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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 EE

# EXHIBIT EE



KENNY C. GUINN  
Governor

BARBARA SMITH CAMPBELL  
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK  
Executive Director

# STATE OF NEVADA DEPARTMENT OF TAXATION

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Fax: (775) 688-1303

## AMENDED PUBLIC NOTICE

**TO:** To All Interested Parties  
**FROM:** Dino DiCianno, Deputy Executive Director *[Signature]*  
**DATE:** October 22, 2003  
**RE:** Workshop on Proposed Permanent Tax Regulations

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

### Carson City --

Thursday, October 30, 2003 Room 2134

Nevada Legislative Building  
401 S. Carson Street  
Carson City, Nevada

### Las Vegas - Via Video Conference --

Thursday, October 30, 2003 Room 4401

Grant Sawyer State Office Building  
555 E. Washington Avenue  
Las Vegas, Nevada

The October 30, 2003 meeting will start at 10:00 a.m.

## AGENDA

10:00 a.m.

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

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

On or before 3:00 pm Adjourn

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

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

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

**DRAFT REGULATIONS FOR DISCUSSION  
ON OCTOBER 30**

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

**AUTHORITY:** NRS 360.090, 233B.033, 233B.0613 and Senate Bill 8 of the 20<sup>th</sup> Special Session

*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 8, inclusive, of this regulation.*

*Section 2. Definitions. As used in sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special Session and this chapter, unless the context otherwise requires:*

- 1. "Admission charge" shall be construed 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. "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.*
- 3. "Boxing contest or exhibition" shall have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."*
- 4. "Department" means the Nevada Department of Taxation.*
- 5. "Executive director" means the executive director of the department.*
- 6. "Live entertainment" shall be construed to include, without limitation, the following:*
  - (a) Music or vocals provided by one or more professional or amateur musicians or vocalists;*
  - (b) Dancing performed by one or more professional or amateur dancers or performers;*
  - (c) Acting or drama provided by one or more professional or amateur actors or players;*
  - (d) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;*
  - (e) Animal stunts or performances provided or incited by one or more animal handlers or trainers.*



(f) Athletic contests, events or exhibitions provided by one or more professional or amateur athletes;

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

(h) Cooking or product demonstrations 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.

7. "Live entertainment" shall not be construed to include:

(a) Ambient background music.

(b) Television, radio, closed circuit or Internet broadcasts of live entertainment.

(c) Entertainment provided by a patron or patrons.

(d) The presentation of recorded music, if the person presenting the recorded music does not engage in a performance that constitutes live entertainment. A person who presents recorded music does not engage in a performance that constitutes live entertainment if the person limits his or her interaction with patrons to:

(1) Introducing or generally describing the recorded music;

(2) Periodically making comedic remarks or engaging patrons in banter or conversation, and;

(3) Directing or explaining participatory activities between patrons.

6. "Live entertainment status" means that condition which renders the admission to a facility, or the selling of food, refreshments or merchandise subject to the tax.

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

8. "Patron" means a person who gains access to a facility where live entertainment is provided and who neither solicits nor receives from any source, with the taxpayer's knowledge or consent, any payment, reimbursement, remuneration or other form of consideration for providing live entertainment at the facility.

9. "Taxpayer" means any person described in section 75 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

9. "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 3. Nonprofit Organizations.**

1. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is "provided by or entirely for the benefit of" a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization so long as such person retains no more of the proceeds than is necessary to cover the direct, supportable costs associated with his operation of the facility where the live entertainment is provided.

2. Subject to the provisions of paragraph 1 of this section, 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, even if the proceeds from sales of food, refreshments or merchandise do not become the property of the nonprofit organization.

3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there 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 proceeds from the sales of food, refreshments or merchandise do not become the property of the nonprofit organization.

4. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in section 64 to 100 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session or this chapter, the Department shall assess and compute the excise tax in accordance with section 5.

### **Section 4. Applicability of the Tax.**

1. Live entertainment status commences when any patron is allowed to enter a facility by virtue of having paid an admission charge, regardless of when the live entertainment actually commences.

2. Live entertainment status ceases at the later of:

(a) The conclusion of live entertainment; or

(b) The time when a facility that was restricted by admission is completely vacated by admitted patrons, or is opened to the general public free of any admission charge.

3. The tax applies to sales of food, refreshments or merchandise sold at a facility with a seating capacity of less than 7,500, even if patrons are unable to see, hear or enjoy live

entertainment from the location within the facility where the food, refreshments or merchandise are sold.

#### **Section 5. Computation of the Tax.**

1. Subject to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Department shall apply the tax rate to the total admission charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.

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

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

#### **Section 6. Determination of Seating Capacity in the Absence of a Permit**

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

#### **Section 7. Over-Collection of Tax.**

1. Any over-collection must, if possible, be refunded by the taxpayer to the patron from whom it was collected.

2. If an audit of a taxpayer reveals the existence of an over-collection, the department shall credit the over-collection toward any deficiency that results from the audit, provided that the taxpayer furnishes the department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 1. The department shall not provide a credit for

interest assessed on an over-collection that the taxpayer failed to report to the Department, but the executive director may approve a credit of not more than 75 percent of the penalty assessed, provided that the taxpayer refunds the over-collection as required by subsection 1.

3. A taxpayer shall:

(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 1 and the name and address of the person to whom the refund is to be made.

(b) Within 60 days after receiving notice from the department that a refund must be made, make an accounting to the department of all refunds paid. The accounting must be accompanied by any supporting documents required by the department.

4. If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the department.

5. As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 through 4, inclusive, of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

**Section 8. Jurisdiction of the Department.**

1. If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the department to collect the tax. The taxpayer shall thereafter collect and remit the tax to the department in accordance the provisions of this chapter and sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

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*interest assessed on an over-collection that the taxpayer failed to report to the Department, but the executive director may approve a credit of not more than 75 percent of the penalty assessed, provided that the taxpayer refunds the over-collection as required by subsection 1.*

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*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.*

**October 6, 2003**

**Mr. Dino DiCianno**  
**Deputy Executive Director**  
**Department of Taxation**  
**1550 E. College Parkway**  
**Suite 115**  
**Carson City, NV 89706-7937**

**RECEIVED**

ОСТ 0 9 2003

DEPARTMENT OF REVENUE  
DIVISION OF TAXATION

**Re: Proposed Live Entertainment Tax Regulations**

Dear Mr. DiCianno:

The purpose of this letter is provide to the Department of Taxation some input as to the draft regulations for discussion in regard to the Live Entertainment Tax as imposed under Senate Bill 8 of the 20<sup>th</sup> Special Session.

As you may know, the [REDACTED] not only runs the [REDACTED] but also runs [REDACTED] here in Las Vegas. The [REDACTED] is concerned because certain draft regulations may be interpreted to tax conventions/tradeshows/public events that are truly not events attended by patrons "for a primary purpose of viewing, hearing, or participating in live entertainment". The following comments relate to the draft regulations for discussion on October 2, 2003.

The [redacted] main concern relates to certain conventions and public events at [redacted]. Specifically, the [redacted] leases [redacted] to public events such as home shows, recreational shows and consumer shows that may have "incidental" live entertainment beyond the live entertainment limitations set forth in Section 9. For example, when the [redacted] leases [redacted], the primary purpose for this event is not live entertainment but is mostly a forum by which artisans and other craft makers can display their goods and sell the same to the general public. During the [redacted] show, the show would have magicians, mimes and other ambient music/entertainment (like the piano players at Paris). Under the October 2, 2003 draft regulations, the [redacted] would then arguably be taxed. I do not believe that it is the intent of the Nevada State Legislature to tax the [redacted] or any like convention or tradeshow.

The above-referenced concern also relates to any "convention" as opposed to a tradeshow, which may use [REDACTED]

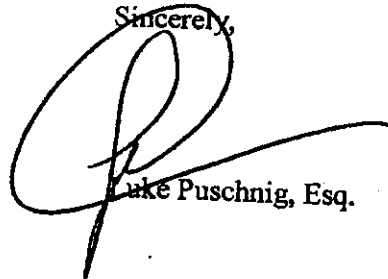
The [REDACTED] would suggest that you expand the scope of Section 9, which is the limitation of live entertainment, to include any "ambient entertainment" as well as ambient background music. This ambient entertainment could be defined to include mimes, magicians and other like live entertainment that is provided for the enjoyment of the patrons while they attend the event, so long as such entertainment is not the primary purpose of attending the event.

In relation to your definition of "tradeshow" set forth in Section 3, Subsection 5, I would respectfully request the language be changed to be read as follows:

"Tradeshow" 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/or  
matters of interest to members of the trade or industry ~~or are~~  
discussed".

Thank you for allowing the [REDACTED] the opportunity to provide this written comment on the proposed regulations. The foregoing is preliminary only, and the [REDACTED] respectfully reserves the right to provide additional comments and suggestions as the process moves forward as additional draft regulations are considered.

Sincerely,

A handwritten signature in black ink, appearing to be 'Luke Puschnig', written over the typed name.

Luke Puschnig, Esq.

gn

ATTORNEY- CLIENT  
PRIVILEGED DOCUMENT

[REDACTED]

October 17, 2003

Ms. Cathy Chambers  
Auditor III  
Nevada Department of Taxation  
4600 Kietzke Lane  
Building O, Room 263  
Reno, Nevada 89502

Re: Proposed Regulations  
Nonprofit Live Entertainment

Dear Ms. Chambers:

Thank you for speaking with us recently concerning the proposed regulations that your office is reviewing for purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session. We have reviewed Sections 5 and 6 of the draft regulations and have the following questions or comments:

1. We assume, for purposes of Section 5, that the word, "inure", is being used in a manner consistent with Section 501(c)3 of the Internal Revenue Code and all related Treasury Regulations and Revenue Rulings. Thus, for example, a compensation arrangement between the [REDACTED] and a production company that is (i) consistent with the exempt purposes of the [REDACTED], (ii) the result of arm's length bargaining, and (iii) based on reasonable compensation, would not result in prohibited inurement. This is clearly stated in Revenue Ruling 69-383; and
2. The [REDACTED] is very aware that a basic principle of its status is that no part of its earnings inure to the benefit of any private shareholder or individual. We understand if any arrangement results in prohibited inurement, it could be grounds for revocation of the tax exempt status, as well as a basis for assessing employment tax liabilities for unreported income; and
3. Given the foregoing, it would appear, so long as a nonprofit's tax exempt status remains in effect, that a nonprofit would always be exempt from the live entertainment excise tax.

I trust this is in order. If you have any questions, please feel free to contact us. We look forward to working through any issues so that appropriate regulations can be adopted that are consistent with tax exempt organizations and their treatment under federal law.

Very truly yours,

[REDACTED]

[REDACTED]

State of Nevada  
**Gaming Control Board**

555 E. Washington Ave., Ste. 2600  
Las Vegas, NV 89101

Dino Di Cianno

Dept of Taxation

Fax #: 702-486-5981

Lynda Hartzell

Phone #: 702-486-2118

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The information contained in this facsimile transmission and any and all accompanying documents are the property of the State of Nevada, Gaming Control Board. The information is intended solely for the use of the designated recipient named above. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of, or taking of any action or reliance on this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone at (702) 486-2650.

October 27, 2003

[REDACTED]

Dennis K. Neilauder, Chairman  
Nevada State Gaming Control Board  
1919 E. College Parkway  
P.O. Box 8003  
Carson City, Nevada 89702

**Re: 10/07/03 Draft of Proposed Amendments to Regulation 13 (LET)**

Dear Mr. Chairman:

This will transmit comments and questions on behalf of [REDACTED] concerning the October 7, 2003, draft of "Proposed Amendments to Regulation 13." We were unable to offer testimony at your public hearing on October 8, 2003, because of insufficient time to make a thorough study of the new provisions.

The comments and questions and the sections to which they are directed are as follows:

13.010 (5) - Is it intended that Superbowl parties to which tickets are sold would fall within the definition of "live entertainment"?

13.010 (5)(b) - We support Alternative B as being in accord with the provisions of S. B. 8.

It may be that the language of Alternative B can be reshaped in some respects, but it captures the necessary essence. Types of facilities that are properly excluded from "live entertainment" by this language are casino lounges and bars where the attraction consists of the food or refreshments sold and the ambience provided. A part of the ambience is the presentation

of recorded music that is facilitated by a person. Such persons act merely as facilitators of the recorded music, determining - by the push of a button or the turn of a dial on electronic equipment - which music is most appropriate to maintain the desired ambience for the facility throughout the evening. These "music facilitators" have no substantial interaction with patrons, they do nothing that would constitute visual entertainment for patrons and their names are not advertised as an attraction for patrons.

13.010 (5)(e) - We support the exclusion for "instrumental ambient background music". We assume this exclusion is not affected by 13.010(5)(d)(1) if the facility in which the "instrumental ambient background music" takes place is a bar, lounge or restaurant located in or near gaming areas.

13.010(5)(e) - We recommend adding to this provision "or as part of the background ambience of the facility." An example of this would be an excerpt from an opera sung by a waiter in an Italian restaurant once or twice every hour.

13.020(5) - We support this language. This is an appropriate method to deal with sales in facilities with no admission charges that operate under a continual time schedule. If the food, refreshment or merchandise is ordered while the facility is in a live entertainment status, the charge is taxable, if it is ordered before or after the facility is in a live entertainment status, the charge is not taxable.

13.020(11) - For purposes of clarity and consistency, we recommend that "clearly" be inserted before "see and hear" in the last line.

13.025(6) - We recommend this provision be amended to read as follows:

"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  
group. or organization.

"(b) Casual assemblages.

"(c) An event that limits participation to persons who are participants in  
conventions, extended business meetings or tournaments and their  
guests."

We suggest that the addition of "group" to 13.025(6)(a) will provide for celebrations of such events as weddings, birthdays and anniversaries.

It appears to us that the language proposed as 13.025(6)(c) might read better as a subsection rather than a separate paragraph.



October 27, 2003

Page 3

13.050(6) - As the contracting parties are both gaming licensees, why is the approval of the Chairman necessary? Wouldn't it be sufficient for the Chairman to be notified who will pay the tax?

13.060(1) - We suggest the following be inserted in the fourth line following "prosecution":  
"commenced prior to the end of the 5-year period".

Please let me know if there are any questions or if we need to supply clarification of any of our proposals.

Best wishes,

[REDACTED]

cc: Member Bobby Siller  
Member Scott Scherer  
Chairman Peter C. Bernhard  
Chief Gregory Gale  
Deputy Chief Lynda L. Hartzell  
Deputy A. G. Antonia A. Cowan

[REDACTED]

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. **Definitions.** As used in sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special Session and this chapter, unless the context otherwise requires:

1. "Admission charge" shall be construed to include any consideration paid for the right or privilege to have access to a facility where live entertainment, **other than ambient entertainment**, is provided. The term includes, without limitation, any amount characterized as an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.

2. "**Ambient entertainment**" means live entertainment provided:

(a) At an athletic or sporting camp, contest, event, or tournament, if patrons access the area or premises of the camp, contest, event or tournament for the primary purpose of participating as athletes rather than as spectators;

(b) At 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, if patrons access the area or premises of the market, meet, show, tasting, festival, fair or conference for the primary 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;

(c) At a zoo, museum, botanical garden, or outdoor display or exhibition of natural or geological history, if patrons access the area or premises of the zoo, museum, garden, display or exhibition for the primary purpose of viewing or learning about plants, animals or natural features of the environment;

(d) At a restaurant or similar eating establishment if patrons access the area or premises of the restaurant or establishment for the primary purpose of eating.

**Whether patrons access an area or premises for a primary purpose described in this section shall be determined by reference to objective factors, and not to the state of mind of any particular patron or patrons. Such objective factors may include, without limitation, the content of advertising or public relations materials concerning any live entertainment to be provided at the area or premises, the price of admission to the area or premises, and any physical features of the area or premises that are specifically designed to accommodate entertainers or spectators, or facilitate the provision or enjoyment of live entertainment.**

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

4. "Facility" shall be construed to refer separately to an area or premises within the physical boundaries or specified borders of a surrounding area or premises where live entertainment is provided if:

(a) Consideration is collected for the right or privilege of entering the inner area or premises;

(b) Live entertainment is provided at the inner area or premises; and

(c) Persons physically located in the surrounding area or premises are not able to reasonably enjoy the live entertainment provided at the inner area or premises.

No admission charge paid for the right or privilege to have access to the surrounding area or premises shall be considered an admission charge for the right or privilege to have access to the inner area or premises. Likewise, no amounts paid for food, refreshments or merchandise purchased at the surrounding area or premises shall be considered amounts paid at the inner area or premises.

5. "Live entertainment" shall be construed to include, without limitation, the following:

(a) music or vocals provided by one or more professional or amateur musicians or vocalists;

(b) dancing performed by one or more professional or amateur dancers or performers;

(c) acting or drama provided by one or more professional or amateur actors or players;

(d) acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;

(e) animal stunts or performances provided or incited by one or more animal handlers or trainers.

(f) athletic contests, events or exhibitions provided by one or more professional or amateur athletes;

(g) comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;

(h) cooking or product demonstrations 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.

6. "Live entertainment" shall not be construed to include:

(a) A television, radio, closed circuit or Internet broadcast of live entertainment.

(b) Entertainment provided by a patron or patrons, unless the conduct or activity of the patron or patrons constitutes a spectator attraction for other patrons, and provided that such activity or conduct is specifically addressed by a regulation of the Department of Taxation or the Gaming Control Board;

(c) The presentation of recorded music, if the person presenting the recorded music does not engage in a performance that constitutes live entertainment. A person who presents recorded music does not engage in a performance that constitutes live entertainment so long the person's celebrity status does not constitute an attraction for patrons, and provided that the person limits his or her interaction with patrons to:

(1) Introducing or generally describing the recorded music;

(2) Periodically engaging patrons in playful or comedic banter, and;

(3) Directing or explaining participatory activities between patrons.

7. Live entertainment status" is that condition which renders the admission to a facility, or the selling of food, refreshments or merchandise subject to the tax.

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

9. "Patron" means a person who gains 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.

10. "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 3. Nonprofit Organizations.**

1. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is "provided by or entirely for the benefit of" a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided will become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization so long as such person retains no more of the proceeds than is necessary to cover the direct, supportable costs associated with his operation of the facility where the live entertainment is provided.

2. Subject to the provisions of paragraph 1 of this section, 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, even if the proceeds from sales of food, refreshments or merchandise do not become the property of the nonprofit organization.

3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there 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 proceeds from the sales of food, refreshments or merchandise do not become the property of the nonprofit organization.

4. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in section 65 to 100 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session or this chapter, the Department shall assess and compute the excise tax in accordance with section 4.

#### **Section 4. Computation of the Tax.**

1. Subject to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Department shall apply the tax rate to the total admission charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.

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

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

**Section 5.** For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including evidence of actual attendance, the number of tickets sold 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.

# DRAFT REGULATIONS FOR DISCUSSION

October 14, 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 20<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> Special Session, live entertainment is deemed to be "provided by or entirely for the benefit of" a nonprofit organization if no 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 20<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> Special Session, the Department shall apply the appropriate tax rate to total admission charges, and if applicable, to the total amount paid for food, beverages or merchandise, less sales tax.

**Section 11.** For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including evidence of actual attendance, the number of tickets sold 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.

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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 20<sup>th</sup> 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 20<sup>th</sup> Special Session, unless the context otherwise requires:

1. "Facility" means any designated 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 outside the physical boundaries or specified borders of the facility if that area or those premises constitute a "facility" as defined in subsection 1; or

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(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.

2. "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, (i) any performances of dancing, physical stunts, pantomimes or other activities if the establishment designates a space for these activities to take place and allows or encourages employees, independent contractors or other persons other than patrons to perform such activities.

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3. "Live entertainment" shall not be construed to include:

(a) Recorded music;

(b) Entertainment provided by patrons to other patrons (such as dancing);

(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.

4. "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.

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

Section 4. For purposes 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, engage in a performance that constitutes live entertainment so long as:

(1) The individual presenting the recorded music engages in substantial interaction with patrons;

(2) The paid advertising for the facility names the individual or individuals who are to present the recorded music; or

(3) The individual presenting the recorded music engages in forms of visual entertainment including, without limitation, physical stunts, dances, pantomimes or similar activities.

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~~Deleted: the person uses no public address or other voice amplification system, and performs no physical stunts, dances, pantomimes, or similar forms of visual entertainment.~~

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Section 5. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is deemed to be "provided by or entirely for the benefit of" a nonprofit organization if no 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 20<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> Special Session, the Department shall apply the appropriate tax rate to total admission charges, and if applicable, to the total amount paid for food, beverages or merchandise, less sales tax.

Section 11. For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including evidence of actual attendance, the

number of tickets sold 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.

Section 12. 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.

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.

Section 13. Jurisdiction

Licensed gaming establishments that have Live Entertainment within their facilities as defined in section 3, paragraph 1 and 2 shall report the LET to the NGCB. All other taxpayers shall report the LET to the Department of Taxation.

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PRIVILEGED DOCUMENT



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DINO DICIANNO

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From: [REDACTED]  
Sent: Thursday, October 09, 2003 10:55 AM  
To: DINO DICIANNO  
Subject: LET INFO



LETMEMO.wpd  
(17 KB)

Here is the information that I spoke to you about. I hope it is useful to you.

Hope all is well.

A

[REDACTED]

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This e-mail message is confidential, intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-383-8888 and delete this e-mail message and any attachments from your workstation or network mail system.  
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## MEMORANDUM

To: [REDACTED]  
From: [REDACTED]  
Subject: S.B. 8 -Construction of "Live Entertainment"  
Date: October 9, 2003

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As requested by [REDACTED]  
[REDACTED] I have researched certain issues involving the proper construction for "live entertainment" pursuant to Nevada Senate Bill 8 of the 20th Special Session. Below is the result of my research:

### **I. Questions Presented**

A. Is the meaning of "live entertainment" identical under the amended Casino Entertainment Tax ("CET") and its successor, the Live Entertainment Tax ("LET")?

B. Once promulgated, will the Department of Taxation's (the "Department") definition of "live entertainment" be controlling under both the CET and the LET?

C. Will the Department's definition of "live entertainment" supercede any other administrative definitions of the same promulgated for purposes of the CET?

