino entertainment tax applies to all amounts paid for admission, food and refreshments at a bar located adjacent to a cabaret, nightclub, cocktail lounge, or casino showroom only when patrons of the bar can clearly see and hear the entertainment presented in the cabaret, nightclub, cocktail lounge, or casino showroom.]

[11] 9. The live [casino] entertainment tax shall also apply to all amounts paid for food or refreshments sold from a place located adjacent to a live entertainment facility [a cabaret, nightclub, cocktail lounge, or casino showroom whose] if its primary purpose is to provide food or refreshments to patrons viewing entertainment in that facility [those facilities].

10. If an admission charge is collected, the live entertainment tax applies to sales of food, refreshments and merchandise sold in any part of the facility in which admission is granted based upon payment of the admission charge, regardless of whether patrons may clearly hear or see the entertainment while ordering or purchasing food, refreshments or merchandise if the admission charge entitles the patron to access areas where the live entertainment is provided.

11. If no admission charge is collected, all sales of food, refreshments and merchandise made anywhere in the facility shall be subject to the tax, unless the licensee is able to identify through its recordkeeping system the sales made to patrons who could not see and hear the entertainment.

(Adopted: 12/85. Amended: 10/1/95; 12/XX/03.)

13.025 Exemptions. The live entertainment tax does not apply to:

1. Live entertainment that this state is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.
2. Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).
3. Live entertainment that is provided at 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, unless the facility in which the live entertainment is provided has a maximum seating capacity of at least 300 and an admission charge is collected or the price of food, refreshment or merchandise is increased during periods of live entertainment.
4. Merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.
5. Live entertainment that is provided at a trade show.

6. If the purpose of the event is not primarily for entertainment, live entertainment at:

- (a) Private meetings or dinners attended by members of a particular organization.
- (b) Casual assemblages.

7. Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.

8. Fees paid by patrons to actively participate in sporting events.

NOTE: #9, regarding services was deleted.

(Adopted: 12/xx/03)

13.030 Charitable or nonprofit benefit. An event shall be considered a charitable or nonprofit benefit that is not subject to the live [casino] entertainment tax if (a) the admission charge proceeds for (or) the event are for the benefit of an organization described in paragraph (b) of subsection 5 of section 513 of Senate Bill 3 with 2015 Special Session (they charitable organization). If the event is a charitable or nonprofit benefit that is exempt from the live entertainment tax 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 the nonprofit organization. Amounts to offset costs of the event are not considered to be a part of the net proceeds. The status as a charitable or nonprofit benefit shall be retained even if the licensee is reimbursed or retains, by agreement, an amount to cover direct supportable costs associated with the event. If the charitable or nonprofit organization is not clearly known, the licensee shall retain documentation of its efforts to ensure that the organization is a qualifying organization.

(Adopted: 12/65. Amended: 10/1/95; 12/xx/03.)

13.040 Computation of tax.

1. The tax will be applied to 100 percent of the taxable sale only, without regard to other taxes, either federal, state, or local, imposed upon said sale.
2. The tax shall be paid on all cash and credit sales of food, refreshments and merchandise while the facility [cabaret, nightclub, cocktail lounge, or casino showroom] is in live [casino] entertainment status.
3. Subject to the provisions of section 13.050(4 [5]), any ticket for admission to a facility [cabaret, nightclub, cocktail lounge, or casino showroom], or redeemable for food or refreshments subject to the live [casino] entertainment tax, which is sold as a component of a package, shall be taxed as follows:
 - (a) The average retail value of the ticket will be prorated against the average retail value of all components of the package, and the resulting prorated fraction will then be multiplied times the actual

- price paid for the package, with the live [casino] entertainment tax being paid on the product thereof;
- (b) Any value advertised to the public as being the retail value of a package component shall be rebuttably presumed to be the retail value of that component;
 - (c) If no average retail value can be established for a component of a package, its cost to the licensee will be used for the purpose of determining prorated values; and

(d) Notwithstanding any other provision of this subsection, [no] live entertainment tax will be payable on any package value that is assigned to any item, tangible or intangible, of the average retail value of the package components less than \$5.00. Any tangible item, for example, of the average retail value of the package components with an average retail value of less than \$5.00 shall be taxed at full retail value and shall not be assigned a package value.