### **II. Short Answers**

A. The meaning of "live entertainment" under the amended CET and LET is the same.

B. Once the Department determines the meaning of "live entertainment," that definition will control under both the CET and the LET, regardless of which agency collects the tax.

C. The Department's definition of "live entertainment" will supercede all prior or contemporaneous administrative definitions promulgated to explain that term.

### III. Analysis

#### A. "Live Entertainment" Under the CET and the LET

##### 1. The Definition of "Live Entertainment" Is Identical

Words used in one place in a legislative enactment generally have the same meaning in every other place in the statute. See Gustafson v. Alloyd Co., Inc., 513 U.S. 561 (1995) (subsequently, distinguished on different grounds); see also Vielma v. Eureka Co., 218 F.3d 458 (5th Cir. 2000) (holding similarly; subsequently, distinguished on different grounds). In particular, *identical words* used in different parts of the same act are intended to have the *same meaning*. See Department of Revenue of Oregon v. ACF Industries, Inc., 510 U.S. 332, 333 (1994) (subsequently, distinguished on different grounds).

Both the amended CET and the LET provide in *identical language* that "'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." S.B. 8, 72nd Leg., 20th Spec. Sess. § 77 and 171(5) (2003) (enacted) (quotation in original).

Therefore, because S.B. 8 uses identical definitions for "live entertainment," the term must mean the same thing in both contexts.

##### 2. Different Construction May Be Unconstitutional

The United States Supreme Court explained that the Equal Protection Clause of the United States Constitution applies "to taxation which in fact bears unequally on persons or property of the *same class*." Allegheny Pittsburg Coal Co. v. County Comm'n of Webster County, 488 U.S. 336, 343 (1989) (emphasis added; subsequently, distinguished on different grounds); see generally U.S. Const. amend. XIV, § 1.

The Nevada Supreme Court further explained that only where a tax "results in intentional discrimination, *arbitrary action*, constructive fraud, or *grossly and relatively unfair assessment* are the constitutional provisions relating to equal protection and uniformity violated." Recanzone v. Nevada Tax Comm'n, 550 P.2d

401, 404 (Nev. Sup. Ct. 1976) (emphasis added);<sup>1</sup> see also Topeka Cemetery Assoc. v. Schnellbacher, 542 P.2d 278 (Kan. Sup. Ct. 1975) (holding that corporate versus individual ownership of cemetery plots is not a rational, permissible basis for tax classification; subsequently, distinguished on different grounds).

Additionally, under the common law, an interpretation that produces unjust or oppressive results should be avoided. See City and County of Denver v. Holmes, 400 P.2d 901 (Colo. Sup. Ct. 1965); see also Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co., 606 N.W.2d 376 (Iowa Sup. Ct. 2000) (holding similarly); Pierson v. Faulkner, 279 N.W. 813 (Neb. Sup. Ct. 1938) (holding that unequal operation of laws should be avoided).

*Entertainment companies*, regardless of whether they offer a gaming component as part of their entertainment package, are essentially the *same class of entities*. If "live entertainment" is construed differently under the amended CET than under the LET and this results in a greater scope of taxation under the CET, then this is an outcome where the casino industry faces a different burden than other entertainment industries for essentially the same activities. This would be an unequal application of the laws.

In addition, because S.B. 8 itself offers identical definitions for "live entertainment" for both the amended CET as well as the LET, creating two different administrative definitions for "live entertainment" is *arbitrary* and cannot be justified on a statutory basis. Therefore, such construction also appears to be unconstitutional.

#### **B. Plain Language Designates the Department**

Where the language of a statute is clear and unambiguous, its clear meaning may not be evaded by an administrative body or court under the guise of construction. See Davis v. North Carolina Dept. of Human Resources, 505 S.E.2d 77 (N.C. Sup. Ct. 1998).

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<sup>1</sup>Under the Nevada Constitution, taxes must be uniformly applied. Specifically, the Constitution provides that the "legislature shall provide by law for a *uniform and equal* rate of assessment and taxation . . ." N.V.Const. Art 10, §1(1) (emphasis added). In the context of property taxes, for example, where common elements in condominiums were taxed differently than common elements in planned communities, such tax was held unconstitutional. See Sun City Summerlin Community Assoc. v. Department of Taxation, 944 P.2d 234 (Nev. Sup. Ct. 1997).

Specifically, under S.B. 8, the "*Department shall provide by regulation for a more detailed definition of 'live entertainment' consistent with the general definition set forth . . . (herein) for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.*" S.B. 8, 72nd Leg., 20th Spec. Sess. § 77 (2003) (enacted) (emphasis added).

A plain reading of the foregoing provision reveals that the Nevada legislature entrusted only the Department with the responsibility of promulgating regulations for the meaning of "live entertainment." Therefore, the Department has the sole responsibility to determine the meaning of "live entertainment," regardless of which agency collects the taxes.

#### **C. The Department Has the Ultimate Authority**

Again, under S.B. 8, the "*Department shall provide by regulation for a more detailed definition of 'live entertainment' consistent with the general definition set forth . . . (herein) for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.*" S.B. 8, 72nd Leg., 20th Spec. Sess. § 77 (2003) (enacted) (emphasis added). Furthermore, under S.B. 8, the Department can already adopt regulations. See id. at § 7.<sup>2</sup>

Therefore, even if Nevada gaming regulators were to adopt an interim definition for "live entertainment" for purposes of the CET, the Department's definition -when adopted- would immediately supercede such intermediate regulatory definition for purposes of both the LET as well as the CET.

#### **IV. Conclusion**

For the foregoing reasons, the meaning of "live entertainment" under the CET and LET is identical and will be conclusively determined by the Department.

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<sup>2</sup>Chairman Dennis Nellander, in an informal memorandum to the gaming industry, acknowledged that "the *Department . . . is to adopt regulations that further define live entertainment. Therefore, a conclusive determination of the types of entertainment subject to the tax cannot be made by the Board at this time . . .*" Chairman Dennis Nellander, Nevada State Gaming Control Board Industry Letter, Senate Bill 8 -Creation of Live Entertainment Tax and Amendment to the Casino Entertainment Tax (Aug. 7, 2003) at 2 (emphasis added).

Senate Bill 8  
Page 5  
October 9, 2003

**DINO DICIANNO**

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**From:** Nevada Taxpayers Association (info@nevadataxpayers.org)

**Sent:** Wednesday, October 08, 2003 10:31 AM

**To:** Dino DiCianno

**Subject:** Fw: Memo re LET

[REDACTED] received a call this morning from GCB to confirm that they had received the attached which I sent via fax. She was told that they will probably not get to this reg until this afternoon.

I sent a copy to [REDACTED] and told him about 233B. I couldn't write it in a way that satisfied me.

Carole

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

**From:** Nevada Taxpayers Association

**To:** Barbara Campbell

**Cc:** [REDACTED]; David Turner

**Sent:** Tuesday, October 07, 2003 6:30 PM

**Subject:** Memo re LET

FYI

Carole

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**NEVADA TAXPAYERS ASSOCIATION**

Las Vegas Office

2303 E. Sahara Ave., Ste. 203

Las Vegas, NV 89104

Phone: (702) 457-8442

Fax: (702) 457-6361

E-Mail: [info@nevadataxpayers.org](mailto:info@nevadataxpayers.org)

[www.nevadataxpayers.org](http://www.nevadataxpayers.org)

Carson City Office

501 So. Carson St., Ste 301

Carson City, NV 89701

Phone: 775/882-2697

Fax: 775-8828938



DATE: October 7, 2003

MEMO TO: Dennis Neilander, Chairman, Nevada Gaming Control Board (delivered via fax)  
Bobby L. Siller, Member, Nevada Gaming Control Board (delivered via fax)  
Scott Scherer, Member, Nevada Gaming Control Board (delivered via fax)

REFERENCE: Proposed Amendments to Regulation 13

For the record, I am writing to express the concern of the Association with regards to the proposed amendments to Regulation 13 particularly on:

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 proposed definitions of Live Entertainment.

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. In fact, as I read Section 80, paragraph (a) of SB 8 of the 20<sup>th</sup> Special Session, the Board's responsibility extends only to "Collect the tax imposed by this chapter from taxpayers who are licensed gaming establishments." In my limited research - - - if a shopping center or restaurant is independently owned, they are not licensed as a gaming establishment, yet it would appear they are captured in the "curb to curb" definition which I think is contrary to the language in Section 80 of the bill. I would think that also applies to Slot Route Operators whom I have never heard referred to as licensed gaming establishments.

Additionally, when the gaming facility is a non-restricted licensee, if the "curb to curb" definition is applied, then a location which is not owned by the facility does not have the benefit of the under 300 seat (occupancy) exemption. And, how does this affect a property which leases or otherwise arranges for its parking lot to be used by a traveling circus? (A couple of weeks ago I noticed that part of the parking lot at the Castaways in Las Vegas had been given over to a Circus. A big top was visible as were rides both of which I would believe had admission charges.)

Following is the suggested language for qualifying agency jurisdiction which I presented prior to the last joint workshop on the Live Entertainment tax. (Attached is a copy of that Memo.)

*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*

continued on page 2

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501 South Carson Street, Ste. 301 • Carson City, NV 89701 • (775) 882-2697 • Fax (775) 882-8938  
2303 East Sahara Avenue, Ste. 201 • Las Vegas, NV 89104 • (702) 457-8442 • Fax (702) 457-6361  
[www.nevadataxpayers.org](http://www.nevadataxpayers.org)

*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".)*

2. The proposed amendments to regulation 13 provide definitions for Live Entertainment. Section 77 of SB 8 of the 20<sup>th</sup> Special Session specifically gives the authority to the Department of Taxation for providing "... a more detailed definition of "live entertainment" ...". I respectfully suggest that it is premature for these definitions to be included. The definitions of Live Entertainment, when included in Regulation 13, should parallel those adopted by the Tax Commission to assure that insofar as possible similarly situated taxpayers are treated alike.

Thank you for your consideration of the concerns which I have expressed on behalf of the Association.

Respectfully submitted,

s/ Carole Vilardo

President

CC: Peter Bernhard, Chairman, Nevada Gaming Commission (delivered via fax)  
Barbara Campbell, Chairwoman, Nevada Tax Commission (delivered via email)

**DINO DICIANNO**

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**From:** Nevada Taxpayers Association [info@nevadataxpayers.org]  
**Sent:** Tuesday, October 21, 2003 2:02 PM  
**To:** Dino DiCianno  
**Subject:** Fw: 10/7/03 Draft of Proposed Amendments to Regulation 13 (LET)

**Importance:** High



MGM Mirage - Reg. 13 comments ...



MGM Mirage - Reg. 13 comments ...

Hi Dino -

Sorry I forgot to send you transcript. When I went on email just now to find it I came across this which I thought you might find interesting.

Carole

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

**From:** [REDACTED]  
**To:** <info@nevadataxpayers.org>  
**Sent:** Friday, October 17, 2003 3:39 PM  
**Subject:** 10/7/03 Draft of Proposed Amendments to Regulation 13 (LET)

Please see

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This e-mail message is a confidential communication from the law firm of Lionel Sawyer & Collins and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-383-8888 and delete this e-mail message and any attachments from your workstation or network mail system.  
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October 21, 2003

[REDACTED]

Dennis K. Neilander, Chairman  
Nevada State Gaming Control Board  
1919 E. College Parkway  
P.O. Box 8003  
Carson City, Nevada 89702

**Re: 10/07/03 Draft of Proposed Amendments to Regulation 13 (LET)**

Dear Mr. Chairman:

This will transmit comments and questions on behalf of [REDACTED] concerning the October 7, 2003, draft of "Proposed Amendments to Regulation 13." We were unable to offer testimony at your public hearing on October 8, 2003, because of insufficient time to make a thorough study of the new provisions.

The comments and questions and the sections to which they are directed are as follows:

13.010 (5) - Is it intended that Superbowl parties to which tickets are sold would fall within the definition of "live entertainment"?

13.010 (5)(b) - We support Alternative B as being in accord with the provisions of S. B. 8.

It may be that the language of Alternative B can be reshaped in some respects, but it captures the necessary essence. Types of facilities that are properly excluded from "live entertainment" by this language are casino lounges and bars where the attraction consists of the food or refreshments sold and the ambience provided. A part of the ambience is the presentation

of recorded music that is facilitated by a person. Such persons act merely as facilitators of the recorded music, determining - by the push of a button or the turn of a dial on electronic equipment - which music is most appropriate to maintain the desired ambience for the facility throughout the evening. These "music facilitators" have no substantial interaction with patrons, they do nothing that would constitute visual entertainment for patrons and their names are not advertised as an attraction for patrons.

13.010 (5)(e) - We support the exclusion for "instrumental ambient background music". We assume this exclusion is not affected by 13.010(5)(d)(1) if the facility in which the "instrumental ambient background music" takes place is a bar, lounge or restaurant located in or near gaming areas.

13.010(5)(e) - We recommend adding to this provision "or as part of the background ambience of the facility." An example of this would be an excerpt from an opera sung by a waiter in an Italian restaurant once or twice every hour.

13.020(5) - We support this language. This is an appropriate method to deal with sales in facilities with no admission charges that operate under a continual time schedule. If the food, refreshment or merchandise is ordered while the facility is in a live entertainment status, the charge is taxable, if it is ordered before or after the facility is in a live entertainment status, the charge is not taxable.

13.020(11) - For purposes of clarity and consistency, we recommend that "clearly" be inserted before "see and hear" in the last line.

13.025(6) - We recommend this provision be amended to read as follows:

"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 group or organization.

"(b) Casual assemblages.

"(c) An event that limits participation to persons who are participants in conventions, extended business meetings or tournaments and their guests."

We suggest that the addition of "group" to 13.025(6)(a) will provide for celebrations of such events as weddings, birthdays and anniversaries.

It appears to us that the language proposed as 13.025(6)(c) might read better as a subsection rather than a separate paragraph.

October 21, 2003  
Page 3

13.050(6) - As the contracting parties are both gaming licensees, why is the approval of the Chairman necessary? Wouldn't it be sufficient for the Chairman to be notified who will pay the tax?

13.060(1) - We suggest the following be inserted in the fourth line following "prosecution":  
"commenced prior to the end of the 5-year period".

Please let me know if there are any questions or if we need to supply clarification of any of our proposals.

Best wishes,

[REDACTED]

cc: Member Bobby Siller  
Member Scott Scherer  
Chairman Peter C. Bernhard  
Chief Gregory Gale  
Deputy Chief Lynda L. Hartzell  
Deputy A. G. Antonia A. Cowan  
[REDACTED]



**NEVADA GAMING COMMISSION**  
1919 E. College Parkway, P.O. Box 8003  
Carson City, Nevada 89702  
(775) 684-7750

PETER BERNHARD, *Chairman*  
AUGIE GURROLA, *Member*  
ARTHUR MARSHALL, *Member*  
SUE WAGNER, *Member*  
RADHA CHANDERRAJ, *Member*

GOVERNOR KENNY C. GUTNN  
*Gaming Policy Committee Chairman*

MARILYN EPLING  
*Executive Secretary*

October 10, 2003

**TO: ALL NONRESTRICTED LICENSEES, SLOT ROUTE OPERATORS  
AND INTERESTED PERSONS**

**NOTICE OF HEARING FOR ADOPTION OF AMENDMENTS TO REGULATIONS  
OF THE NEVADA GAMING COMMISSION AND STATE GAMING CONTROL BOARD**

The Nevada Gaming Commission will hold a public hearing on or about the hour of 10:30 a.m. on Thursday, November 20, 2003, in Conference Room 2450, 555 East Washington Avenue, Las Vegas, Nevada, for the purpose of considering adoption of proposed amendments to the following regulations:

- **NGC REGULATION 4, "APPLICATIONS: PROCEDURE"**

Purpose of Amendments: To repeal current NGC Regulation 4.175 in its entirety and replace it with new NGC Regulation 5.109 which provides for the processing of any application for (1) reconsideration of an application for registration as a gaming employee which has been objected to pursuant to NRS 463.335, and (2) for reinstatement of the registration of a person as a gaming employee which has been suspended pursuant to NRS 463.336 or revoked pursuant to NRS 463.337; to establish time periods for the filing of such applications and any subsequent applications; to establish criteria for requesting withdrawal of such applications.

- **NGC REGULATION 5, "OPERATION OF GAMING ESTABLISHMENTS."**

Purpose of Amendments: To repeal current NGC Regulations 5.100 to 5.108, inclusive, in their entirety and replace them with new regulations which: (1) establish uniform procedures for the registration of gaming employees; (2) establish uniform criteria for objection by the board to an application for registration; and (3) provide for the creation and maintenance of a system of records that contains information regarding the current place of employment of each person who is registered as a gaming employee and each person whose registration as a gaming employee has expired, was objected to by the board, or was otherwise suspended or revoked, in conformance with statutory amendments to NRS 463.335.

- **NGC REGULATION 6.010, "DEFINITIONS."**

Purpose of Amendments: To adjust the annual gross gaming revenue thresholds applicable to the definitions of Group I and II licensees as required by Regulation 6.010(7). These changes correspond to the percentage increase in the "Consumer Price Index" published by the United States Department of Labor for the preceding year.

- **NGC REGULATION 6.080, "AUDITED FINANCIAL STATEMENTS."**

Purpose of Amendments: To adjust the annual gross gaming revenue thresholds applicable to audited and reviewed financial statements submitted by nonrestricted licensees, as required by NRS 463.159. These changes correspond to the percentage increase in the "Consumer Price Index" published by the United States Department of Labor for the preceding year.

- **NGC REGULATION 13, "CASINO 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 20<sup>th</sup> 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.

In the event some of the above amendments are not adopted at the November 20, 2003 hearing; an additional hearing will be held on Thursday, December 18, 2003, in Conference Room 100, 1919 East College Parkway, Carson City, Nevada, on or about the hour of 10:30 a.m. for the purpose of considering adoption of the proposed amendments.

The proposed amendments will be considered by the Commission in accordance with the provisions of NRS 463.145 which allows that on the date and at the time and place designated, any interested person, or their duly authorized representative, or both, shall be afforded the opportunity to present statements, arguments or contentions in writing, with or without the opportunity to present the same orally.

In addition, these proposed amendments are agendaed for discussion at the Nevada Gaming Commission meeting on Thursday, October 23, 2003, in Conference Room 100, 1919 East College Parkway, Carson City, Nevada, on or about the hour of 10:30 a.m.



Notice of Hearing  
October 10, 2003  
Page Three

To obtain copies of the proposed amendments to these regulations, please call the Nevada Gaming Commission office at (775) 684-7750, or submit a written request addressed to the Executive Secretary, P.O. Box 8003, Carson City, Nevada 89702-8003. The above notice and proposed regulation amendments are also available on the Commission's web site at [gaming.state.nv.us](http://gaming.state.nv.us).

Very truly yours,

---

Marilyn Epling  
Executive Secretary

ME/je

***This Agenda Posted for Public Inspection in the Following Locations:***

1919 EAST COLLEGE PARKWAY, CARSON CITY, NEVADA  
885 EAST MUSSEY STREET, CARSON CITY, NEVADA  
209 EAST MUSSEY STREET, CARSON CITY, NEVADA  
100 STEWART STREET, CARSON CITY, NEVADA  
555 EAST WASHINGTON AVENUE, CONFERENCE ROOM 2450, LAS VEGAS, NEVADA

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**STATE GAMING CONTROL BOARD MEETING**

**GAMING CONTROL BOARD OFFICES  
CONFERENCE ROOM 100  
1919 EAST COLLEGE PARKWAY  
CARSON CITY, NV 89708**

**Wednesday, October 8, 2003**

- 9:00 a.m. • Nonrestricted Items # 01-10-03 through # 09-10-03
- 10:30 a.m. • Any Item Continued from 9:00 a.m. Session
- Nonrestricted Items # 10-10-03 through # 16-10-03
- Regulation Agenda

**Thursday, October 9, 2003**

- 9:00 a.m. • Any Item Continued From October 8, 2003, Session
- Public Comments
- Restricted Items # 01-10-03 through # 16-10-03
- 10:30 a.m. • Any Item Continued from 9:00 a.m. Session
- Restricted Items # 17-10-03 through # 34-10-03
- Transfer of Interest Items # 01-10-03
- Regulation 14 – Final Approval (New Device)
- Consideration of Work Permit Appeals Pursuant to NRS 463.335
- Consideration of Work Permit Appeals Pursuant to Regulation 4.175
- Consideration of Casino/Player Dispute Appeals Pursuant to NRS 463.363
- Informational Items

**NEVADA GAMING COMMISSION MEETING**

**GAMING CONTROL BOARD OFFICES  
CONFERENCE ROOM 100  
1919 EAST COLLEGE PARKWAY  
CARSON CITY, NV 89708**

**Thursday, October 23, 2003**

- \* IN ACCORDANCE WITH SECTION 241.020(2)(c)(2) OF THE NEVADA REVISED STATUTES, ALL OF THE AGENDAED ITEMS ARE SUBJECT TO ACTION AND DISPOSITION BY THE STATE GAMING CONTROL BOARD OR NEVADA GAMING COMMISSION, OR BOTH, UNLESS THE AGENDA ITEM SPECIFICALLY INDICATES OTHERWISE.

TO PROMOTE EFFICIENCY AND AS AN ACCOMMODATION TO THE PARTIES INVOLVED, AGENDA ITEMS MAY BE TAKEN OUT OF ORDER.

NOTE: WE ARE PLEASED TO MAKE REASONABLE ACCOMMODATIONS FOR MEMBERS OF THE PUBLIC WHO ARE DISABLED AND WISH TO ATTEND THE MEETING. IF SPECIAL ARRANGEMENTS FOR THE MEETING ARE NECESSARY, PLEASE NOTIFY THE EXECUTIVE SECRETARY'S OFFICE IN WRITING AT THE NEVADA GAMING COMMISSION, P.O. BOX 8003, CARSON CITY, NEVADA 89702-8003, OR CALL THE EXECUTIVE SECRETARY'S OFFICE AT (775) 684-7750 AS SOON AS POSSIBLE.

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 20<sup>th</sup> 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: 10/07/03**

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 by patrons to recorded music, except as described below. Note: "Alternative B" would omit the preceding sentence. 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.