- (e) Nothing in this subsection precludes a licensee from paying live [casino] entertainment tax on the full retail value of the taxable package components, at the licensee's option.

4. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the licensee are not subject to the live entertainment tax. Only actual, and not estimated, credit and debit card fees may be excluded.

5. If a ticket for admission is sold by a person or entity that is not an affiliate of the person or entity licensed to conduct gaming, the taxable sale shall be calculated based upon the portion of the proceeds remitted to the person or entity licensed to conduct gaming. If the ticket for admission is sold by an affiliate of the licensee, the taxable sale shall be computed on the amount of the sale.

(Adopted: 12/65. Amended: 10/1/95; 12/xx/03.)

13.050 Payment of tax.

1. The person or entity who is the licensee of the licensed gaming establishment where **live [music and dancing privileges or any other] entertainment is [are]** provided is responsible for the payment of the tax.
2. The tax imposed shall be paid by the gaming licensee even if some other person or entity is affording entertainment subject to the tax on the premises of the establishment, and it shall be the responsibility of the gaming licensee in the licensed gaming establishment to collect the tax from the person or entity affording the entertainment, and to remit the tax based upon the records of such operator.
3. In the event the licensee does not operate the facilities located in a licensed gaming establishment which provides **live [music and dancing privileges or**

any other] entertainment in connection with the selling of food, refreshments, or merchandise that are subject to the tax, but such facilities are operated in the establishment by some other person or entity, the following shall apply:

- (a) The licensee must keep all records required by chapter 463 of NRS and Regulation 6 of the Nevada gaming commission and state gaming control board.
- (b) The licensee shall either obtain and keep the records required by Regulation 13.060 herein or shall require the person or entity that does operate the facilities to keep such records.

[4. If the tax is passed on to patrons, it must be clearly indicated in some manner acceptable to the commission.]

[5] 4. Any ticket for admission to a facility subject to the live entertainment tax [cabaret, nightclub, cocktail lounge, or casino showroom] must state whether the live [casino] entertainment tax is included in the price of the ticket in substantially this form: "Includes Entertainment Tax," "Inc. Ent. Tax," "Includes Live [Casino] Ent. Tax," or "[C]LET included." If the ticket does not include such a statement, the licensed gaming establishment shall pay the live [casino] entertainment tax on the face amount of the ticket.

5. If the person or entity licensed to conduct gaming offers live entertainment in a publicly owned facility or on publicly owned land, that person or entity shall be responsible for payment of the tax and shall include these sales in the report required by subsection 8.

6. If two or more persons or entities licensed to conduct gaming jointly offer live entertainment in a facility that is not on the premises of a licensed gaming establishment, a determination as to the person or entity responsible for payment of the tax shall be made and reported to the Chairman for his approval. The person or entity that is approved to be the taxpayer shall include the taxable sales in the report required by subsection 8.

7. If live entertainment is offered in a facility within a shopping mall on the premises of a licensed gaming establishment and the shopping mall is owned by the person or entity licensed to conduct gaming or a person or an affiliate of the person or entity licensed to conduct gaming, the person or entity licensed to conduct gaming shall be responsible for payment of the tax and shall include all taxable sales in the report required by subsection 8.

8. Each nonrestricted (this word to be omitted if restricted licensees are to file monthly) licensee shall file with the Board, on or before the 24th day of each month, a report showing the amount of all live entertainment taxable receipts for the preceding month. The report must be on a form prescribed by the Board and be accompanied by the amount of the tax that is due for the period covered by the report.

8. Each restricted licensee shall file with the Board, on or before the 10th day of each applicable month, a report showing the amount of all taxable sales for the preceding calendar quarter. The report must be on a form prescribed by the Board and be accompanied by the amount of the tax that

is due for the period covered by the report. (this subsection will be omitted if restricted licensees are to file monthly.)
(Adopted: 12/65. Amended: 3/76; 10/1/95; 12/xx/03.)