- (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.

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- (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:

- (1) Such entertainment takes place inside a bar, lounge or restaurant and is intended to benefit patrons who are seated therein; or

- (2) 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.

Except as otherwise limited above, live entertainment includes in addition to staged productions of any kind, any performances of dancing, physical stunts, pantomimes or other activities if the establishment designates a space for these activities to take place and allows or encourages employees, independent contractors or other persons other than patrons to perform such activities.

[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 or 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 to 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: 12/65. 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.

The event shall be deemed to have a primary purpose that is for other than entertainment if the event occurs in conjunction with, and attendance is limited to, those persons and their guests who are participants in conventions, extended business meetings or tournaments.
  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.
- (Adopted: 12/xx/03)

13-030. Charitable or nonprofit benefits. (a) An event shall be deemed a charitable or nonprofit benefit that is not subject to the live (casino) entertainment tax, if all net proceeds from the admission charge or proceeds of an event benefit a charitable or nonprofit organization described in paragraph (b) of subsection 5 of section 79 of Senate Bill 8 of the 2012 Special Session (the charitable organization). (b) If the event is a charitable or nonprofit benefit that is exempt from the live entertainment tax, there shall be no tax due 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. The licensee shall retain documentation of reasonable 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 [casino] entertainment tax will be payable on and no package value shall be assigned to any ticket redeemable for food or refreshments if the average retail value of the food or refreshments is less than \$5.00. Any ticket redeemable for food or refreshments 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 3 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 B.

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 B.

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 10<sup>th</sup> 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.)

**13.055 Merchandise** *(The tax does not apply to merchandise sold outside the facility in which entertainment is presented, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.)* For purposes of this section regulation, merchandise shall be deemed to be sold inside the facility if the purchase of a ticket or payment for an admission cover, minimum or other similar charge is required for a patron to gain access to the merchandise being sold inside the facility, nightclub, cocktail lounge, or casino show room, subject to the casino entertainment tax, or if the merchandise is sold in a location 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)

**DINO DICIANNO**

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**From:** Nevada Taxpayers Association [info@nevadataxpayers.org]  
**Sent:** Tuesday, October 21, 2003 2:05 PM  
**To:** Dino DiCianno  
**Subject:** Fw: LET/Gaming  
**Importance:** High

FYI

Carole

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

**From:** Nevada Taxpayers Association

**To:** Barbara Campbell ; David Turner

**Cc:** [REDACTED]

**Sent:** Thursday, October 16, 2003 12:19 PM

**Subject:** LET/Gaming

Dear All -

I have attached a copy (both in Word Perfect and Word) of that portion of a transcript that [REDACTED] sent me re the Gaming Control Board meeting. I am not sending it to anyone else since I am not sure what the ground rules are concerning dissemination of transcripts. For this reason, I would appreciate it if you would use this just for your information and not share it with anyone else.

Carole

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1 2. CONSIDERATION OF: Proposed Amendments to NGC  
2 REGULATION 13, "CASINO ENTERTAINMENT TAX."

3 SECRETARY EPLING: Yes. Which is  
4 consideration of proposed amendments to NGC Regulation 13,  
5 casino entertainment tax.

6 CHAIRMAN NEILANDER: In respect to this  
7 matter, myself and Board Member Scherer, as well as  
8 Chairman Bernhard from the Commission, have been  
9 participating in various public hearings with the  
10 Department of Taxation. The legislation that is the basis  
11 for this regulation does set forth a set of procedures  
12 that are to be followed and in adopting the regulations,  
13 and one of those requirements is that we work with the  
14 Department of Taxation to try to make sure the regulations  
15 are consistent, and we have been doing that. We have gone  
16 through various drafts with them and have taken public  
17 comment on at least three different occasions.

18 The process is a little bit unique because  
19 the Senate Bill 8 requires that the Board actually adopt  
20 the regulation, and in discussions with Chairman Bernhard,  
21 the procedural method that we have proposed is sort of a  
22 two-tiered method. The first is that the Board would  
23 adopt the regulation under Chapter 233B of the Nevada  
24 Revised Statutes, which is a different process than what  
25 we're normally used to.

1 This hearing today is not a 233B hearing.  
2 This is a normal hearing in the course of our business,  
3 because the Commission is going to adopt an amendment to  
4 Regulation 13 which will be identical to the Chapter 233B  
5 regulation.

6 So I wanted to get this on the agenda today  
7 so that we can give notice in respect of the Commission's  
8 duties in adopting Regulation 13, and then the Board will  
9 have to have a separate 233B hearing which will have to be  
10 noticed in accordance with Chapter 233B. And we will do  
11 that at a later time.

12 But my intent today was to get these issues  
13 in front of the Board, begin to create a record for the  
14 Commission, and also get some feedback from my colleagues  
15 and anyone else who wants to provide comments so that I  
16 can go back to the next joint meeting which the Department



17 of Taxation and continue that process. But I felt like  
18 because of the timing, it was important to go ahead and  
19 have this matter in front of the Board today.

20 Linda Hartzell from the Audit Division and  
21 Toni Cowan from the Attorney General's Office have been  
22 working on this issue with us, among other members of  
23 staff, and today they are prepared to give you a brief  
24 overview of where we're at in respect of the regulation.

25 You will note that you should have a draft in

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1 front of you dated 10/7. Those in the audience, if you  
2 have not seen this draft, there should be copies  
3 available. We did post it on our website, but I  
4 understand that we were working on this as late as  
5 yesterday morning even, I believe. So this is all new.  
6 So I know everyone is still digesting this.

7 But with that, I'll turn it over to  
8 Miss Hartzell.

9 MS. HARTZELL: Thank you, Chairman Neilander.  
10 It is not my intent to walk through in a great deal of  
11 depth. What I would like to do is cover each section very  
12 briefly, and just hit some of the highlights.

13 The very first section that we have is the  
14 definition section. Of course, the definition section  
15 sets the groundwork for what is and is not taxable under  
16 the regulation. It's not my intent to cover every  
17 definition, but we can start by covering a couple of them.

18 The very first one we need to talk about is  
19 an admission charge. This comes from section 66 of Senate  
20 Bill 8. The majority of the language you see in front of  
21 you comes directly from the bill.

22 However, starting with the words "This term  
23 includes," those are all amendments that we have made that  
24 we feel are necessary to bring clarity to the issue. We  
25 are indicating that an admission price might be also a

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1 minimum purchase of food or refreshments or merchandise.  
2 It also could be a table reservation fee, an entertainment  
3 fee or a cover charge. None of this is new to the  
4 industry at all.

5 That is not something that we have had any  
6 commentary on at all so far. No one has raised the issue.

7 The boxing is simply it needs to be defined

8 because the statute exempts boxing, which is regulated  
9 under NRS 467 to be exempt from the live entertainment  
10 tax. The definition was broadened here based on some  
11 information that we obtained from the Athletic Commission.

12 Starting in number 4, you have a very  
13 critical issue, and that is the definition of a facility.  
14 It is in looking at the definition of facility that we  
15 first become aware that there are really two entirely  
16 separate classes of taxpayers for the purpose of this  
17 regulation. All I have done with this facility definition  
18 is taken it basically from the statute and simply reworded  
19 it slightly because of the awkwardness of referring to any  
20 other licensee.

21 I felt it was better to simply take an  
22 approach of defining facility for the smaller gaming  
23 properties and then separately defining it for the larger  
24 gaming properties.

25 And you can see here that I have indicated in

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1 item (a) that if the entertainment is provided at a  
2 licensed gaming establishment that is licensed for less  
3 than 51 slot machines and less than six games, a facility  
4 means an area or premises where live entertainment is  
5 provided and an admission charge or other consideration is  
6 collected.

7 This becomes very significant because you  
8 will note here that if you are one of those smaller gaming  
9 properties, that unless you charge an admission charge,  
10 your facility is not subject to tax. That is a very  
11 critical issue. So I wanted to highlight that one.

12 One other -- there are a couple of areas that  
13 you will see printed in gray here. The gray areas in here  
14 are ones that represent changes from an August 22nd draft.  
15 Not everything that I added is in gray. These are simply  
16 changes from an August 22nd draft.

17 One thing you will see is where we have  
18 indicated other consideration is collected from one or  
19 more persons, and that is because the issue has been  
20 raised that if an admission charge is not collected from  
21 everyone, there was the question as to whether or not the  
22 facility was taxable at all. It is of course our position  
23 that if an admission charge is collected, from anyone, an  
24 admission charge is being collected and it's subject to  
25 tax.

1 Also there is some additional language that  
 2 we have put in here, and this is something we feel will  
 3 primarily apply to restricted locations, although there is  
 4 some potential for it to apply to other people as well.  
 5 But we are looking at an increase in the price of food,  
 6 refreshments or merchandise that occurs exactly when the  
 7 entertainment begins is going to be deemed as  
 8 consideration paid for the right or privilege of entering  
 9 the area or premises where the live entertainment is  
 10 provided. Now that is something that we have had some  
 11 controversy expressed at this point, and I wanted to make  
 12 you aware of that.

13 Section (b) deals with the larger properties  
 14 where the question of what a facility is, is much broader.  
 15 There is no requirement that there be an admission charge,  
 16 and it is essentially any area on the curb-to-curb  
 17 premises where live entertainment might be offered.

18 It is when we reach section 5 that we get  
 19 into probably the most difficult area of this regulation,  
 20 and that is the very definition of live entertainment. As  
 21 you can see, the way that Board staff at this point has  
 22 approached the issue is to essentially say that it's  
 23 everything except what is listed below.

24 That is not the approach at this point that  
 25 the Department of Taxation is taking. They are taking the

1 opposite approach of defining what it is. I'm simply  
 2 putting it out there for your awareness.

3 CHAIRMAN NEILANDER: I would comment there  
 4 that actually they have defined it as what it is but then  
 5 in the most recent hearing also added a section that said  
 6 what it isn't. So I don't know that we're that far apart.  
 7 Ours says here is what it isn't and also here is what it  
 8 is.

9 So I think it is just a drafting issue. I  
 10 don't think it is substantive. We chose to go to that  
 11 direction because the casino entertainment tax  
 12 historically has defined entertainment and then provided a  
 13 list of exclusions. So we felt that that was the way it  
 14 was drafted previously. So we just followed in that same  
 15 direction.

16 MS. HARTZELL: Thank you, Mr. Chairman.  
 17 You will note here that we have several

18 issues listed and they are alphabetized. I wanted to  
19 point out that we are presenting today two alternatives on  
20 item (b). We have the issue of recorded music, which as  
21 anyone who has been following this issue at all is aware  
22 is a very controversial issue.

23 We have presented the first option as saying  
24 that if you have a disc jockey that is presenting recorded  
25 music, they would not be considered subject to the tax

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1 unless they do one of three things: unless the manner or  
2 the presentation constitutes a performance in its own  
3 right; if the person that is the DJ has some notoriety, or  
4 if dancing is permitted. That is option one. That is the  
5 paragraph that's printed first for item (b).

6 There is also an alternative (b) in which we  
7 essentially take the position of ignoring the issue of  
8 dancing and simply saying that the DJ would have to  
9 essentially become a performer. And we have listed three  
10 tests under which we would consider them to be a  
11 performer: namely, that this individual engages in  
12 substantial interaction with patrons, or the advertising  
13 is directed at bringing attention to the person who is  
14 going to serve as the DJ, or if this individual does  
15 something more than just spin records. And I'm not  
16 talking about just vocalizing; I'm talking about visual  
17 entertainment, such as physical stunts, dancing,  
18 pantomimes, similar activity of that nature.

19 Are there some questions or would you like me  
20 to continue to move forward on that?

21 CHAIRMAN NEILANDER: This is the area where  
22 we have had the most difficulty in terms of trying to  
23 define these activities. Just a little bit more  
24 background.

25 When the Legislature adopted Senate Bill 8,

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1 there weren't really any hearings, and there really is not  
2 a lot of -- actually, there isn't any legislative history  
3 with respect to the meaning of some of these terms.  
4 Although there is a statement that Senator Townsend made  
5 in the Senate journal when he and his colleagues voted for  
6 this bill which in essence said that it was the intent of  
7 the Legislature not to reduce the tax base on matters that  
8 were currently being subject to the old casino

9 entertainment tax. But rather, the notion was to add  
10 these other venues and pick up additional revenue.

11 Having said that, however, the legislation  
12 itself in defining live entertainment among other things  
13 is subject to interpretation. I think when we first  
14 looked at this, at least I was taking the position that  
15 dancing in and of itself was a form of entertainment.

16 We have had this debate with the Tax  
17 Commission for some time now, and I think that based on  
18 the comments that we have received jointly, I felt it was  
19 appropriate at this time to go ahead and propose an  
20 alternative that did not rely solely on the dancing,  
21 because if you read the statute literally, I mean you  
22 definitely can come to that interpretation. Because  
23 Taxation to some extent was uncomfortable taking it that  
24 far, what we have proposed here, and would like to get  
25 your thoughts on this, is that rather than -- we go back

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1 more to the language in the statute, and rather than  
2 relying on the dancing alone, we're really looking at, as  
3 Miss Hartzell outlined, a different sort of a test, which  
4 would rely more on I think what would be a traditional  
5 interpretation of entertainment by other persons.

6 So that's what alternative (b) is. And I  
7 personally think that that is the direction that we need  
8 to go in order to resolve this matter.

9 MEMBER SCHERER: I guess I have some concern  
10 about that for a number of reasons. One, it is my  
11 understanding the legislative counsel bureau in putting  
12 together their projections started with the current base  
13 of the casino entertainment tax and then they added on to  
14 that. They did not subtract anything.

15 This definition would subtract from what is  
16 currently taxable, which is the dancing that occurs in  
17 these nightclubs at various casino premises. So I don't  
18 know that that is consistent with anything that the  
19 Legislature did or what little legislative history there  
20 is based on the LCB's projections and based on Senator  
21 Townsend's comments.

22 The definition of live entertainment talks  
23 about any activity provided by a person. It doesn't say  
24 provided by a performer. It doesn't say provided by an  
25 entertainer. It says provided by a person.

1 So clearly with this new subsection (c) that  
 2 Miss Hartzell has added that excludes jukeboxes, clearly  
 3 that is excluded I think in the language. I don't know  
 4 that there is any room for interpretation there at all.  
 5 But where you have a DJ there spinning records, I think  
 6 there is at least a legitimate argument that the  
 7 Legislature intended that to be taxable, and in fact, what  
 8 little legislative history there is I think supports the  
 9 view that the Legislature intended that to be taxable.

10 And I will say that this alternative  
 11 language, I'm not sure how we go about as a practical  
 12 matter in the Audit Division having to determine what is  
 13 substantial interaction with patrons and having different  
 14 auditors come up with different conclusions based on what  
 15 their view of substantial interaction is. So I am  
 16 concerned about that.

17 I guess I would like to -- I'm not a big fan  
 18 of taxes generally, would prefer to see a lot not taxable.  
 19 But I also don't want to fail in our statutory duty to  
 20 enforce what the law as the Legislature has adopted it.

21 And I guess what I might suggest is this.  
 22 That if we adopt an interpretation that is different from  
 23 what the Tax Commission has adopted, because these  
 24 regulations are being adopted pursuant to 233B, that means  
 25 they are going to go to the legislative commission for

1 review and we can allow the legislative commission to  
 2 resolve this and tell us what they think the legislative  
 3 intent was behind this and whether there are supposed to  
 4 be two different definitions here, one for gaming  
 5 establishments that have historically paid this tax and  
 6 one for others, or whether we need to reconcile them with  
 7 one definition, and if so, which definition that is.

8 CHAIRMAN NEILANDER: That's the issue.  
 9 Lawyers will differ on this.

10 I think the other side of that argument is if  
 11 you read the plain language in the statute, you don't even  
 12 look at the legislative intent. That is the argument that  
 13 we have been getting at the Tax Committee hearing, is that  
 14 the plain language of the statute doesn't address dancing,  
 15 and the fact is that the Legislature deleted the dancing  
 16 language from the old statute.

17 MEMBER SCHERER: I think if you had only

18 recorded music with no person there physically spinning  
19 the records, I think that would certainly be with the  
20 plain language, and I think the jukebox exception in  
21 (5)(c), clearly that is supported by the plain language.  
22 I think because they chose to use the word person rather  
23 than performer or entertainer, I think there is some room  
24 for interpretation in the statutory definition of live  
25 entertainment.

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1 I really don't have a strong feeling one way  
2 or the other except for the fact that I'm concerned that  
3 we could end up losing tax revenue when the Legislature's  
4 intent was to raise additional revenue. I don't want to  
5 go back in front of them next session and have them say  
6 how come you failed to collect this tax that we told you  
7 to go collect. If the legislative commission tells us  
8 that wasn't what they intended, I certainly don't have any  
9 heartaches with that.

10 CHAIRMAN NEILANDER: One of the things we're  
11 doing right now is we're doing some research to try to  
12 compile some numbers to the extent we can to see what  
13 percentage of these activities are attributable to  
14 essentially what we're talking about is nightclubs, the  
15 kind of nightclub atmosphere, venue. And so we are doing  
16 that research right now because, obviously, that is  
17 something that both the Governor's office and the  
18 Legislature will be interested in as we proceed. We spent  
19 a lot of time at the joint hearings discussing that issue.

20 Mr. Hartzell, why don't you go ahead and  
21 briefly hit the other major points.

22 MS. HARTZELL: Thank you. As Member Scherer  
23 has already covered, (c) is simply the jukebox exception.

24 Item (d), just for informational purposes,  
25 what we're trying to do there is simply to clarify once

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1 and for all that acts like the circus acts that are free  
2 of charge and they are out in the open area are clearly  
3 not subject to the tax.

4 Also there is the possibility that you could  
5 have a live band presenting music in the middle of the  
6 pit. As long as they are not recreating a lounge around  
7 the area where the bandstand is, there is the potential  
8 for looking at that as not being live entertainment, if we

9 can basically substantiate that it is a draw to the gaming  
10 area rather than live entertainment provided in  
11 conjunction with the selling of food and beverage. So  
12 that is all that that is for is to try to eliminate or at  
13 least to clarify that we do not wish to try to tax that,  
14 that we do not consider that to be consistent with the  
15 intent of taxing live entertainment.

16 Item (e) is something that's been well  
17 addressed. We have already sent out a September 5th  
18 letter indicating basically that ambient background music  
19 that is incidental to the primary purpose does not  
20 constitute live entertainment. I continue to get  
21 inquiries periodically asking for determinations. I think  
22 we have a very good handle on where that dividing line is  
23 at this point.

24 The only other thing that I really wanted to  
25 highlight here is after you see letter (m), you will see

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1 another gray block of language that starts with the  
2 words "Except as otherwise limited above." In conjunction  
3 with doing some drafting work with the rest of the staff  
4 on this regulation, one of the things that was done was a  
5 visit to some of the clubs basically looking for the issue  
6 of DJ's as performers.

7 But one of the things that we have found that  
8 needs to be addressed in the regulation is the issue that  
9 a number of these nightclubs do have what might be termed  
10 go-go dancers. They are employees or independent  
11 contractors -- I'm not sure which -- but clearly they are  
12 authorized to be on specific stages or platforms. They  
13 are dressed typically in costumes, probably selected by  
14 the club, and so on. They are clearly acting as  
15 performers.

16 So what I did here is basically put in a  
17 section that says unless it falls under some other  
18 exception listed above, the presence of those go-go  
19 dancers, or whatever name you might like to call them,  
20 that does constitute live entertainment.

21 CHAIRMAN NEILANDER: I guess that this comes  
22 up in a couple different contexts in terms of trying to  
23 make sure that Taxation and the Gaming Control Board are  
24 being consistent. The first is the notion of patrons.  
25 And as I said earlier, there is -- I think I started out



1 from the position that patrons who may be entertaining  
 2 each other could be construed under the statute as being a  
 3 form of live entertainment. But I think there again are  
 4 two schools of thought on that.

5 There is also the notion that really if it is  
 6 a patron driven activity, it's not within the definition  
 7 of live entertainment.

8 The other thing is that there is, has been  
 9 testimony provided in front of the joint committee in  
 10 respect of the Legislature's intent to capture these  
 11 gentlemen's clubs where there is a form of live  
 12 entertainment is the dancing which is performed in those  
 13 clubs. And I don't know, this is just some suggested  
 14 language that we came up with based on our observations.  
 15 But it seems that you really need to treat those kind of  
 16 things equally.

17 So to me, they seem to be along the same  
 18 lines. So that's why we have added that definition.

19 MEMBER SCHERER: If I might ask a question on  
 20 subsection (e) there, the ambient background music. It  
 21 says "which is incidental to the primary attraction to the  
 22 facility, or to the primary basis for the admission charge  
 23 for the facility." I wanted to ask, what kind of  
 24 facilities did you have in mind that might charge an  
 25 admission charge but where the background music would be

1 ambient in nature and not taxable?

2 MS. HARTZELL: I believe probably one example  
 3 was the much publicized Eifel Tower restaurant where there  
 4 is a charge to go upstairs. There is an admission charge.  
 5 Presumably, I think the thinking is if someone were to pay  
 6 that charge, they are not paying it specifically because  
 7 they had a piano player.

8 Admittedly, for licensed gaming  
 9 establishments, I look at that as a pretty limited issue,  
 10 because typically if there is live entertainment and they  
 11 are paying an admission charge, it ordinarily would not be  
 12 considered incidental. But we did not want to have a  
 13 situation where if there was an admission charge it was  
 14 automatically -- that they were going to end up being  
 15 treated substantially different if the music was  
 16 identical.

17 MEMBER SCHERER: As I just try and brainstorm

18 through this, I don't know if, for example, like the  
19 Guggenheim Museum, if they happen to have a string quartet  
20 come in and was playing in the background as you went  
21 around and looked at the exhibits, I guess you might say  
22 that was incidental, ambient, background music. I assume  
23 they charge an admission charge to get into the museum  
24 there.

25 MS. HARTZELL: Another area that I wanted to

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1 highlight to your attention is item 10, the shopping mall.  
2 This is a definition created. However, it is basically  
3 taken as a dictionary definition. It is nothing  
4 particularly unusual.

5 The only thing is that I think there may be  
6 situations which are going to be purported to be shopping  
7 malls that may not meet our common understanding of a  
8 shopping mall, and that is an issue that going forward we  
9 are going to have to wrestle with. As you know, we have  
10 some issues basically related to shopping malls as to  
11 whether they are part of the gaming establishment or not,  
12 but that is addressed a little bit later in the  
13 regulation.

14 The next major section of this regulation is  
15 applicability. And it's in this section where we  
16 basically kind of lay down the ground rules about when a  
17 facility goes into entertainment status and so on. It  
18 basically moves from defining live entertainment to saying  
19 when does this live entertainment apply.

20 You will notice that paragraph 1 is the  
21 paragraph that actually imposes the tax. This is worded  
22 almost identical to the statute. The only difference is  
23 that in that grayed language, you do see during live  
24 entertainment status. I believe that was also the  
25 intended meaning. But we simply inserted that for

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1 clarity.

2 Just because a facility might happen to be in  
3 operation during the day but there is no entertainment,  
4 that certainly we would not take the position that it  
5 should be taxed all day long if there is a portion of the  
6 day when it does not have live entertainment.

7 You will see some new language over in items  
8 2 and 3. This is really not new information. The

9 definition of when live entertainment status commenced is  
10 not significantly different than it was before.

11 We did decide that it was worthwhile to try  
12 to define when it ends also. And that is why it got moved  
13 from the definition section to the applicability section,  
14 simply because the language wasn't very manageable as a  
15 definition.

16 Items 10 and 11 might be worth taking a  
17 little bit closer look at. We have always historically  
18 had a little bit of trouble with the issue of if you have  
19 bars that are nearby an entertainment area, is that  
20 subject to tax or is it not. And you can see that I have  
21 added some language to address the issue of a -- actually  
22 number 11 is the one where there's -- let me start over  
23 here.

24 Section 10 deals with the issue of where you  
25 have a facility where an admission charge is collected but

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1 you might have that facility divided into two areas. For  
2 example, it might have a main restaurant and a patio.

3 We are taking the position at staff at this  
4 point that if there is an admission charge to the facility  
5 as a whole, the patron is free to come and go in between  
6 the patio area and the main restaurant and therefore has  
7 paid for the right to view the live entertainment, whether  
8 that individual happens to walk to the patio or stay  
9 within the main facility. As long as he is granted the  
10 access to move freely between those two areas, we are  
11 deeming that any sales made within that overall facility  
12 will be subject to the tax.

13 Section 11 is the counterpart to that. When  
14 there is no admission charge collected, we're again  
15 looking at the issue if there are areas within the  
16 facility where the patrons cannot hear or see the  
17 entertainment, that if the licensee can demonstrate which  
18 sales were made to patrons who could not see or hear, that  
19 there is a way for them to exclude a portion of the sales.  
20 But the record keeping burden is on them to make that  
21 distinction.

22 Section 13.025 is the exemption section. And  
23 these exemptions come primarily directly out of the  
24 statute. You can again see in number 3 where I address  
25 the issue of the price of food and refreshment going up

1 during entertainment to be essentially consideration paid  
2 for the right to access the live entertainment.

3 We did in item 6 try to bring some clarity to  
4 the issue of private meeting and casual assemblages. That  
5 language is not new. It was in the historical CET  
6 statutes. It is also repeated in SB 8.

7 All we have done is basically reorganized the  
8 language to make it clear that this clause concerning the  
9 purpose of the event not primarily for entertainment  
10 applies both to the private meetings and to the casual  
11 assemblages.

12 We have looked at saying that we're going to  
13 deem the event to have a primary purpose other than  
14 entertainment if it occurs within like a convention or a  
15 series of business meetings. Item 7 is where we begin  
16 to -- well, actually this is out of the statute where we  
17 say that if it is live entertainment that is provided in  
18 the common area of a shopping mall is not subject to the  
19 tax. However, if the entertainment occurs in a facility  
20 subject -- facility within that mall, it would be subject  
21 to the tax. Again, that is consistent with the statute.

22 In Regulation 13.030, we address the issue of  
23 charitable and nonprofit benefits. This is one that has  
24 evolved quite a bit from our historical interpretation  
25 under the old statutes.

1 Basically the long and short of this  
2 paragraph is that if a licensee donates 100 percent of the  
3 admission proceeds, there will be no tax on the event even  
4 if another for-profit company sells the food and beverage,  
5 and the licensee may offset its costs. The only thing  
6 they cannot do is keep a portion of the admission  
7 proceeds. In other words, they can't say, well, 50-50.  
8 That's basically the position that we were moving toward.

9 CHAIRMAN NEILANDER: Just for the record, we  
10 haven't fully explored the latest version of Taxation's  
11 draft, but there is a bit of a difference here. We have  
12 chosen to take the hundred percent of the admission charge  
13 approach. Their latest draft, they are using a 20 percent  
14 of gross proceeds.

15 So as long as the charity keeps, I believe it  
16 was 80 percent of the gross proceeds, 20 percent could go  
17 to any profit organization that was assisting in the

18 event. And we're still exploring that with Taxation where  
19 the 20 percent, why that threshold was set at that moment.  
20 We're also doing some additional research now  
21 to try to get a better handle on how the costs are split  
22 in some of the events that occur at least that are under  
23 the jurisdiction of the Gaming authorities.  
24 MS. HARTZELL: I think the next area that's  
25 worthy of highlight is Regulation 13.050, payment of the

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1 tax. Item 7. Here is where we talk about the shopping  
2 malls and making a distinction between those that are part  
3 of the gaming establishment and therefore subject to the  
4 same rules as far as is an admission charge necessary,  
5 does the head count matter.

6 Basically what we're stating here is if the  
7 shopping mall is owned by the same people that own the  
8 gaming operation, then we would take the position that it  
9 is in fact part of the gaming establishment and the tax  
10 should be collected by Gaming rather than Taxation, and it  
11 should follow the rules for gaming establishments in terms  
12 of determining whether something is or is not a facility.

13 I think there is just one more item that I  
14 feel is appropriate to highlight at this point given the  
15 stage that we're at. That is Regulation 13.060, records,  
16 and item 3. We have had some controversy in the past over  
17 some issues where perhaps a group of patrons might have  
18 come in shortly before the show and ordered a round of  
19 drinks or something, but the tab stayed open till long  
20 after entertainment was closed or even perhaps just a  
21 little while -- or excuse me -- the entertainment  
22 started. It's very difficult to establish which of those  
23 drinks is taxable if there is no means by which we can  
24 identify what time a particular drink was purchased,  
25 because if they order, say, one round before the

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1 entertainment starts and a second round after the  
2 entertainment starts, only that second round is taxable.

3 What we have had in the past is some record  
4 keeping issues. So what we have done is address in the  
5 record keeping section is that if you are going to say  
6 that a portion of those sales are not taxable because a  
7 portion of the drinks were ordered before entertainment,  
8 that those records -- the burden is on the licensee to

9 keep the records to isolate those sales. We do have some  
10 existing CET systems that do not properly isolate that and  
11 have caused some difficulties for our auditors.

12 I believe that those are the essential areas  
13 that I wanted to cover.

14 CHAIRMAN NEILANDER: Questions for Miss Cowan  
15 or Miss Hartzell?

16 Before I open it up for additional testimony,  
17 I'll submit these letters for the record. I haven't read  
18 this particular letter yet. I think we just got it. But  
19 we got a letter from the Nevada Taxpayers Association, and  
20 it appears that it is addressing two issues. One is the  
21 notion of curb to curb, and Miss Velardo is I think asking  
22 for some clarification in respect of what curb to curb  
23 means in the context of who would have jurisdiction to  
24 collect the tax.

25 The second issue she raises is in respect of

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1 the definition of live entertainment, and she's  
2 essentially stating that it's her belief that the  
3 definitions adopted by the Nevada Gaming Control Board,  
4 Gaming Commission, and the Department of Taxation should  
5 be the same.

6 The second letter is from Haunani Dew, and  
7 this is a letter which we just received as well, and this  
8 individual is raising some concerns about how hula dancers  
9 might be treated under the new taxation, and in fact,  
10 whether or not they are, could be considered ambient  
11 background performers. We will enter those into the  
12 record.

13 With that, why don't we open it up for  
14 anybody who wants to provide any additional testimony  
15 today. One last chance.

16 MR. BIBLE: Let me just indicate for the  
17 record, again, Bill Bible from the Nevada Resort  
18 Association. We just received this draft, as you  
19 indicated in your introductory comments, yesterday, and we  
20 have not had an opportunity to review it and will provide  
21 written comments on the various provisions that have been  
22 added or changed.

23 Additionally, as you are aware, I did provide  
24 comments to both yourself and Chairman Bernhard of the  
25 Nevada Gaming Commission earlier under letter draft and

1 would like that draft at least to be incorporated into  
2 today's record.

3 CHAIRMAN NEILANDER: Sure. We will  
4 incorporate that draft into the record.

5 With respect to the issue that we have  
6 identified in subsection -- section 5, Mr. Scherer, I  
7 guess just so I can understand your comments, to go back  
8 to as we regather ourselves and head back to our next  
9 joint hearing, you still are of the position that you  
10 would favor the first approach as opposed to the  
11 alternative approach?

12 MEMBER SCHERER: Yes. That's -- well, at  
13 least in terms of I think it would make -- with this one  
14 particular issue, which is somewhat controversial and  
15 contested, I think that it would make sense for us to  
16 adopt that interpretation and allow the Department of  
17 Taxation if they are going to go ahead and adopt the other  
18 interpretation, to do so, and allow the legislative  
19 commission then to in effect resolve the conflict between  
20 the two interpretations.

21 CHAIRMAN NEILANDER: Mr. Siller, did you have  
22 any particular thoughts on that?

23 MEMBER SILLER: No. My thoughts from  
24 listening to the discussion is that seemed to be, Member  
25 Scherer's recommendation seemed to be the most logical way

1 to address that concern.

2 I'm real concerned with words like  
3 substantial interaction with patrons. I can see that as  
4 being a lawyer's field day, and justifying why something  
5 was or was not done. Even if we were to go with  
6 alternative (b), that would just send chills up my spine  
7 seeing substantial interaction.

8 But that put aside, I think Member Scherer's  
9 suggestion, I support it. I think that is the best course  
10 of action.

11 MEMBER SCHERER: I would perhaps suggest that  
12 we might add some language into subsection 5 there, the  
13 term includes without limitation dancing by patrons to  
14 recorded music, and perhaps we could add, presented by a  
15 person who is physically present, which would parrot the  
16 language of the statute.

17 Again, I don't intend to get at the jukebox

18 or the muzak system or those kinds of things, but rather  
19 more the DJ situation where you have got spinning records,  
20 CD's.

21 CHAIRMAN NEILANDER: But in respect of the  
22 DJ, it would not -- the DJ would not have to be a  
23 performer themselves. They would simply be facilitating  
24 the playing of music.

25 MEMBER SCHERER: Correct. I think that as I

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1 said earlier, I think that is one reasonable  
2 interpretation of the language of the statute. I don't  
3 disagree that the alternative interpretation is also  
4 reasonable. I just think the legislative commission --  
5 what little legislative history we have seems to indicate  
6 the Legislature intended us to continue to collect things  
7 that were already taxable, which this is clearly already  
8 taxable. Unless the legislative commission tells us to  
9 the contrary.

10 MS. COWAN: Mr. Chairman, may I raise one  
11 issue and that you just mentioned, the dancing by the hula  
12 girls, could that possibly be ambient dancing? I think  
13 that raises an issue that we may have to grapple with.

14 Again, like the problem we had where the  
15 piano players were summarily fired to avoid paying the  
16 tax. In my conversations with counsel for the Taxation  
17 Department, I'm understanding that their position is if  
18 there is a go-go dancer, or a dancer providing any  
19 entertainment to the crowd, that they think that that  
20 would be live entertainment also. My concern is if that's  
21 where everyone is agreeing is live entertainment, that  
22 facilities might fire their go-go dancers to avoid having  
23 to pay the tax similarly as what happened with the piano  
24 players.

25 CHAIRMAN NEILANDER: Well, I think until we

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1 decide the issue of what's taxable and what's not taxable,  
2 I mean, people will make business decisions based on  
3 whatever the law eventually reads.

4 MR. BIBLE: Before I leave the podium I did  
5 want to ask Miss Hartzell for clarification when she  
6 explained 5(d)(2), you indicated, and this would be where  
7 there is entertainment that is provided within the gaming  
8 area, I think you indicated live music was permissible?



9 MS. HARTZELL: Yes, that is correct, as long  
10 as the band is simply in the gaming area, and we're not  
11 talking about a lounge that's in the center of the casino,  
12 for example.

13 MR. BIBLE: It appears to me the language on  
14 the top of page 3 does not reflect that intent.

15 MS. HARTZELL: Can you clarify your question?

16 MR. BIBLE: It appears to me that you have --  
17 that it does not apply if it is offered as ambiance or to  
18 attract people unless there's live music. As I read the  
19 proposed regulation. Maybe I'm not reading it correctly.

20 MS. HARTZELL: I guess I will need to take a  
21 closer look at that and re-analyze it. But where I was  
22 going with this is saying that if you have -- for example,  
23 there are a number of properties that have some form of  
24 entertainment out on the casino floor. Its primary  
25 purpose is to simply draw people into the casino. There

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1 are a limited number of them who have gone so far as to  
2 put a small bandstand out on the casino floor. It's in  
3 the gaming area. It's not a lounge or it is not by a  
4 lounge. It is really designed to just create an  
5 attraction off the street into the pit area.

6 If that bandstand is out there and all that  
7 is happening is some live music but they don't have a  
8 dance floor nearby, they don't have any kind of tables to  
9 sit at, I think that it is possible to suggest that that  
10 is not going to be subject to the tax because there is no  
11 direct food and beverage sales associated with it. It's  
12 really out in the pit, and the only option would be to  
13 start taxing bars that are nearby.

14 MR. BIBLE: Or food and beverage sales that  
15 occur within the pit.

16 MS. HARTZELL: Generally those are comped.  
17 It's never our position to try to tax things like that  
18 unless -- there are some situations where I have gone out  
19 and reviewed and they put a bandstand there, but  
20 unfortunately, they also put a dance floor in front of it  
21 and some tables immediately around it, and it would be  
22 very difficult, if there is cocktail service to that, to  
23 establish that that is any different than any other kind  
24 of lounge.

25 MR. BIBLE: You may want to take a look at

1 the language. At least I had the different impression.

2 MS. HARTZELL: Okay, I will take a look at  
3 it.

4 MR. BIBLE: Thank you.

5 CHAIRMAN NEILANDER: Thank you. Further  
6 testimony? Good afternoon, Mr. Faiss.

7 MR. FAISS: Mr. Chairman, Mr. Siller,  
8 Mr. Scherer, Madam Secretary. I'm Bob Faiss of Lionel,  
9 Sawyer & Collins, appearing as counsel for MGM Mirage.

10 I'm in the company of Bruce Aguilera, who is  
11 the vice president and general counsel of Bellagio, and he  
12 serves the function as being the leader of the MGM Mirage  
13 team with regard to the amended CET and the LET.

14 Another important member of the team is Jorge  
15 Perez, who is Bellagio Hotel controller.

16 As Mr. Bible said, Mr. Chairman, we did not  
17 receive this draft until the last several hours. It was  
18 not our intention to testify today. We were and are going  
19 to present you a detailed written response draft in  
20 response to several points.

21 I do want to take the opportunity to commend  
22 Linda Hartzell and Toni Cowan, Steve Hixon and you for the  
23 tremendous work you have done. I'm delighted that Member  
24 Scherer is getting involved so heavily. I think that will  
25 enhance and help define the discussion.

1 I'm up here because I didn't expect that the  
2 Board would be voting on anything today.

3 CHAIRMAN NEILANDER: We are not.

4 MR. FAISS: Because perhaps Member Siller  
5 hasn't had the opportunity to read a lot of background  
6 things that we have submitted to you privately and also at  
7 the various hearings.

8 While I'm up here, Mr. Chairman, for example,  
9 you are talking about recorded music. That is entirely  
10 separate from what happens to anything in response to the  
11 recorded music. You do not tax recorded music now.  
12 Recorded music, as we suggested to you, is not a  
13 performance, not necessarily a performance. Recorded  
14 music are presented in various venues, and you do not tax  
15 it now.

16 It's not presented unless a human being makes  
17 that responsible, makes that happen. He pushes a button.

18           What we have suggested to the Board and to  
19 the Commission, to the department, is that the mere fact  
20 that a person who is in the same room with the audience  
21 pushes that button does not make that a performance. That  
22 there is a difference between the facilitation of music  
23 and the performance and the presentation of it. And  
24 that's one thing.

25           I do not know if Mr. Siller has had the

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1 advantage of the background discussion on that. I'm sure  
2 he will want to before he makes any vote as to what  
3 direction the Board will take.

4           And if you are not taking any vote and  
5 setting any direction today, then I have made a mistake in  
6 what I heard in the audience.

7           CHAIRMAN NEILANDER: No. Perhaps I should  
8 restate that because if I was unclear, it's because we're  
9 wandering into strange 233B lands that we have never been  
10 to, at least not this body.

11          The intention is to at the end of the day  
12 have a regulation adopted under Chapter 233B which will  
13 have to be adopted by the Board, and then an identical  
14 regulation under the Nevada Revised Statutes, and it will  
15 be a portion of NGC Regulation 13, which the Commission  
16 will adopt, and the procedures by which you get there are  
17 different under both.

18          The purpose today was just to get some  
19 feedback from my colleagues and also to begin to create a  
20 record for the Commission. We have no intention of taking  
21 any action today.

22          MR. FAISS: Mr. Chairman, thank you. I  
23 understand that. The vote I was talking about, you are  
24 talking about two alternatives present in today's draft.  
25 I understood some indication of preference to one of two

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1 alternatives was being given today. That is what I was  
2 talking about.

3          CHAIRMAN NEILANDER: To present those views  
4 back at the Tax Commission meeting, not for purposes of  
5 voting or taking any action.

6          MR. FAISS: I thank you.

7          CHAIRMAN NEILANDER: I think Mr. Scherer has  
8 a question for you.

9 MEMBER SCHERER: Mr. Faiss, perhaps we don't  
10 want to go down this road today. I'm not sure. But why  
11 does it matter whether it is a performance or not?

12 MR. FAISS: Well, it has to be live  
13 entertainment, and recorded music is not a live  
14 entertainment.

15 MEMBER SCHERER: There is nothing in the  
16 definition of live entertainment that the Legislature  
17 passed that requires a performance.

18 MR. FAISS: It provides the presentation of  
19 live entertainment.

20 MEMBER SCHERER: It requires any activity  
21 provided for pleasure, enjoyment, recreation, relaxation,  
22 diversion or other similar purpose by a person or persons  
23 who are physically present when providing that activity to  
24 a patron or group of patrons who are physically present.

25 MR. FAISS: I concede that, and I'm sure you

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1 will concede the presentation of recorded music does not  
2 come within that definition.

3 MEMBER SCHERER: If a person is present, it  
4 does.

5 MR. FAISS: I'm not arguing the point. It  
6 would be good to understand the basis of your position.  
7 You're saying that if the sole activity by the person who  
8 is pushing a button, he is inside the room, that that is  
9 live entertainment; is that correct?

10 MEMBER SCHERER: I'm saying that that could  
11 fall within that definition.

12 MR. FAISS: Would you concede that that same  
13 person was in a different room that had a one-way mirror  
14 and had a wall, and could see what was happening in that  
15 room, and pushed that same button, that it would not be?

16 MEMBER SCHERER: I would have to think about  
17 that.

18 MR. FAISS: I urge you to think about it  
19 because in some cases the people who press the button do  
20 not perform. They are in isolated areas and sometimes in  
21 enclosed areas looking at the room.

22 MEMBER SCHERER: No, I understand that. But  
23 there are also ways to get requests in to them, and if  
24 there is any kind of -- when you have that ability to make  
25 requests, I think arguably you come back within this

1 definition of live entertainment, as the Legislature has  
2 written it.

3 I'm not suggesting that that is the only  
4 reasonable definition of live entertainment. I'm simply  
5 suggesting that it is one.

6 I saw a newspaper -- a story on the news the  
7 other night with new street entertainers, that new fashion  
8 for street entertainers is to take their laptop computers  
9 out and play music for the people that gather around, on  
10 their laptop computer. Because that music is being  
11 artificially created by their laptop commuter, does that  
12 mean that it is not entertaining in any form of  
13 entertainment?

14 I guess that's the issue. The more  
15 technologically advanced we get, the more we have to  
16 determine how we are going to interpret those different  
17 forms of entertainment and whether they fall within this  
18 definition or not.

19 I'm not necessarily saying that they ought to  
20 be taxable. What I'm saying, I guess, is there is nothing  
21 that says it has to be a performance in the Legislature's  
22 definition.

23 So I'm concerned because of the, granted,  
24 very little legislative history there is, Senator  
25 Townsend's statement and then the LCB's basis for their

1 projections. I'm concerned about taking away things that  
2 have previously been taxable without some indication from  
3 the Legislature that that is what they want us to do.

4 MR. FAISS: Mr. Scherer, I understand your  
5 position. I'm sure that you would agree that you'll come  
6 to a position to say this is our position, but you will  
7 say why. If those are the two reasons that you use, that  
8 will be the basis for your position. We can respond to  
9 that.

10 CHAIRMAN NEILANDER: Thank you, Mr. Faiss.  
11 And I should also point out before we close that the  
12 Department of Taxation and the Board and the Commission  
13 are continuing to work closely together, and it's not -- I  
14 hope it's not coming off as there is some kind of dispute,  
15 because there is not. We're struggling through these  
16 issues the same as they are, and hopefully at the end of  
17 the day we can come to some consensus.

18           Let's see if there is any additional  
19 testimony before we close the hearing.  
20           Seeing none, we will stand in recess until  
21 the hour of 9:00 a.m. tomorrow.  
22           (Recess for day at 3:04 p.m.)  
23  
24  
25

# EXHIBIT FF

# EXHIBIT FF



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   
**DATE:** October 24, 2003  
**RE:** Workshop on Proposed Permanent Tax Regulations

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

**Carson City –**

Friday, November 21, 2003 Room 2135

Nevada Legislative Building  
401 S. Carson Street  
Carson City, Nevada

**Las Vegas - Via Video Conference –**

Friday, November 21, 2003 Room 4401

Grant Sawyer State Office Building  
555 E. Washington Avenue  
Las Vegas, Nevada

The November 21, 2003 meeting will start at 9:00 a.m.