The section below was modified since Gregg's review.

13.055 Merchandise. The tax does not apply to merchandise sold outside the facility in which entertainment is presented, nor to the purchase of the merchandise unless the purchase is made for the purpose of the entertainment. For purposes of this section, merchandise includes items to be sold inside the facility if the purchase of a ticket or payment of an admission cover, minimum or other similar charge is required for a patron to gain access to the merchandise being sold inside the facility, such as night club, cocktail lounge, or casino show room, subject to the casino entertainment tax, or if the merchandise is in the area where the live entertainment is being offered.

(Adopted: 10/1/95. Amended: 12/xx/03.)

13.060 Records.

1. Accurate and detailed records of sales subject to the live entertainment tax [the amount of the tax imposed by NRS 463] shall be kept and maintained for a period of 5 years from the date of sale, or until any litigation or prosecution pursuant to this regulation is finally determined, whichever is longer [or date of return].

2. All sales subject to the tax must be recorded in a manner that reflects the amount of taxable sale, unless the licensee provides adequate alternative accounting procedures approved by the chairman.

3. If food or refreshments are ordered prior to the commencement of live entertainment status but the sale is finalized after the commencement of live entertainment status, records showing the dollar value of food or refreshments ordered prior to entertainment status must be maintained for such sales to not be subject to the tax.

[3] 4. The records shall be kept and made available at any reasonable time for audit by the board [commission].

(Adopted: 12/65. Amended: 3/76; 10/1/95; 12/xx/03)

13.070 Penalty for willful evasion. Any licensee who willfully fails to report, pay or truthfully account for the tax shall be liable to a penalty in the amount of the tax evaded or not paid, which will be assessed and collected in the same manner as other charges, taxes, licenses and penalties under NRS 463.
(Adopted: 12/65.)

13.080 Violation of statute or regulation. Violation of any provision of this regulation or the live entertainment statutes shall constitute an unsuitable method of operation subjecting the license holder to suspension or revocation of his gaming license.

(Adopted: 12/65.)

13.090 Claims for refund. Any claim for refund of overpaid live entertainment taxes must be filed in accordance with NRS 463.387, except that a claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made. If the Board determines that any overpayment has been made intentionally or by reason of carelessness, the Board shall not allow any interest on the overpayment.

(Adopted: 12/xx/03)

13.100 Internal Control.

1. Each Group I licensee who offers live entertainment shall include in its system of internal control submitted pursuant to Regulation 6.090 a description of the procedures adopted to comply with this regulation. Each Group I licensee shall comply with both its system of internal control and the minimum internal control standards for entertainment. Group II licensees and restricted licensees shall comply with the internal control procedures for entertainment adopted pursuant to Regulation 6.100. A licensee may not implement internal control procedures that deviate from the published internal control standards or procedures unless the deviations are approved in writing by the chairman.
2. Using guidelines, checklists and other criteria established by the chairman, each Group I licensee shall direct its independent accountant to perform observations, document examinations and inquiries of employees to determine compliance with the live entertainment statutes, the minimum internal control standards for entertainment and this regulation. The independent accountant shall report his findings as part of the report required by Regulation 6.090(9).
3. Using guidelines, checklists, and other criteria established by the chairman, the Group I licensee's internal auditor shall perform observations, document examinations, and inquiries of employees to determine compliance with live entertainment statutes, minimum internal control standards for entertainment, and this regulation. Two copies of the internal auditor's report summarizing all instances of noncompliance and management responses must be submitted to the board within 120 days after the end of the first six months of the licensee's business year and must include all work required to be performed during that six-month period along with any additional procedures that were performed. Noncompliance noted in the second half of the business year must be submitted to the board within 120 days after the end of the business year unless the

**noncompliance is to be disclosed in the Independent accountant's
report submitted pursuant to Regulation 6.090(9).**

(Adopted: 12/xx/03)

(Effective: 01/01/04)