### AGENDA

9:00 a.m.

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

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

On or before 3:00 pm Adjourn

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

Proposed draft permanent regulations will be available on our web site for review. Proposed permanent 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.



## DRAFT REGULATIONS FOR DISCUSSION ON NOVEMBER 21

EXPLANATION - Matter in *italics* is original text of revision dated 11-20-03; matter in brackets is new; stricken text is material to be omitted.

**AUTHORITY:** NRS 360.090, Senate Bill 8 of the 20<sup>th</sup> Special Session.

**Section 1.** *Title 32 of NAC is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 17, inclusive, of this regulation.*

**Section 2.** *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Section 3.** *"Board" means the Nevada Gaming Control Board.*

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

**Section 5.** *"Department" means the Nevada Department of Taxation.*

**Section 6.** *"Executive Director" means the executive director of the department.*

**Section 7.** *"Live Entertainment Status" means that condition which renders the admission to a facility, or the selling of food, refreshments or merchandise subject to the tax.*

**Section 8.** *"Nonprofit Organization" means any organization described in paragraph (b) of subsection 3 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.*

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

**Section 10.** *"Taxpayer" means any person described in section 75 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.*

**Section 11.** *For purposes of sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Commission interprets 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. *"Boxing Contest or Exhibition" to have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."*

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

**4. "Live Entertainment"**

**(a) To include, without limitation:**

- (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 provided in subparagraph (8) of paragraph (b) of subsection 4 of section 11;**
- (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 performance involving one or more of the activities described in this subsection, by a disc jockey who presents recorded music. For purposes of this section, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this subsection 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;**
- (9) A show or production involving any combination of the activities described above.**

**(b) To exclude:**

- (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 occurring in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, so long as the performers stroll continuously throughout the facility;*

(4) *Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if occurring in a gaming establishment other than a gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, so long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables.*

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

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

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

5. *"Shopping Mall" to include any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises.*

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

7. *"Casual Assemblage" includes, but is not limited to:*

(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.*

#### Section 12. Nonprofit Organizations.

1. *For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is provided by or entirely for the benefit of a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization so long as such person retains no more of the proceeds than is necessary to cover*

*the direct, supportable costs of hosting, promoting or sponsoring the event at which the live entertainment is provided.*

*2. Subject to the provisions of paragraph 1 of this section, 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, even if the proceeds from sales of food, refreshments or merchandise do not become the property of the nonprofit organization.*

*3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there 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 proceeds from the sales of food, refreshments or merchandise do not become the property of the nonprofit organization.*

*4. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in section 65 to 100 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session or this chapter, the Department shall assess and compute the excise tax in accordance with section 15.*

#### **Section 13. Required Records for Nonprofit Organizations**

*1. Any person who claims to be a nonprofit organization exempt from the provisions of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session of the Nevada Legislature, 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:*

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

*(b) If the person claims to be an exempt religious organization, 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, as the case may be, that the person or the organization for whose benefit the person provided live entertainment meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.*

#### **Section 14. Applicability of the Tax.**

*1. Live entertainment status commences when any patron is allowed to enter a facility by virtue of having paid an admission charge, regardless of when the live entertainment actually commences.*

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

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

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

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

**Section 15. Computation of the Tax.**

1. *Subject to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Department shall apply the tax rate to the total admission charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.*

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

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

**Section 16. Determination of Seating Capacity in the Absence of a Permit.**

*For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including evidence of actual attendance, the number of tickets sold 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.*

**Section 17. Over-Collection of Tax.**

1. *As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, or any amount in excess of the amount of the*

*applicable tax as computed in accordance with subsections 1 through 4, inclusive, of section 78 of Senate Bill No. 8 of the 20th Special Session.*

*2. Any over-collection must, if possible, be refunded by the taxpayer to the patron from whom it was collected.*

*3. A taxpayer shall:*

*(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 2 and the name and address of the person to whom the refund is to be made.*

*(b) Within 60 days after reporting to the department that a refund must be made, make an accounting to the department of all refunds paid. The accounting must be accompanied by any supporting documents required by the department.*

*4. If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the department.*

*5. If an audit of a taxpayer reveals the existence of an over-collection, the department shall:*

*(a) Credit the over-collection toward any deficiency that results from the audit, provided that the taxpayer furnishes the department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 2.*

*(b) Within 60 days after receiving notice from the department that a refund must be made, the department shall seek an accounting of all refunds paid. The accounting must be accompanied by any supporting documents required by the department.*

**Section 18. Jurisdiction of the Department.**

*1. If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the department to collect the tax. The taxpayer shall thereafter collect and remit the tax to the department in accordance the provisions of this chapter and sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.*

*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.*

ATTORNEY- CLIENT  
PRIVILEGED DOCUMENT

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*premises [from one or more patrons], even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises.*

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- (8) A performance involving one or more of the activities described in this subsection, by a disc jockey who presents recorded music: For purposes of this section, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this subsection 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;**
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1. *For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is provided by or entirely for the benefit of a nonprofit organization if the proceeds of the admission charges to the facility where the live*

*entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization so long as such person retains no more of the proceeds than is necessary to cover the direct, supportable costs of hosting, promoting or sponsoring the event at which the live entertainment is provided.*

*2. Subject to the provisions of paragraph 1 of this section, 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, even if the proceeds from sales of food, refreshments or merchandise do not become the property of the nonprofit organization.*

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#### **Section 13. Required Records for Nonprofit Organizations**

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

*(b) If the person claims to be an exempt religious organization, 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, as the case may be, that the person or the organization for whose benefit the person provided live entertainment meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.*

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1. *Subject to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Department shall apply the tax rate to the total admission charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.*

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

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

**Section 16. Determination of Seating Capacity in the Absence of a Permit.**

*For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including evidence of actual attendance, the number of tickets sold 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.*

**Section 17. Over-Collection of Tax.**

1. As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 through 4, inclusive, of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

2. Any over-collection must, if possible, be refunded by the taxpayer to the patron from whom it was collected.

3. A taxpayer shall:

- (a) Use all practical methods to determine any amount to be refunded pursuant to subsection 2 and the name and address of the person to whom the refund is to be made.
- (b) Within 60 days after reporting to the department that a refund must be made, make an accounting to the department of all refunds paid. The accounting must be accompanied by any supporting documents required by the department.

4. If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the department.

5. If an audit of a taxpayer reveals the existence of an over-collection, the department shall:

- (a) Credit the over-collection toward any deficiency that results from the audit, provided that the taxpayer furnishes the department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 2.
- (b) Within 60 days after receiving notice from the department that a refund must be made, the department shall seek an accounting of all refunds paid. The accounting must be accompanied by any supporting documents required by the department.

**Section 18. Jurisdiction of the Department.**

1. If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the department to collect the tax. The taxpayer shall thereafter collect and remit the tax to the department in accordance the provisions of this chapter and sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

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

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## DRAFT REGULATIONS FOR DISCUSSION ON NOVEMBER 21

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

**AUTHORITY:** NRS 360.090, Senate Bill 8 of the 20<sup>th</sup> Special Session.

**Section 1.** *Title 32 of NAC is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 17, inclusive, of this regulation.*

**Section 2.** *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Section 3.** *"Board" means the Nevada Gaming Control Board.*

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

**Section 5.** *"Department" means the Nevada Department of Taxation.*

**Section 6.** *"Executive Director" means the executive director of the department.*

**Section 7.** *"Live Entertainment Status" means that condition which renders the admission to a facility, or the selling of food, refreshments or merchandise subject to the tax.*

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

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

**Section 10.** *"Taxpayer" means any person described in section 75 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.*

**Section 11.** *For purposes of sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Commission interprets 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. *"Boxing Contest or Exhibition" to have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."*

3. *"Facility" to encompass any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those*

*premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises.*

**4. "Live Entertainment"**

**(a) To include, without limitation:**

- (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 provided or incited by one or more animal handlers or trainers;**
- (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; and**
- (8) A show or production involving any combination of the activities described above.**

**(b) To exclude:**

- (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) Periodic or infrequent 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 occurring in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, so long as the performers stroll continuously throughout the facility;**



- (4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if occurring in a gaming establishment other than a gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, so 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; and
  - (7) The presentation of recorded music, if the person presenting the recorded music does not engage in a performance that constitutes live entertainment.
- (c) For purposes of this subsection 4, a person who presents recorded music does not engage in a performance that constitutes live entertainment if the person limits his or her interaction with patrons to:
- (1) Introducing or generally describing the recorded music;
  - (2) Periodically making comedic remarks or engaging patrons in banter or conversation; and
  - (3) Directing or explaining participatory activities between patrons.
5. "Shopping Mall" to include any area or premises where multiple vendors assemble for the primary purpose of selling commercial products or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises.
6. "Trade Show" to mean an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services, or discussing matters of interest to members of that trade or industry.
7. "Casual Assemblage" includes, but is not limited to:
- (a) Participants in conventions, business meetings or tournaments 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.

**Section 12. Nonprofit Organizations.**

- 1. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is provided by or entirely for the benefit of a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization so long as such person retains no more of the proceeds than is necessary to cover

*the direct, supportable costs associated with his operation of the facility where the live entertainment is provided.*

*2. Subject to the provisions of paragraph 1 of this section, 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, even if the proceeds from sales of food, refreshments or merchandise do not become the property of the nonprofit organization.*

*3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there 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 proceeds from the sales of food, refreshments or merchandise do not become the property of the nonprofit organization.*

*4. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in section 65 to 100 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session or this chapter, the Department shall assess and compute the excise tax in accordance with section 14.*

**Section 13. Applicability of the Tax.**

*1. Live entertainment status commences when any patron is allowed to enter a facility by virtue of having paid an admission charge, regardless of when the live entertainment actually commences.*

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

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

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

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

**Section 14. Computation of the Tax.**

*1. Subject to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, the Department shall apply the tax rate to the total admission charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.*

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

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

**Section 15. Determination of Seating Capacity in the Absence of a Permit.**

1. For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including evidence of actual attendance, the number of tickets sold 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.

**Section 16. Over-Collection of Tax.**

1. As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 through 4, inclusive, of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

2. Any over-collection must, if possible, be refunded by the taxpayer to the patron from whom it was collected.

3. A taxpayer shall:

(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 2 and the name and address of the person to whom the refund is to be made.

*(b) Within 60 days after reporting to the department that a refund must be made, make an accounting to the department of all refunds paid. The accounting must be accompanied by any supporting documents required by the department.*

*4. If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the department.*

*5. If an audit of a taxpayer reveals the existence of an over-collection, the department shall:*

*(a) Credit the over-collection toward any deficiency that results from the audit, provided that the taxpayer furnishes the department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 2.*

*(b) Within 60 days after receiving notice from the department that a refund must be made, the department shall seek an accounting of all refunds paid. The accounting must be accompanied by any supporting documents required by the department.*

**Section 17. Jurisdiction of the Department.**

*1. If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the department to collect the tax. The taxpayer shall thereafter collect and remit the tax to the department in accordance the provisions of this chapter and sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.*

*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.*

**DRAFT REGULATIONS FOR DISCUSSION ON NOVEMBER 21, 2003**

*Italicized language represents changes from the draft discussed on November 20*

**AUTHORITY: NRS 463.010 et seq., 233B.010 et seq., and Senate Bill No. 8 of the 20<sup>th</sup> Special Session of the Nevada Legislature**

**Section 1. Definitions.**

As used in sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special session and this chapter, for the purposes of this regulation, unless the context otherwise requires:

1. "Admission charge" shall be construed to include, without limitation, an entertainment fee, a cover charge, a table reservation fee or required minimum purchase of food, beverages or merchandise.
2. "Ambient entertainment" means entertainment that contributes to the general atmosphere of a facility but is not its primary attraction. The term includes:
  1. Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant or lounge if such music does not routinely rise to a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;
  2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food or beverages to patrons, if such *instrumental or vocal music is not advertised as entertainment to the public;*
  3. *Performances by performers of any type, if occurring in a licensed gaming establishment other than a licensed gaming establishment that 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, so long as the performers stroll continuously throughout the facility, and*
  4. *Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if occurring in a gaming establishment other than a gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, so long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables.*
3. "Boxing contest or exhibition" shall have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."
4. "Board" means the state gaming control board.

5. "Casual Assemblage" includes, but is not limited to:
- (a) Participants in conventions, business meetings or tournaments 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.

6. "Chairman" means the chairman of the state gaming control board or his designee.

7. "Craft fair" shall be construed to mean an event where the primary purpose is the display or sale of merchandise by multiple artisans or craftsmen.

8. "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, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises.
- (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 designated area on the premises of the licensed gaming establishment within which live entertainment is provided.

9. "Live entertainment" shall be construed to include, without limitation, the following:

- (a) Music or vocals provided by one or more professional or amateur musicians or vocalists, **including singing by patrons (e.g., Karaoke)** in nightclubs, lounges, showrooms and restaurants;
- (b) Dancing performed in nightclubs, lounges, showrooms and restaurants by one or more professional or amateur dancers or performers **including dancing by patrons.** \*
- (c) Acting or drama provided by one or more professional or amateur actors or players;
- (d) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;
- (e) Animal stunts or performances provided or incited by one or more animal handlers or trainers;

\* The bolded language in this section represents a substantive difference between the Board's regulation draft and the draft from the Department of Taxation with regard to forms of entertainment that are or are not taxable.

- (f) Athletic contests, events or exhibitions provided by one or more professional or amateur athletes;
- (g) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;
- (h) Cooking or product demonstrations provided by one or more professional or amateur chefs, speakers, or demonstrators; and
- (i) A show or production involving any combination of the activities described above.

10. "Live entertainment" shall not be construed to include:

- (a) Ambient entertainment;
- (b) Television, radio, closed circuit or Internet broadcasts of live entertainment;
- (c) The presentation of recorded music, **if there is no patron dancing permitted** and if the person presenting the recorded music does not engage in a performance that constitutes live entertainment. A person who presents recorded music does not engage in a performance that constitutes live entertainment if the person limits his or her interaction with patrons to:
  - (1) Introducing or generally describing the recorded music;
  - (2) Periodically making comedic remarks or engaging patrons in banter or conversation; and
  - (3) Directing or explaining participatory activities between patrons;
- (d) Recorded music that can be selected by patrons by operating a device, such as a jukebox, designed to play patron-specified music, whether or not patron dancing is permitted; and
- (e) Entertainment provided at craft fairs or other events where the primary purpose is to display the non-food, non-refreshment wares of a variety of vendors.

11. "Live entertainment status" means that condition which renders the selling of food, refreshments or merchandise subject to the tax.

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

13. "Package" is any aggregation of rights to rooms, food, refreshments, merchandise, entertainment, services or other items advertised to the public as a single unit and sold for a single price.

14. "Patron" is a person present in a facility who receives no payment or representative of value whatsoever from anyone for his or her presence or activity in the facility.

15. "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.

16. "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.

17. "Taxpayer" means any person described in subsection 1 of section 75 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

18. "Trade show" means an event of limited duration *primarily attended by members of a particular trade or industry* 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.

## **Section 2. Nonprofit Organizations.**

1. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is "provided by or entirely for the benefit of" a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization so long as such person retains no more of the proceeds than is necessary to cover the direct, supportable costs associated with his operation of the facility where the live entertainment is provided.

2. Subject to the provisions of paragraph 1 of this section, 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, even if the proceeds from sales of food, refreshments or merchandise do not become the property of the nonprofit organization.

3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there 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 proceeds from the sales of food, refreshments or merchandise do not become the property of the nonprofit organization.

4. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in section 64 to 100 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session or this chapter, the Board shall assess and compute the excise tax in accordance with section 4 of this regulation.

## **Section 3. Applicability of the Tax to Licensed Gaming Establishments.**

1. Live entertainment status commences at the earlier of:



- (a) The time taxable entertainment starts<sup>\*\*</sup>; or
  - (b) The time when any patrons are allowed to enter a facility by virtue of having paid an admission charge.
2. Live entertainment status ceases at the later of:
- (a) The conclusion of the last performance<sup>\*\*</sup>; or
  - (b) The time when a facility that was restricted by admission is vacated by admitted patrons, or is opened to the general public.
3. Admission charges are taxable whether or not the patron remains for the live entertainment.<sup>\*\*</sup>
4. 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;<sup>\*\*</sup>
5. All sales made to patrons in a facility subject to the live entertainment tax during the intervals between performances shall be subject to the tax unless the licensed gaming establishment can account for the volume of sales to persons who entered during an interval between performances and left before the commencement of the next performance.<sup>\*\*</sup>
6. 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.<sup>\*\*</sup>
7. All sales of tickets which afford a patron the right to be present during live entertainment shall be subject to the tax, unless the licensee can establish that a full refund has been made to the patron.<sup>\*\*</sup>
8. The live entertainment tax shall also apply to all amounts paid for food or refreshments sold from a place located adjacent to a live entertainment facility if its primary purpose is to provide food or refreshments to patrons viewing entertainment in that facility.<sup>\*\*</sup>
9. 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 to 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.<sup>\*\*</sup>

<sup>\*\*</sup> The language of this section differs somewhat from the draft prepared by the Department of Taxation. The Board believes that the differences are not substantive in nature, but that the language provides additional guidance to gaming licensees on the proper accounting for sales.

**Note:** We believe that taxation of the entire facility is appropriate and consistent with subsection 1 of section 70 of Senate Bill No. 8 when an admission charge is collected. It our understanding that in taxing a "Gentlemen's club" this concept will be applied. Because an admission charge is collected at the entrance to the club, the fact that a patron chooses to spend all or a portion of his time in a private area does not change the fact that he paid for the right to view the live entertainment.

The situation reflected in subsection 9 differs from the situation in subsection 10 where no admission charge is collected to enter the facility. In subsection 10, it is presumed that the patron may be seated either in an area where the entertainment is clearly visible and audible, or in an area where it is not. The patron has not paid specifically for the right to view entertainment, but instead pays for his food, refreshments or merchandise. If he in fact can clearly see and hear the live entertainment from where he is seated, the tax applies to his purchases. If he cannot, then the tax does not apply. This is consistent with the Board's historical approach to the application of the Casino Entertainment Tax.

10. 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 clearly see and hear the entertainment.\*\*

#### **Section 4. Computation of the Tax for Licensed Gaming Establishments.**

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 is in live entertainment status. The tax shall also be paid on all admission charges. For purpose of computing sales subject to the tax, required minimum purchases of food, refreshment or merchandise shall be included in admission charges or in the total sales of food, refreshments or merchandise, but not both.
3. Subject to the provisions of subsection 4 of section 5 of this regulation, any ticket for admission to a facility, or redeemable for food or refreshments subject to the live 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 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;

(d) Notwithstanding any other provision of this subsection 3, any ticket redeemable for food or refreshments 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; and

(e) Nothing in this subsection 3 precludes a licensee from paying live 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 that is not an affiliate of the person licensed to conduct gaming, the taxable sale shall be calculated based upon the portion of the proceeds remitted to the person 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.

#### **Section 5. Payment Of Tax by Licensed Gaming Establishments.**

1. The person who is the licensee of the licensed gaming establishment where live entertainment is 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 is affording entertainment subject to the tax on the premises of the establishment, and it shall be the responsibility of the gaming licensee of the licensed gaming establishment to collect the tax from the person 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 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, the following shall apply:

(a) The licensee must keep all records required by chapter 463 of NRS, Regulation 6 of the Nevada gaming commission and state gaming control board, and by section 83 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.

(b) The licensee shall either obtain and keep the records required by Section 7 herein or shall require the person that does operate the facilities to keep such records.

4. Any ticket for admission to a facility subject to the live entertainment tax must state whether the live entertainment tax is included in the price of the ticket in

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substantially this form: "Includes Entertainment Tax," "Inc. Ent. Tax," "Includes Live Ent. Tax," or "LET included." If the ticket does not include such a statement, the licensed gaming establishment shall pay the live entertainment tax on the face amount of the ticket.

5. 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 licensed to conduct gaming or a person or an affiliate of the person licensed to conduct gaming, the person licensed to conduct gaming shall be responsible for payment of the tax and shall include all taxable sales in the report required by subsection 6 or 7 herein.

6. Each nonrestricted 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.

7. 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.

#### **Section 6. Merchandise.**

For purposes of this regulation, merchandise shall be deemed 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 or if the merchandise is in the area where the live entertainment is being offered.

#### **Section 7. Records of Licensed Gaming Establishments.**

1. 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.

2. 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. The records shall be kept and made available at any reasonable time for audit by the board.

#### **Section 8. 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.

**Section 9. Violation of Statute or Regulation.**

Violation of any provision of this regulation or the live entertainment provisions of Senate Bill No. 8 of the 20<sup>th</sup> Special Session shall constitute an unsuitable method of operation subjecting the license holder to suspension or revocation of his gaming license.

**Section 10. Determination of Seating Capacity in the Absence of a Permit.**

For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Board 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 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 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.

**Section 11. Claims for Refund by Licensed Gaming Establishments.**

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.

**Section 12. Internal Control for Licensed Gaming Establishments.**

1. Each Group I licensee (as defined in Nevada Gaming Commission Regulation 6.010) who offers live entertainment shall include in its system of internal control submitted pursuant to Nevada Gaming Commission 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 (as defined in Nevada Gaming Commission Regulation 6.010) and restricted licensees shall comply with the internal control procedures for entertainment adopted pursuant to Nevada Gaming Commission 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 Nevada Gaming Commission Regulation 6.090(9).

**FAX TRANSMISSION COVER SHEET**

**TO:** Sen. Randolph Townsend  
[REDACTED]  
Carole Vilardo  
Dino DiGianna

**FAX NO.:** (775) 954-2023  
[REDACTED]  
(702) 457-6361  
(775) 687-5981

**FROM:** [REDACTED]

**FAX NO.:** [REDACTED]

**DATE:** November 17, 2003

**TIME:** 3:40 p.m.

**PAGES:** 3 (including cover page)

**COMMENTS:**



November 17, 2003

**MEMORANDUM**

TO: Barbara Campbell, Chairwoman, Nevada Tax Commission  
Peter Bernhard, Chairman, Nevada Gaming Commission  
Dennis Neilander, Chairman, State Gaming Control Board

FROM: 

SUBJECT: Proposed Regulation on Live Entertainment Tax

At the Joint Workshop on the Live Entertainment Tax that was held on October 30, 2003, I testified that it may be necessary to develop a definition of, and an exemption for, "ambient entertainment" which may take place anywhere in either a gaming or nongaming facility in order to create mood and atmosphere. This type of entertainment is not the primary attraction of the facility and is not the main basis for why patrons come to the facility.

The latest version of the Gaming Control Board's proposed Draft LET Regulations, dated 11/14/03, includes a definition of, and exemption for, "ambient entertainment." Using this definition as a starting point, the Nevada Tax Commission's proposed Draft Regulation, dated October 30, 2003, could be amended to substitute the following definition of "ambient entertainment", with appropriate language change in Section 2(7)(a), for the proposed definition of "ambient background music":

2. "Ambient entertainment" means entertainment that contributes to the general atmosphere of a facility but is not its primary attraction. The term includes:

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 a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;
2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such instrumental or vocal music is not advertised as entertainment to the public.



3. Performers of any type who stroll throughout the facility; and
4. Performers situated within the gaming or nongaming areas of a licensed gaming establishment other than in nightclubs, lounges, restaurants or showrooms who enhance the theme of the establishment or attract patrons to the areas in which they perform, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables.

It is also important to define the term "casual assemblage", found in Section 78(5)(i) of SB 8, 20<sup>th</sup> Special session, in order to create regulatory certainty. Proposed language is set forth below:

"Casual assemblage" includes, but is not limited to:

- (a) Participants in conventions, business meetings or tournaments 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.

I would also endorse the comments made by Carol Vilardo of the Nevada Taxpayers Association where she advocates the elimination of "cooking or product demonstrations" from the definition of live entertainment. There are a number of events such as a rib or chili cook off in Sparks or Laughlin that allows vendors to demonstrate their culinary skills and sell products associated with these skills that just do not seem like the type of entertainment envisioned in SB8.

WAB:kd

c: Sen. Randolph Townsend  
Members, Regulatory Committee  
[REDACTED]  
Carol Vilardo  
Dino DiCianno

## DINO DICIANNO

---

**From:** Nevada Taxpayers Association [info@nevadataxpayers.org]  
**Sent:** Wednesday, November 12, 2003 3:47 PM  
**To:** Barbara Campbell  
**Cc:** Chuck Chinnock; Dino DiCianno; Greg Zunino; Cathy Chambers; Lynda Hartzell  
**Subject:** LET REGULATIONS

Attached are additional comments regarding the proposed LET Regulation of October 30, which will be discussed at the workshop of November 21. Please contact me if further information or clarification is required.

Thank you  
Carole Vilardo

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NEVADA TAXPAYERS ASSOCIATION  
Las Vegas Office  
2303 E. Sahara Ave., Ste. 203  
Las Vegas, NV 89104  
Phone: (702) 457-8442  
Fax: (702) 457-6361  
E-Mail: [info@nevadataxpayers.org](mailto:info@nevadataxpayers.org)  
[www.nevadataxpayers.org](http://www.nevadataxpayers.org)  
Carson City Office  
501 So. Carson St., Ste 301  
Carson City, NV 89701  
Phone: 775/882-2697  
Fax: 775-8828938

**DATE:** November 11, 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:** Proposed Regulation on Live Entertainment Tax (October 30) and Senate Bill 8 of the 20<sup>th</sup> Special Session - Live Entertainment Tax (LET) Sections 75-100

Having the opportunity to further review the regulations regarding the Live Entertainment Tax (LET) that were discussed at the last workshop, I believe that further clarification is required. The following comments, questions and suggestions are in addition to the issues which I raised at that workshop. I realize that under the provisions of the above referenced legislation the Tax Commission is given the responsibility for defining live entertainment. However, I am addressing other regulatory issues which deal with the administration of the tax because of my concern that similarly situated taxpayers be treated the same irrespective of which agency is administering the tax - - - the Department of Taxation or the Gaming Control Board/Commission.

#### **A. COOKING OR PRODUCT DEMONSTRATIONS**

Relative to the Regulation, Section 2 subsection 6 paragraph (h) says -- "*Cooking or product demonstrations provided by one or more professional or amateur chefs, speakers, or demonstrators;*", therefore classifying these presentations as entertainment.

I do not believe that cooking or product demonstrations can be construed as live entertainment; I believe they are more properly classified as "educational" or "informational" presentations.

Various editions of Webster's Dictionary, generally define the word "entertainment" as something that is interesting, diverting or amusing such as pertains to a show or performance. If there is a culinary products trade show open to the public, there would obviously be cooking and product demonstrations which are not to provide entertainment, but in fact are provided to generate sales. Two other examples of events which might possibly be captured are: (1) a fashion show (is this not a product demonstration?) presented by a retail establishment in their facility for which there is an admission charge; and (2) the requirement of the payment of an annual membership fee to gain admission to a facility (i.e. Sam's Club or Costco).

#### **QUESTIONS**

1. If the example of a fashion show does in fact fall into the interpretation of "product demonstration" wouldn't that then require the 10% Live Entertainment Tax to be added to all purchases because of the proposed language in Section 4, subsection 3 of the Regulation which says, "The tax applies to merchandise sold at a facility with a seating capacity of less than 7,500"?

### QUESTIONS CONTINUED

2. If an annual membership constitutes an "admission charge" and the occupancy is under 7,500, doesn't that require the 10% tax rate to be added to all merchandise sold during the time cooking or product demonstrations are taking place?

### SUGGESTION

Delete paragraph (h). In the alternative, if food and product demonstrations are left in the regulation as "entertainment", and payment of an annual membership fee constitutes an admission charge, a provision should be added to the regulation. The provision should address the primary purpose of these demonstrations, possibly something similar to the following:

*"Excluded from the provisions of this section (h) are:*

- 1. An event held for the primary purpose of selling the products or goods demonstrated.*
- 2. A cooking or product demonstration which does not require the attendance of all occupants of the facility."*

### **B. APPLICATION OF TAX AND THE WORD "FACILITY"**

Throughout SB 8 of the 2<sup>nd</sup> Special Session and the proposed regulation of October 30, reference is made to "facility". Section 4 subsection 3 of the proposed regulation says, *"The tax applies to sales of food, refreshments or merchandise at a facility with a seating capacity of less than 7,500, even if patrons are unable to see, hear or enjoy live entertainment from the locations within the facility where the food, refreshments or merchandise are sold."* (Emphasis added).

I believe there are a number of questions that arise, particularly if the nexus for the facility is "curb to curb". Also, relative to the following questions please note that Section 78, subsection 6, paragraph (a) of SB 8 of the 20<sup>th</sup> Special Session requires that the first priority in determining "maximum seating capacity" is the "maximum occupancy of the facility".

### QUESTIONS REGARDING "FACILITY"

1. Is the phrase "seating capacity" as used in Section 4.3 of the Regulation correct in view of the language in Section 78, subsection 6, paragraph (a) of SB 8 of the 20<sup>th</sup> Special Session (priorities for determining seating capacity)?
2. Does not the phrase "unable to see or hear or enjoy" imply that a person is not physically present in the same location as the entertainment being presented? Is this not contrary to the phrase "physically present" as it appears in Section 73 of SB 8 of the 20<sup>th</sup> Special Session if this regulation is addressing the specific physical location within a facility where the entertainment is presented?
3. If a rodeo is presented at an outdoor Stadium by ABC Rodeo Productions (presumed occupancy of less than 7,500 pursuant to Section 6 of the proposed regulation) and on the grounds of the same stadium facility XYZ Merchandise Enterprises is concurrently selling related rodeo merchandise, does the 10% live entertainment tax apply to the merchandise sold by XYZ Merchandise Enterprises?
4. If the Department of Taxation accepts "curb to curb" as the implied definition of "facility" wouldn't applying the LET on merchandise as described in the above example (# 3) be contrary to the exclusions from the tax provided in paragraph (f) subsection 5 of Section 78 of SB 8 of the 20<sup>th</sup> Special Session? This paragraph says *"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."*

QUESTIONS REGARDING FACILITIES ON GAMING PROPERTIES -

5. Is the gaming establishment/facility considered to include everything on the property of the establishment - - - "curb to curb" - - - without reference to a specific premise or location in which the live entertainment is presented (i.e. nightclub, showroom, lounge, etc.)?
6. If the answer to the above question is yes, does this then mean that entertainment provided in or on a gaming property with a "maximum occupancy of the facility" over 7,500 would be subject to the tax at a 5% rate, thereby excluding the levy being applied to food, refreshments or merchandise?

SUGGESTION

It would appear that a definition of "facility" to pertain to the physical area or location where the live entertainment is being provided might clarify when and at what rate the tax applies. I believe that if carefully worded it would also address the concern of having the 10% tax applied to food served in the restaurant when the entertainment is presented in a separate lounge or bar area of a restaurant..

**OTHER ISSUES -**

**C . SLOT ROUTE OPERATORS**

1. Has there been a legal determination that the slot route operator is liable for the collection of the tax just by the fact that he has placed machines in a restaurant or bar which provides entertainment?

**D. 1970 GAMING REGULATION WHICH ADDRESSES "CURB TO CURB"**

At the last joint workshop on the LET, Chairman Neilander referenced a regulation adopted in 1970 which gave "curb to curb" authority to the Gaming Control Board and Gaming Commission as it pertained to the Casino Entertainment Tax (CET). I would respectfully suggest that the LET which has replaced the CET is substantially different and for that reason that regulation should be updated.

From my perspective it is unfortunate that Gaming Regulations are not subject to the provisions of NRS 233B, for if they were they would be reviewed every 10 years to assure that they reflected current statutory provisions and did not conflict with other statutory provisions.

Thank you for your consideration to the comments, questions and suggestions I have raised in this memo, and the efforts you are putting forth in developing a workable set of definitions and regulations for both agencies.

Respectfully submitted,

s/Carole Vilardo

President

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)  
Cathy Chambers, Department of Taxation (delivered via email)  
Lynda Hartzell, Gaming Control Board (delivered via email)

**DINO DICIANNO**

---

**From:** [REDACTED]  
**Sent:** Wednesday, November 05, 2003 3:19 PM  
**To:** 'Barbara Campbell'  
**Cc:** [REDACTED]

[REDACTED]  
[REDACTED]  
Las Vegas, Nevada  
Phone - [REDACTED]  
FAX - [REDACTED]

---

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[REDACTED]  
[REDACTED]  
LAS VEGAS, NEVADA

• FAX [REDACTED]

DATE: November 5, 2003

MEMO TO: Barbara Campbell, Chairwoman, Nevada Tax Commission

RE: Live Entertainment Tax

At the Tax Commission workshop last Thursday, you asked that I forward you the proposed text I read during the hearing. It was as follows:

*Service personnel whose job responsibility is to serve food, refreshments or merchandise shall not be considered live entertainment if they engage in infrequent, non-featured activities such as singing or dancing while performing their service duties.*

We also support the concept proposed by [REDACTED] that would exempt ambient entertainment that is not the primary motivating factor or purpose of patrons visiting an establishment. We understand that [REDACTED] and others, are working to set forth this concept into regulatory language. I would be happy to work with anyone to assist in drafting language that includes these concepts.

We are greatly appreciative of the work being done by the Commission, Gaming Control Board, and their staffs to work through this difficult issue. If we can be of any assistance in any manner, please feel free to contact us.

[REDACTED]  
Barbara Campbell: [dicianno@govmail.state.nv.us](mailto:dicianno@govmail.state.nv.us)

cc: [REDACTED]  
[REDACTED]

G:\JSelfin\EJQ\BEACH\tax-11-5-03.doc

TO NV Taxation Commission - ATTENTION ERIN

Dennis Neilander  
Gaming Control Board  
1919 E. College Parkway  
P.O. 8003  
Carson City, NV 89702

I'm [REDACTED] and I know many [REDACTED]. This entertainment tax is going to hurt some, and eliminate work for others. For instance, if a restaurant in a casino should decide to have a Hawaiian buffet one night a week, they will usually want to have a musician [REDACTED]. The musicians will need to sing, [REDACTED]. Definitely causing patrons to look. However, this is not a show the patrons go to see, it simply adds atmosphere.

There are other restaurants that like to provide "fun" for their patrons, and would occasionally hire [REDACTED]. This law is guaranteed to hurt many [REDACTED] musicians and [REDACTED]. Jobs will not be created which would have been.

I understand the difficult position you are in, but when people hear that in the "entertainment capitol of the world," entertainment must "not be of a nature that would tend to cause people to watch as well as listen," people shake their heads and lose faith in the system. I don't envy your situation; you were tossed a hot potato, good luck in handling it! [REDACTED] and musicians should be allowed to add "atmosphere" to the dinning experience. Preventing them from working helps no one.

Thank you very much for your time and consideration!

Aloha,

[REDACTED]  
Las Vegas, NV [REDACTED]

cc: To others concerned.



**DINO DICIANNO**

**From:** Lynda Hartzell, Audit Division, Gaming Control Board [LHartzell@gcb.state.nv.us]  
**Sent:** Tuesday, November 18, 2003 3:53 PM  
**To:** [REDACTED]  
**Cc:** DINO DICIANNO; Cathy Chambers; ggalle@gcb.state.nv.us  
**Subject:** RE: Is [REDACTED] liable for LET on F&B sales related to an outdoor concert on property adjacent to, but not owned by [REDACTED]

After reviewing the documentation you provided, including the aerial photos, [REDACTED] and I concurred that [REDACTED] would not be liable for remitting the live entertainment tax to the Gaming Control Board for these events. We take the position that the entertainment is not offered on the premises of a licensed gaming establishment.

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

Thank you for your patience in awaiting a response.

Lynda Hartzell

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

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, October 22, 2003 4:44 PM  
**To:** 'lhartzell@gcb.state.nv.us'  
**Cc:** [REDACTED]  
**Subject:** Is [REDACTED] liable for LET on F&B sales related to an outdoor concert on property adjacent to, but not owned by [REDACTED]

Lynda,

As a follow up to our discussion today, please comment on the extent of [REDACTED] liability for Live Entertainment Tax.

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

Do you find this description consistent with:

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

or

"Common area of a shopping mall (not a facility within a mall)"

or some other interpretation?

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

Regards,

[Redacted]  
Tel: [Redacted] Fax: [Redacted]

**DINO DICIANNO**

---

**From:** Lynda Hartzell [lhartzell@gcb.state.nv.us]

**Sent:** Thursday, November 13, 2003 1:48 PM

**To:** DINO DICIANNO

**Subject:** Live Entertainment Status

From the applicability section:

1. 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.

2. 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.

We also have a definition of live entertainment status:

"Live entertainment status" means that condition which renders the selling of food, refreshments or merchandise subject to the tax.

Entertainment Expenses → Performance.  
Accounting, Settlement → Records.

(Live Entertainment Status:  
Open to Public → To Time of Vacated.

Administration by Admission Charges.

→ View Entertainment Contracts.

ATTORNEY- CLIENT  
PRIVILEGED DOCUMENT

**DINO DICIANNO**

**From:** Campbell, Barbara Smith [bcampbell@mrgmail.com]  
**Sent:** Tuesday, November 18, 2003 9:34 AM  
**To:** [REDACTED]  
**Subject:** RE: LET Comment Letter

[REDACTED]

We are going to incorporate the following into our proposed draft language.

(Under section 11 (4) (b))

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 a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;
2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons if such instrumental or vocal music is not advertised as entertainment to the public.

(Under Section 11 (7))

"Casual assemblage" includes, but is not limited to:

- (a) Participants in conventions, business meetings or tournaments 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.

The DAG has concerns about your recommended language in Ambient Entertainment #3. In summary, he feels the language may lead to the exemption of "entertainers" at the Gentlemen Clubs. Therefore, we did not incorporate it in our draft. We certainly welcome comments at the hearing.

Ambient Entertainment #4 appears to be appropriate under the GCB. I'm not sure that it is appropriate for Tax. Again, we welcome your comments.

**Barbara Smith Campbell**  
3950 Las Vegas Blvd. South  
Las Vegas, Nevada 89119  
702-632-7770 LV office  
702-597-2952 LV fax  
775-328-9553 Reno Office  
775-328-9505 Reno fax

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

**From:** [REDACTED]  
**Sent:** Monday, November 17, 2003 4:08 PM  
**To:** Barbara Campbell  
**Subject:** Fw: LET Comment Letter

Barbara:  
Original message came back as undeliverable.  
Hopefully, this comes through.

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

**From:** [REDACTED]  
**To:** Dino DiCianno ; Barbara Campbell  
**Cc:** [REDACTED]  
**Sent:** Monday, November 17, 2003 3:39 PM  
**Subject:** LET Comment Letter

Chairwoman Campbell and Deputy Executive Director DiCianno:  
Attached are the [REDACTED] comments on the latest draft of the LET Regulations.  
As I indicated during our telephone conversations, both of you have done an outstanding job in developing this regulation in a manner that will help keep Nevada as the entertainment capital of the world!  
We all appreciate your efforts.

ATTORNEY- CLIENT  
PRIVILEGED DOCUMENT



**DINO DICIANNO**

---

**From:** [REDACTED]  
**Sent:** Monday, November 17, 2003 3:40 PM  
**To:** DINO DICIANNO; Barbara Campbell  
**Cc:** [REDACTED]  
**Subject:** LET Comment Letter

Chairwoman Campbell and Deputy Executive Director DiCianno:  
Attached are the [REDACTED] comments on the latest draft of the LET Regulations.  
As I indicated during our telephone conversations, both of you have done an outstanding job in developing this regulation in a manner that will help keep Nevada as the entertainment capital of the world!  
We all appreciate your efforts.  
[REDACTED]

November 17, 2003

**MEMORANDUM**

TO: Barbara Campbell, Chairwoman, Nevada Tax Commission  
Peter Bernhard, Chairman, Nevada Gaming Commission  
Dennis Neilander, Chairman, State Gaming Control Board

FROM: [REDACTED]

SUBJECT: Proposed Regulation on Live Entertainment Tax

At the Joint Workshop on the Live Entertainment Tax that was held on October 30, 2003, I testified that it may be necessary to develop a definition of, and an exemption for, "ambient entertainment" which may take place anywhere in either a gaming or nongaming facility in order to create mood and atmosphere. This type of entertainment is not the primary attraction of the facility and is not the main basis for why patrons come to the facility.

The latest version of the Gaming Control Board's proposed Draft LET Regulations, dated 11/14/03, includes a definition of, and exemption for, "ambient entertainment." Using this definition as a starting point, the Nevada Tax Commission's proposed Draft Regulation, dated October 30, 2003, could be amended to substitute the following definition of "ambient entertainment", with appropriate language change in Section 2(7)(a), for the proposed definition of "ambient background music":

2. "Ambient entertainment" means entertainment that contributes to the general atmosphere of a facility but is not its primary attraction. The term includes:

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 a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;
2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such instrumental or vocal music is not advertised as entertainment to the public.

3. Performers of any type who stroll throughout the facility; and
4. Performers situated within the gaming or nongaming areas of a licensed gaming establishment other than in nightclubs, lounges, restaurants or showrooms who enhance the theme of the establishment or attract patrons to the areas in which they perform, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables.

It is also important to define the term "casual assemblage", found in Section 78(5)(i) of SB 8, 20<sup>th</sup> Special session, in order to create regulatory certainty. Proposed language is set forth below:

"Casual assemblage" includes, but is not limited to:

- (a) Participants in conventions, business meetings or tournaments 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.

I would also endorse the comments made by Carol Vilardo of the Nevada Taxpayers Association where she advocates the elimination of "cooking or product demonstrations" from the definition of live entertainment. There are a number of events such as a rib or chili cook off in Sparks or Laughlin that allows vendors to demonstrate their culinary skills and sell products associated with these skills that just do not seem like the type of entertainment envisioned in SB8.

WAB:kd

c: Sen. Randolph Townsend  
Members, Regulatory Committee  
[REDACTED]  
Carol Vilardo  
Dino DiCianno

## MEMORANDUM

**DATE:** November 14, 2003  
**TO:** Nevada Gaming Licensees and Interested Parties  
**FROM:** Lynda Hartzell, Chief Deputy Auditor  
Gaming Control Board  
**SUBJECT:** Live Entertainment Tax Regulations

Senate Bill No. 8 of the 20<sup>th</sup> Special Session of the Nevada Legislature implements a Live Entertainment Tax to replace the Casino Entertainment Tax. This bill requires the State Gaming Control Board (Board) to work in cooperation with the Department of Taxation (Department) to adopt regulations to govern the administration of the tax. Senate Bill No. 8 includes the following broad definition of "live entertainment":

*Sec. 73. "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 Department's definition of live entertainment in its most recent draft of its proposed regulation excludes dancing by patrons to recorded music in nightclubs and Karaoke involving patrons singing to other patrons. These forms of live entertainment have historically been subject to the Casino Entertainment Tax.

The Senate Journal for July 22, 2003 contains the following statement by Senator Randolph Townsend:

"...With regard to Senate Bill No. 8, our funding bill and our DSA, Section 77 reads: the department shall provide by regulation for a more detailed definition of "live entertainment" consistent with the general definition set forth in Section 73 of this act for use by the board and the department in determining whether an activity is a taxable activity under the provisions of this chapter. It is a very generic version and in order to help the department to understand better that there is no intent by the crafters or this body that this would do anything other than continue to capture the revenue that they do. Those events currently defined by the board and the department as taxable events under this will continue to do so."

The Department's current draft definition of "live entertainment" appears to exclude from taxation certain forms of entertainment previously subject to the Casino Entertainment Tax. While the Audit Division does not assert that the language of Senate Bill No. 8 necessarily includes or excludes patron dancing in nightclubs or Karaoke, we are nevertheless concerned that the Department's interpretation may potentially reduce the

**NEVADA GAMING COMMISSION  
STATE GAMING CONTROL BOARD**

collection of entertainment taxes by excluding various activities previously subject to the Casino Entertainment Tax.

Although our projection is an estimate and may not reliably reflect the actual amount of taxes that would be forfeited, we believe that the amount of taxes associated with dancing to recorded music and Karaoke may be as much as \$4 million annually.

The Audit Division has prepared the attached proposed regulation dated November 14, 2003, which would include both dancing to recorded music in nightclubs and Karaoke as forms of live entertainment, consistent with the previous application of the Casino Entertainment Tax. The language that would allow taxation of these activities is clearly marked in the draft.

This memorandum and background information is being provided for discussion at the meeting of the Nevada Gaming Commission on November 20, 2003. The Commission's 10:30 a.m. agenda includes a public hearing on proposed amendments to NGC Regulation 13, relating to SB 8 and the live entertainment tax, as well as input to the Nevada Tax Commission concerning the definition of live entertainment and related matters. A joint workshop of the Department, the Board and the Commission is scheduled for November 21 at 9:00 a.m., and the Department has scheduled a hearing for November 25, 2003, to consider adopting its regulation concerning the live entertainment tax.

LLH

Attachment

cc: Nevada Gaming Commission  
Dennis Neilander, Board Chairman  
Bobby Siller, Board Member  
Scott Scherer, Board Member  
Gregory Gale, Chief Auditor  
Antonia Cowan, Senior Deputy Attorney General

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**DRAFT REGULATIONS FOR DISCUSSION ON NOVEMBER 20, 2003**

**AUTHORITY: NRS 463.010 et seq., 233B.010 et seq., and Senate Bill No. 8 of the 20<sup>th</sup> Special Session of the Nevada Legislature**

**Section 1. Definitions.**

As used in sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20<sup>th</sup> Special session and this chapter, for the purposes of this regulation, unless the context otherwise requires:

1. "Admission charge" shall be construed to include, without limitation, an entertainment fee, a cover charge, a table reservation fee or required minimum purchase of food, beverages or merchandise.
2. "Ambient entertainment" means entertainment that contributes to the general atmosphere of a facility but is not its primary attraction. The term includes:
  1. Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant or lounge if such music does not routinely rise to a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;
  2. Instrumental or vocal music performed in restaurants by employees whose primary job function is that of serving food or beverages to patrons, if such music is performed no more frequently than three times per hour and each performance lasts no longer than five minutes;
  3. Performers of any type who stroll throughout the facility; and
  4. Performers situated within the gaming or nongaming areas of a licensed gaming establishment other than in nightclubs, lounges, restaurants or showrooms who enhance the theme of the establishment or attract patrons to the areas in which they perform, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables.
3. "Boxing contest or exhibition" shall have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."
4. "Board" means the state gaming control board.
5. "Chairman" means the chairman of the state gaming control board or his designee.
6. "Craft fair" shall be construed to mean an event where the primary purpose is the display or sale of merchandise by multiple artisans or craftsmen.
7. "Live entertainment" shall be construed to include, without limitation, the following:

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- (a) Music or vocals provided by one or more professional or amateur musicians or vocalists, **including singing by patrons (e.g., Karaoke)** in nightclubs, lounges, showrooms and restaurants;
- (b) Dancing performed in nightclubs, lounges, showrooms and restaurants by one or more professional or amateur dancers or performers **including dancing by patrons.** \*
- (c) Acting or drama provided by one or more professional or amateur actors or players;
- (d) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;
- (e) Animal stunts or performances provided or incited by one or more animal handlers or trainers;
- (f) Athletic contests, events or exhibitions provided by one or more professional or amateur athletes;
- (g) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;
- (h) Cooking or product demonstrations provided by one or more professional or amateur chefs, speakers, or demonstrators; and
- (i) A show or production involving any combination of the activities described above.

8. "Live entertainment" shall not be construed to include:

- (a) Ambient entertainment;
- (b) Television, radio, closed circuit or Internet broadcasts of live entertainment;
- (c) The presentation of recorded music, **if there is no patron dancing permitted** and if the person presenting the recorded music does not engage in a performance that constitutes live entertainment. A person who presents recorded music does not engage in a performance that constitutes live entertainment if the person limits his or her interaction with patrons to:
  - (1) Introducing or generally describing the recorded music;
  - (2) Periodically making comedic remarks or engaging patrons in banter or conversation; and
  - (3) Directing or explaining participatory activities between patrons;
- (d) Recorded music that can be selected by patrons by operating a device, such as a jukebox, designed to play patron-specified music, whether or not patron dancing is permitted; and
- (e) Entertainment provided at craft fairs or other events where the primary purpose is to display the non-food, non-refreshment wares of a variety of vendors.

9. "Live entertainment status" means that condition which renders the selling of food, refreshments or merchandise subject to the tax.

\* The bolded language in this section represents a substantive difference between the Board's regulation draft and the draft from the Department of Taxation with regard to forms of entertainment that are or are not taxable.

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10. "Nonprofit organization" means any organization described in paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.
11. "Package" is any aggregation of rights to rooms, food, refreshments, merchandise, entertainment, services or other items advertised to the public as a single unit and sold for a single price.
12. "Patron" is a person present in a facility who receives no payment or representative of value whatsoever from anyone for his or her presence or activity in the facility.
13. "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.
14. "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.
15. "Taxpayer" means any person described in subsection 1 of section 75 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.
16. "Trade show" means an event of limited duration 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.

## **Section 2. Nonprofit Organizations.**

1. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, live entertainment is "provided by or entirely for the benefit of" a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization so long as such person retains no more of the proceeds than is necessary to cover the direct, supportable costs associated with his operation of the facility where the live entertainment is provided.
2. Subject to the provisions of paragraph 1 of this section, 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, even if the proceeds from sales of food, refreshments or merchandise do not become the property of the nonprofit organization.

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

4. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in section 64 to 100 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session or this chapter, the Board shall assess and compute the excise tax in accordance with section 4 of this regulation.

**Section 3. Applicability of the Tax to Licensed Gaming Establishments.**

1. Live entertainment status commences at the earlier of:

- (a) The time taxable entertainment starts<sup>\*\*</sup>; or
- (b) The time when any patrons are allowed to enter a facility by virtue of having paid an admission charge.

2. Live entertainment status ceases at the later of:

- (a) The conclusion of the last performance<sup>\*\*</sup>; or
- (b) The time when a facility that was restricted by admission is vacated by admitted patrons, or is opened to the general public.

3. Admission charges are taxable whether or not the patron remains for the live entertainment.<sup>\*\*</sup>

4. 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.<sup>\*\*</sup>

5. All sales made to patrons in a facility subject to the live entertainment tax during the intervals between performances shall be subject to the tax unless the licensed gaming establishment can account for the volume of sales to persons who entered during an interval between performances and left before the commencement of the next performance.<sup>\*\*</sup>

6. 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.<sup>\*\*</sup>

7. All sales of tickets which afford a patron the right to be present during live entertainment shall be subject to the tax, unless the licensee can establish that a full refund has been made to the patron.<sup>\*\*</sup>

<sup>\*\*</sup> The language of this section differs somewhat from the draft prepared by the Department of Taxation. The Board believes that the differences are not substantive in nature, but that the language provides additional guidance to gaming licensees on the proper accounting for sales.

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8. The live entertainment tax shall also apply to all amounts paid for food or refreshments sold from a place located adjacent to a live entertainment facility if its primary purpose is to provide food or refreshments to patrons viewing entertainment in that facility.\*\*

9. 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 to 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.\*\*

**Note: We believe that taxation of the entire facility is appropriate and consistent with subsection 1 of section 70 of Senate Bill No. 8 when an admission charge is collected. It our understanding that in taxing a "Gentlemen's club" this concept will be applied. Because an admission charge is collected at the entrance to the club, the fact that a patron chooses to spend all or a portion of his time in a private area does not change the fact that he paid for the right to view the live entertainment.**

The situation reflected in subsection 9 differs from the situation in subsection 10 where no admission charge is collected to enter the facility. In subsection 10, it is presumed that the patron may be seated either in an area where the entertainment is clearly visible and audible, or in an area where it is not. The patron has not paid specifically for the right to view entertainment, but instead pays for his food, refreshments or merchandise. If he in fact can clearly see and hear the live entertainment from where he is seated, the tax applies to his purchases. If he cannot, then the tax does not apply. This is consistent with the Board's historical approach to the application of the Casino Entertainment Tax.

10. 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 clearly see and hear the entertainment.\*\*

**Section 4. Computation of the Tax for Licensed Gaming Establishments.**

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 is in live entertainment status. The tax shall also be paid on all admission charges. For purpose of computing sales subject to the tax, required minimum purchases of food, refreshment or merchandise shall be included in admission charges or in the total sales of food, refreshments or merchandise, but not both.
3. Subject to the provisions of subsection 4 of section 5 of this regulation, any ticket for admission to a facility, or redeemable for food or refreshments subject to the live 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 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;
  - (d) Notwithstanding any other provision of this subsection 3, any ticket redeemable for food or refreshments 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; and
  - (e) Nothing in this subsection 3 precludes a licensee from paying live 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 that is not an affiliate of the person licensed to conduct gaming, the taxable sale shall be calculated based upon the portion of the proceeds remitted to the person 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.

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**Section 5. Payment Of Tax by Licensed Gaming Establishments.**

1. The person who is the licensee of the licensed gaming establishment where live entertainment is 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 is affording entertainment subject to the tax on the premises of the establishment, and it shall be the responsibility of the gaming licensee of the licensed gaming establishment to collect the tax from the person 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 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, the following shall apply:
  - (a) The licensee must keep all records required by chapter 463 of NRS, Regulation 6 of the Nevada gaming commission and state gaming control board, and by section 83 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session.
  - (b) The licensee shall either obtain and keep the records required by Section 7 herein or shall require the person that does operate the facilities to keep such records.
4. Any ticket for admission to a facility subject to the live entertainment tax must state whether the live entertainment tax is included in the price of the ticket in substantially this form: "Includes Entertainment Tax," "Inc. Ent. Tax," "Includes Live Ent. Tax," or "LET included." If the ticket does not include such a statement, the licensed gaming establishment shall pay the live entertainment tax on the face amount of the ticket.
5. 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 licensed to conduct gaming or a person or an affiliate of the person licensed to conduct gaming, the person licensed to conduct gaming shall be responsible for payment of the tax and shall include all taxable sales in the report required by subsection 6 or 7 herein.
6. Each nonrestricted 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.
7. 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.

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**Section 6. Merchandise.**

For purposes of this regulation, merchandise shall be deemed 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 or if the merchandise is in the area where the live entertainment is being offered.

**Section 7. Records of Licensed Gaming Establishments.**

1. 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.
2. 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. The records shall be kept and made available at any reasonable time for audit by the board.

**Section 8. 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.

**Section 9. Violation of Statute or Regulation.**

Violation of any provision of this regulation or the live entertainment provisions of Senate Bill No. 8 of the 20<sup>th</sup> Special Session shall constitute an unsuitable method of operation subjecting the license holder to suspension or revocation of his gaming license.

**Section 10. Determination of Seating Capacity in the Absence of a Permit.**

For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20<sup>th</sup> Special Session, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Board 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 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 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.

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**Section 11. Claims for Refund by Licensed Gaming Establishments.**

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.

**Section 12. Internal Control for Licensed Gaming Establishments.**

1. Each Group I licensee (as defined in Nevada Gaming Commission Regulation 6.010) who offers live entertainment shall include in its system of internal control submitted pursuant to Nevada Gaming Commission 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 (as defined in Nevada Gaming Commission Regulation 6.010) and restricted licensees shall comply with the internal control procedures for entertainment adopted pursuant to Nevada Gaming Commission 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 Nevada Gaming Commission Regulation 6.090(9).

**Gaming Control Board**  
**Proposed Permanent Regulations for**  
**LIVE ENTERTAINMENT TAX**

**AUTHORITY: NRS 463.010 et seq., 233B.010 et seq., and Senate Bill 8 of the 20th Special Session of the 2003 Nevada Legislature**

**Section 1.**

**DEFINITIONS**

As used in sections 64 to 100, inclusive, of Senate Bill 8 of the 20th Special session and this chapter, for the purposes of 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
  - (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.

**Begin special options section**

\*\*\*\*\*

The following presents two alternatives, one to be added to the above SB 8 statutory definition of "Live Entertainment":

In **Option A**, dancing by patrons to recorded music would be taxable, as would the presentation of recorded music in the absence of dancing, under certain circumstances.

In **Option B**, dancing by patrons to recorded music, would **NOT**, in and of itself, constitute "live entertainment." However, under specified circumstances, the person presenting the recorded music, the disc jockey or "DJ," would be a performer and, regardless of whether dancing were present or absent, "live entertainment" would take place.

**Under option A, the following language would be used:**

The term includes, without limitation, dancing by patrons to recorded music, except as described below. 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.

**Under Option B, the following language would be used:**

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:
  - (1) The individual presenting the recorded music engages in substantial interaction with patrons;
  - (2) The paid advertising for the facility names the individual or individuals who are to present the recorded music; or



(3) The individual presenting the recorded music engages in forms of visual entertainment including, without limitation, physical stunts, dances, pantomimes or similar activities.

**-End special option section-**

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(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:

(1) such entertainment takes place inside a bar, lounge or restaurant and is intended to benefit patrons who are seated therein; or

(2) 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.

Except as otherwise limited above, "live entertainment" includes, in addition to staged productions of any kind, any performances of dancing, physical stunts, pantomimes or other activities if the establishment designates a space for these activities to take place and allows or encourages employees, independent contractors or other persons other than patrons to perform such activities.

6. "Live entertainment status" is that condition which renders the selling of food, refreshments or merchandise subject to the tax.

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.

8. "Package" is any aggregation of rights to rooms, food, refreshments, merchandise, entertainment, services or other items 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.

## **Section 2.**

### **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.
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. 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 facility subject to the live entertainment tax during the intervals between performances shall be subject to the tax unless the

licensed gaming establishment can account for the volume of sales to persons who entered during an interval between performances and left before the commencement of the next performance.

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. All sales of tickets which afford a patron the right to be present during entertainment shall be subject to the tax, unless the licensee can establish that a full refund has been made to the patron.

9. The live entertainment tax shall also apply to all amounts paid for food or refreshments sold from a place located adjacent to a live entertainment facility if its primary purpose is to provide food or refreshments to patrons viewing entertainment in that facility.

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 to 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.

### **Section 3.**

#### **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.

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.

The event shall be deemed to have a primary purpose that is for other than entertainment if the event occurs in conjunction with, and attendance is limited to, those persons and their guests who are participants in conventions, extended business meetings or tournaments.

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.

#### **Section 4.**

##### **CHARITABLE OR NONPROFIT BENEFITS**

1. An event shall be considered a charitable or nonprofit benefit that is not subject to the live entertainment tax if the admission charge proceeds for the event become the property of an organization described in paragraph (b) of subsection 5 of section 78 of Senate Bill 8 of the 20th Special Session. If the event is a charitable or nonprofit benefit that is exempt from the live entertainment tax, there shall be no tax due 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. 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. The licensee shall retain documentation of reasonable efforts to ensure that the organization is a qualifying organization.

## **Section 5.**

### **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 is in live entertainment status.
3. Subject to the provisions of section 6, subsection 4, any ticket for admission to a facility, or redeemable for food or refreshments subject to the live 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 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;
  - (d) Notwithstanding any other provision of this subsection 3, any ticket redeemable for food or refreshments 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; and
  - (e) Nothing in this subsection 3 precludes a licensee from paying live 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.

#### **Section 6.**

#### **PAYMENT OF TAX**

1. The person or entity who is the licensee of the licensed gaming establishment where live entertainment is 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 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 Section 8 herein or shall require the person or entity that does operate the facilities to keep such records.
4. Any ticket for admission to a facility subject to the live entertainment tax must state whether the live entertainment tax is included in the price of the ticket in substantially this form: "Includes Entertainment Tax," "Inc. Ent. Tax," "Includes Live Ent. Tax," or "LET included." If the ticket does not include such a statement, the licensed gaming establishment shall pay the live 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 or 9 herein.
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 or 9 herein.

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 or 9 herein.

8. Each nonrestricted 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.

9. 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.

#### **Section 7.**

##### **MERCHANDISE**

1. For purposes of this regulation, merchandise shall be deemed 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 or if the merchandise is in the area where the live entertainment is being offered.

#### **Section 8.**

##### **RECORDS**

1. Accurate and detailed records of sales subject to the live entertainment tax 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.

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.

4. The records shall be kept and made available at any reasonable time for audit by the board.

#### **Section 9.**

##### **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.

#### **Section 10.**

##### **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.

#### **Section 11.**

##### **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.

#### **Section 12.**

##### **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).



KENNY C. GUDIN  
Governor

STATE OF NEVADA  
**GAMING CONTROL BOARD**

1919 E. College Parkway, P.O. Box 8003, Carson City, Nevada 89702  
555 E. Washington Ave., Suite 2600, Las Vegas, Nevada 89101  
3650 South Pointe Cir., P.O. Box 31109, Laughlin, Nevada 89028  
557 W. Silver St., Suite 207, Elko, Nevada 89801  
6980 Sierra Center Parkway, Suite 120, Reno, Nevada 89511

DENNIS K. NEILANDER, *Chairman*  
BOBBY L. SILLER, *Member*  
SCOTT SCHERER, *Member*

November 3, 2003

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

**RE: WORKSHOP TO DISCUSS PROPOSED AMENDMENTS TO NGC REGULATION 13**

The State Gaming Control Board, in conjunction with the Nevada Department of Taxation, will hold a public meeting on Friday, November 21, 2003, at 9:00 a.m., to receive input on proposed language concerning permanent regulations on the live entertainment tax to implement the provisions of Senate Bill 8 of the 20<sup>th</sup> Special Session of the 2003 Legislature at the following locations:

Room 2135  
Nevada Legislative Building  
401 S Carson Street  
Carson City, Nevada

and via video conference in

Room 4401  
Grant Sawyer State Office Building  
555 East Washington Avenue  
Las Vegas, Nevada

**AGENDA**

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).

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

On or before 3:00 p.m. 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 Council Bureau for final review, and prior to the public adoption hearing(s).

Proposed draft permanent regulations will be available for review on the State Gaming Control Board's website at <http://gaming.state.nv.us>. Proposed permanent 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 State Gaming Control Board.

Very truly yours,

Marilyn Epling  
Executive Secretary



KENNY C. GUINN  
Governor

STATE OF NEVADA  
**GAMING CONTROL BOARD**

1919 E. College Parkway, P.O. Box 8003, Carson City, Nevada  
89702

555 E. Washington Ave., Suite 2800, Las Vegas, Nevada 89101  
3650 South Pointe Cir., P.O. Box 31109, Laughlin, Nevada  
89028

557 W. Silver St., Suite 207, Elko, Nevada 89801  
6980 Sierra Center Parkway, Suite 120, Reno, Nevada 89511

DENNIS K. NEILANDER, *Chairman*  
BOBBY L. SILLER, *Member*  
SCOTT SCHERER, *Member*

**POSTED 11-03-03**

**NOTICE OF PUBLIC HEARING FOR THE ADOPTION AND AMENDMENT OF  
PERMANENT REGULATIONS OF THE STATE GAMING CONTROL BOARD**

The State Gaming Control Board will hold a public hearing on December 4, 2003, commencing at 1:00 p.m. at the Board Offices, Conference Room 100, 1919 E. College Parkway, Carson City, Nevada.

The State Gaming Control Board will receive testimony from all interested persons and consider and take action on the following proposed permanent adoption to the Nevada Administrative Code pertaining to the State Gaming Control Board. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the State Gaming Control Board may proceed immediately to act upon any written submissions.

The following information is provided pursuant to the requirements of NRS 233B.0603.

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

The need and purpose of the proposed permanent regulations are, pursuant to Senate Bill 8 of the 20<sup>th</sup> Special Session of the Nevada 2003 Legislature, to set forth and clarify various substantive and procedural matters concerning the administration of the Live Entertainment Tax on licensed gaming establishments within this State.

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

Adding new permanent regulations to the Nevada Administrative Code to implement the administration of Sections 65 through 80, inclusive, of Senate Bill 8 of the 20<sup>th</sup> Special Session of the Nevada 2003 Legislature that provide for the imposition of a Live Entertainment Tax on licensed gaming establishments.

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

**A. Adverse and Beneficial Effects.**

The Legislature has determined that a previously effective excise tax in the State known as the Casino Entertainment Tax should be repealed and a new tax, the Live Entertainment Tax imposed. As implemented by the proposed regulations, considering only the State Gaming Control Board's jurisdiction, that is, limited to licensed gaming establishments, while some licensed gaming establishments previously exempted from this type of tax may be required to pay the tax under some limited circumstances, other licensed gaming establishments that previously paid this type of tax may be exempted in some limited circumstances.

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

There are no reasonably foreseeable immediate or long-term adverse or beneficial economic effects to businesses or the general public.

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

The proposed permanent regulations present no significant foreseeable or anticipated increase in cost or decrease in costs for enforcement. However, there may be some additional administrative costs for the State Gaming Control Board that cannot be quantified at this time.

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

The proposed permanent regulations do not appear to overlap or duplicate any other regulations of federal, state or local government.

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

Senate Bill 8 imposes a 10% excise tax on live entertainment. The proposed permanent regulations do not impose any new fees or any increase to existing fees.

Persons wishing to comment on the proposed action of the State Gaming Control Board may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the State Gaming Control Board, 1919 E. College Parkway, Carson City, Nevada 89706. Written submissions must be received at least two weeks before the scheduled public hearing.

A copy of this notice and the proposed permanent regulations to be adopted 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 will be available at the State Gaming Control Board offices at 1919 E. College Parkway, Carson City, Nevada, on the State Gaming Control Board's website <http://gaming.state.nv.us/> and in all counties in which an office of the State Gaming Control Board 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. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

In addition, the notice and the text of the proposed regulations are available in the State of Nevada Register of Administration Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>.

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

---

Dennis K. Neilander, Chairman  
State Gaming Control Board



**Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the State Gaming Control Board in writing or by calling 775-684-7700 no later than five working days prior to the hearing.**

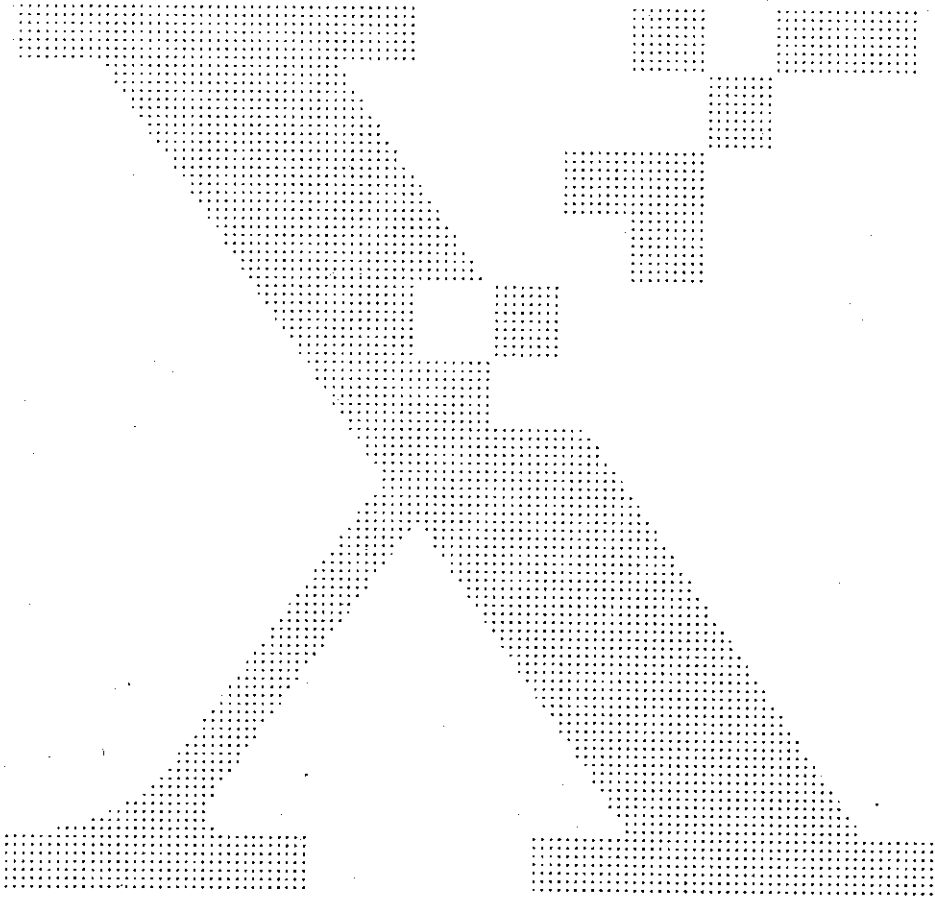
**Notice has been posted at the following locations:** The State Gaming Control Board Offices at 1919 E. College Parkway, Carson City, Nevada; 6980 Sierra Ctr Pkwy, Ste. 120, Reno, Nevada; 555 E. Washington St. Ste. 2600, Las Vegas, Nevada, and a copy was mailed to the Main Public Library in counties where an office of the State Gaming Control Board is not located.

# EXHIBIT GG

# EXHIBIT GG

# JMCasaro

 Notice for NTC meeting.pdf  
 07/23/09 03:23 PM







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

STATE OF NEVADA  
DEPARTMENT OF TAXATION

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

Phone: (775) 687-4820 • Fax: (775) 687-5981  
In-State Toll Free: 800-992-0900

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

LAS VEGAS OFFICE  
Grant Sawyer Office Building  
Suite 1300  
355 E. Washington Avenue  
Las Vegas, Nevada 89101  
Phone: (702) 486-2300  
Fax: (702) 486-2373

RENO OFFICE  
3600 Kietzka Lane  
Building Q, Suite 263  
Reno, Nevada 89502  
Phone: (775) 688-1295  
Fax: (775) 688-1303

POSTED 10/24/03

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

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

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

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

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

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

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

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

**A. Adverse and Beneficial Effects.**

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

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

Same as above.

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

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

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

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

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

None.

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

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

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

Charles E. Chinnock, Executive Director  
October 24, 2003

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

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

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

CERTIFIED COPY

STATE OF NEVADA

TAX COMMISSION

OPEN MEETING

TRANSCRIPT OF PROCEEDINGS

PUBLIC MEETING

THE BOARD:

BARBARA SMITH CAMPBELL, Chairman  
CANDACE EVART, Member  
DAVID TURNER, Member  
JOAN LAMBERT, Member  
JOHN MARVEL, Member  
GEORGE KELESIS, Member

FOR THE DEPARTMENT:

CHUCK CHINNOCK  
Executive Director  
DINO DICIANNO  
Deputy Executive Director  
ERIN FIERRO  
Management Assistant

FOR THE BOARD:

GREG ZUNINO  
Deputy Attorney General

REPORTED BY:

CAPITOL REPORTERS  
BY: CHRISTY Y. HAMREY  
Nevada CCR #625  
410 East John Street, Ste. A  
Carson City, Nevada 89706  
(775) 882-5322

1 RENO, NEVADA, TUESDAY, NOVEMBER 25, 2003

2 ---oOo---

3 CHAIRMAN CAMPBELL: I'm going to start the Tax  
4 Commission meeting for November 25th that is being video  
5 conferenced between Desert Research Institute here in Reno,  
6 Nevada and also Desert Research Institute in Las Vegas. By  
7 telephone we have two other commissioners connected into  
8 this Tax Commission meeting, Commissioner Marvel in Elko,  
9 Nevada, and Commissioner Kelesis is with us from Las Vegas.

10 Before we start this meeting I'd like to make a  
11 few remarks just to get us started. We all knew the  
12 daunting task this legislature had before it. This was not  
13 a perfect legislative session nor a perfect special session.  
14 Very few are.

15 As legislators discussed and debated the many  
16 proposals before them at the time we also knew it would be  
17 the responsibility of the Nevada Tax Commission to respond  
18 to statutory changes with corresponding changes to the  
19 Nevada Administrative Code. This Commission was prepared to  
20 respond quickly and expeditiously to that assignment.

21 This has not been an easy assignment and every  
22 one of the members of the Tax Commission has taken this  
23 responsibility with serious thought and respect. Members of  
24 the Commission have attended every one of the workshops and  
25 have listened to all comments and opinions.

1           We have debated with great rigor the plain  
2 meaning of the law. We have had valuable input from  
3 industry representatives as well as legal opinions from the  
4 deputy attorney general and the Legislative Council Bureau.  
5 Both the deputy attorney general and Legislative Council  
6 Bureau have reviewed, supported, and confirmed that the  
7 draft language which we have before us today is consistent  
8 with the provisions of SB 8.

9           We have held over 14 workshops in a four-month  
10 period. Weekend workshops have been scheduled. The  
11 meetings have been video conferenced from Grant Sawyer  
12 building in Las Vegas and the legislative building in Carson  
13 City. Access to those workshops has also been available  
14 through the internet by logging on to the legislative  
15 website. Interested parties could make comments or ask  
16 questions by faxing into the hearing rooms.

17           Certain sections of SB 8 took effect on July  
18 22nd, others on August 1st, October 1st, and lastly they'll  
19 take place on January 1st 2004.

20           As of today's date the Nevada Tax Commission has  
21 adopted as a permanent regulation the bank excise tax and as  
22 an emergency regulation the new business license fee.

23           I can say with all sincerity that the language  
24 and the basis of these two regulations that we have before  
25 us today has come through working partnership with

1 Commission members, legislators, the Department of Taxation,  
2 the Gaming Commission, the Gaming Control Board, the  
3 attorney general, Legislative Council Bureau, and industry  
4 representatives. And I thank them all for their assistance  
5 and valuable input during this regulatory process.

6 I would like to remind every one that these are  
7 new taxes for the Department of Taxation to administer. The  
8 beauty of the regulatory process is that it is an open  
9 process. If in its attempt to codify the rules for the  
10 administration of these taxes the Commission -- and the  
11 Commission might have missed the mark these rules may be  
12 reopened.

13 Given time and through the recording process I  
14 am quite certain that there will be taxpayer questions that  
15 ~~need to be addressed.~~ The Commission and the Department  
16 will be evaluating the situations to make sure that the  
17 regulations properly address the statutory requirements of  
18 SB 8.

19 With that I'm going to turn it over to  
20 DiCianno -- Dino DiCianno. We have copies of the proposed  
21 three regulations at the back of the room so that every one  
22 can go through them. And we will now open it up for comment  
23 on the three regulations. Mr. DiCianno.

24 MR. DiCIANNO: Thank you. Madam Chair and  
25 Members of the Commission, for the record, Dino DiCianno,

1 Deputy Director for Compliance for the Department. For your  
2 agenda here today you have consideration of adoption of  
3 additions to permanent regulations.

4 MEMBER KELESIS: I can't hear Dino very well.

5 MR. DiCIANNO: Can you hear me now?

6 MEMBER KELESIS: Yes.

7 MR. DiCIANNO: Madam Chair, Members of the  
8 Commission, again for consideration for adoption to  
9 conditions to permanent regulations here today, first of all  
10 is the modified business tax, secondly the modified business  
11 tax on financial institutions both to include the deduction  
12 for employee health benefit plans. More specifically it  
13 relates to Section 1 through 11 inclusive, sections 39  
14 through 40 inclusive, and Section 50 of Senate Bill 8 of the  
15 20th Special Session.

16 Also today for your consideration, Madam Chair  
17 and Members of the Commission, are new regulations to  
18 establish the administrative procedural language associated  
19 with the live entertainment tax. More specifically sections  
20 65 through 80 inclusive of Senate Bill 8 of the 20th Special  
21 Session.

22 And before I begin I'd like to make a few  
23 comments if I can beg your indulgence. For those of you  
24 here in Reno and those of you down in Las Vegas you should  
25 have copies of all three regulations. They have also been

1 posted out on our website for your review.

2 With that, Madam Chair, I'd like to thank you  
3 for your leadership role in this process, Senator Randolph  
4 Townsend for his courage and integrity for coming forward  
5 with this process. He has renewed my faith in this entire  
6 process. This process would not have been a success without  
7 the input of all of those involved, including staff, Nevada  
8 Taxpayer's Association, Mr. Bill Bible, Commissioner  
9 Bernhard, Commissioner Neilander with the Gaming Control  
10 Board, their staff, the staff of the Department. I want to  
11 thank you for allowing me to be -- play a small role in this  
12 success. Without that I don't think we would have made it.  
13 And I hope we don't go through this anytime soon again.

14 But with that said, you've established a blue  
15 print, I believe, as to how things should be done in an  
16 open, candid, fair, process. And that's important. It's  
17 important for the taxpayers of the state. It's important  
18 for the administrative standpoint of the Department to  
19 assist those taxpayers in order for them to be compliant  
20 with SB 8.

21 And with that, Madam Chair, I'd like to begin  
22 with the modified business tax. It's LCB File Number  
23 R204-03. On page -- Starting on page one, Section 3 -- And  
24 I will be brief, Madam Chair, to assist in any questions or  
25 comments associated with these provisions. Section 3



1 through Section 11 defines the Commission, the Department,  
2 the Division, which is the employment security division of  
3 the Department of Employment, Training, and Rehabilitation,  
4 what an employer is, what a health care deduction means, an  
5 Indian tribe, a non-profit organization, a political  
6 subdivision, and self-insured employer.

7 Section 12 begins the discussion with respect to  
8 what claims mean and those provisions therefore.

9 Paragraph two of Section 12 defines direct  
10 administrative costs as a deduction.

11 Paragraph three defines employees to mean whose  
12 wages are included within the measure of the excise tax  
13 imposed upon an employer by Section 50 of Senate Bill 8 of  
14 the 20th Special Session.

15 On page four, paragraph four defines what a  
16 health benefit plan is. To mean a health benefit plan that  
17 covers only those categories of health care expenses that  
18 are generally deductible by employees on their individual  
19 federal income tax returns pursuant to the provisions of 26  
20 USC subparagraph 213.

21 Paragraph 5 defines the amount paid by employer  
22 associated with the Taft-Hartley trust.

23 Section 13 provides for the provisions of  
24 administrative costs if a self-insured employer claims the  
25 depreciation of property as a direct administrative cost for

1 the purposes of a health care deduction and the requirements  
2 thereof and the associated depreciation schedule.

3 On page 5, Section 15 defines what a health care  
4 deduction does not include. Section 15 provides the  
5 requirements for a taxpayer who is not registered with the  
6 Division pursuant to NRS 612.535 and requires them to be  
7 registered with the Department.

8 Section 15, paragraph two defines and sets forth  
9 the requirements for an employer as far as reporting to the  
10 Department on a quarterly basis.

11 Section 16 on page six provides for the  
12 information sharing with the Employment Security Division  
13 with respect to the copies of reports that those employers  
14 provide the Employment Security Division.

15 Section 17 relates to provisions which allow a  
16 taxpayer to file an amended return for any errors on any  
17 report that's provided to the Department with respect to  
18 this tax.

19 And I apologize. I'm more nervous today than I  
20 ever have been.

21 Section 18 provides for the exclusion for the  
22 modified business tax to include an Indian tribe, a  
23 non-profit organization, or a political subdivision with  
24 respect to the provisions of Section 50 of Senate Bill 8.

25 Paragraph two of Section 18 starts the

1 discussion with respect to the records requirements that  
2 need to be maintained by the exempt organizations that I  
3 previously mentioned.

4 Section 19 are the records requirements for  
5 those taxpayers who are subject to the MBT and what needs to  
6 be maintained in their records in addition to our  
7 association or working with the Employment Security  
8 Division.

9 And more specifically, Madam Chair, on Section  
10 19, paragraph four, with respect to any other records  
11 reasonably requested by the Department and I'd like to read  
12 that into the record if I may. The records are available to  
13 the employer and B -- And this is very important -- the  
14 disclosure of the records is not prohibited pursuant to NRS  
15 49.225, 449.720, 683A.0873, or 689B.280 or any other or  
16 federal law requiring the confidentiality of those records.

17 Do you have any questions, Madam Chair, Members  
18 of the Commission I'd be happy to answer them at this time.

19 CHAIRMAN CAMPBELL: Do we have any questions  
20 from Commission members to Mr. DiCianno? George or John, do  
21 you have questions?

22 MEMBER KELESIS: No, ma'am.

23 MEMBER MARVEL: No questions, Madam Chair.

24 CHAIRMAN CAMPBELL: Let's open this up then for  
25 comments from the public either in support or against the

1 regulations. And again we're referencing LCB File R204-03.

2 Patty Taylor, would you help me conduct the  
3 meeting from Las Vegas please and if there's anybody there  
4 that would like to comment for or against this regulation  
5 would you help me recognize them.

6 MS. VALLARDO: Ms. Vallardo, Nevada Taxpayer's  
7 Association speaking in support of the regulation and I  
8 guess I'll do it now. I would like to thank you, everybody  
9 that was involved in the process on all of the regulations  
10 including the live entertainment tax, Gaming Control Board,  
11 Gaming Commission members, their staff, the staff of the  
12 Department for being so receptive to an understanding of the  
13 shortcomings of the legislation and trying to accommodate  
14 those changes that those of us who had to pay the taxes and  
15 comply with the provisions raised of where -- we're most  
16 appreciative and I will leave it go. I have no problem with  
17 any of the regulations so I will not speak at the other  
18 points. This is just a blanket endorsement from my  
19 association's perspective. Thank you.

20 CHAIRMAN CAMPBELL: Thank you, Ms. Vallardo.  
21 And we appreciate your support.

22 Is there anyone in Reno who would like to speak  
23 for or against?

24 MR. KRUGER: I'm going to balance this twice  
25 here. Madam Chairman --

1 CHAIRMAN CAMPBELL: Let me -- David -- I mean  
2 George and John, can you hear?

3 MEMBER KELESIS: Yes.

4 MEMBER MARVEL: Yes.

5 CHAIRMAN CAMPBELL: All right. Thank you.

6 MR. KRUGER: Thank you, Madam Chairman. Peter  
7 Kruger representing a number of self-insured in Taft-Hartley  
8 clients. Number one, we are in support of the provisions of  
9 the proposed regulations of the MBT and fully supporting the  
10 Taft-Hartley provisions. We had several questions and I  
11 apologize for bringing these up at this late hour, but as  
12 you know, sometimes clients wait until the axe is about to  
13 fall and then we get their attention. And I'd just like to  
14 pose these and get them on the record if we can get an  
15 answer.

16 A question on self-insured -- This would be  
17 under Section 12 -- is there a deduction for the stop loss  
18 coverage that a self-insured would pay above and beyond  
19 their normal premiums? I'm getting a nodding of the head.  
20 That's an affirmative yes?

21 MEMBER TURNER: It's my impression that would be  
22 a yes.

23 MR. ZUNINO: For the record, Greg Zunino, Senior  
24 Deputy Attorney General. That is in fact covered by the  
25 legislation. So if you don't see it in the regulation it's

1 only because it's already been covered or addressed by the  
2 legislation itself.

3 MR. KRUGER: All right. Hopefully this question  
4 will be the same and I just missed it. As deductible as  
5 administrative cost would be any audits of the self-insured  
6 plans or filing of a form that's called the IRS form 5500 C.  
7 Again I am not aware of any discussion about those two  
8 items. Peter Kruger again for the record.

9 MR. ZUNINO: And the question that is whether  
10 administrative costs would include the costs of preparing or  
11 working with the Department on an audit, is that the  
12 question?

13 MR. KRUGER: Well, it's my understanding self  
14 insureds have a lot of requirements by the IRS to audit the  
15 plan. And these are larger employers but some of the  
16 members fall in that category.

17 MR. ZUNINO: And I think that so long as the  
18 audit expenses are reasonably allocated to the plan that  
19 qualifies under our provisions then yes those would be  
20 direct administrative costs.

21 MR. KRUGER: So I guess the filing of a form  
22 apparently it's like a tax return I'm told, this IRS form  
23 5500 C is a very complicated annual filing. So again I  
24 would assume or I would hope that your answer would be it  
25 can reasonably be assessed against the plan.

1 MR. ZUNINO: Yes. So long as they can be  
2 allocated to the filing.

3 MR. KRUGER: Thank you. One last question comes  
4 up about fully insured plans as our understanding can have  
5 lots of options that they can deduct where as a self-insured  
6 under the provisions of claims may not because of the  
7 individual federal income tax provisions be able to deduct  
8 the same options. I don't know if coverage of vasectomy,  
9 birth control pills, other things of that nature. My  
10 understanding of fully insured plan -- an employer with a  
11 fully insured plan may choose those options to be covered  
12 whereas they may not be deductible under the IRS provisions  
13 of the tax return.

14 MR. ZUNINO: Well, we've defined both health  
15 benefit plan which is a term that refers to non self-insured  
16 employers, and the term claims, which I believe is  
17 legislative term that refers to self-insured employers and  
18 both of those incorporate Section 213 in categories of  
19 expenses that are listed under 213. So I wouldn't see any  
20 discrepancy between the way the self-insured employers are  
21 treated versus non self-insured employers.

22 MR. KRUGER: Thank you, Madam Chairman.

23 CHAIRMAN CAMPBELL: Is there anyone else in Las  
24 Vegas that wishes to testify?

25 MR. SWAIN: Good morning. This is Scott Swain

1 with the law firm of McDonald, Carano, Wilson. Let me first  
2 say what has been said by Ms. Vallardo, I have been  
3 impressed with the process of how quickly and efficiently  
4 these draft regulations have been put together in efforts to  
5 iron out some things that perhaps were not addressed by the  
6 legislature in its haste to put together Senate Bill 8 and  
7 enact that legislation.

8 With regard to the model business tax proposed  
9 regulations, there's one comment that I have to make. And  
10 I'm here representing Ag Credit Financial which is an  
11 agricultural credit association organized under the Federal  
12 Farm Credit Act. My client also holds subsidiaries that  
13 include federal land bank associations and federal land  
14 credit associations, all of which by federal law are exempt  
15 from taxation by state, local, and municipal government,  
16 similar to credit unions.

17 And the comment that I have with regard to the  
18 regulations for the modified business tax has to do with the  
19 definition of employer as it appears in the regulations.  
20 And of course that definition simply comes directly from  
21 Senate Bill 8, Section 42, which interestingly exempts  
22 financial institutions and refers back to the definition of  
23 financial institutions for purposes of the modified business  
24 tax of financial institutions which of course we'll get to  
25 later.



1           Now, the problem with that reference is that  
2   financial institutions under the modified business tax on  
3   financial institutions excludes federal credit unions or  
4   should also exclude clients such as the clients I represent  
5   that are also exempt under federal law from state taxation.

6           Now, that issue has been addressed in the  
7   regulations, the proposed regulations for the financial  
8   institutions tax that we will discuss later. The problem  
9   that arises, however, with these regulations with modified  
10   business tax is that under this definition financial  
11   institutions would be exempted from the definition of  
12   employer, which means now that any tax exempt organization  
13   not included in the definition of financial institution is  
14   now subject to tax under the modified business tax.

15           Confusing as it is, the bottom line is the way  
16   this is drafted, federal credit unions, and organizations  
17   under the Federal Farm Credit Act would be caught in this  
18   modified business tax inappropriately so.

19           There was some discussion at the most recent  
20   Department of Taxation workshop of adding some broad  
21   language to the regulations that would indicate that any  
22   organization exempt from tax under federal law should not be  
23   subject to this tax. That provision was not added, so this  
24   problem -- this issue still appears in this law.

25           I raise that point mostly for purposes of

1 awareness. This is an issue that will have to be addressed  
2 at some point in time and I recognize that there are ways to  
3 address that issue other than modifying these regulations  
4 today. But I raise that point again to go on record.

5 Aside from that particular point I have no  
6 problem with these proposed regulations for the modified  
7 business tax and again except for that one point would  
8 support these regulations. Thank you.

9 CHAIRMAN CAMPBELL: Thank you, Mr. Swain.

10 MR. ZUNINO: Mr. Swain, this is Greg Zunino for  
11 the record. In response to your comments, we did have that  
12 discussion at the last workshop regarding whether to include  
13 kind of a broad exemption for any employer that would be  
14 exempted under federal law or by the federal constitution.  
15 And I think ultimately it was decided that that wouldn't  
16 really add anything to the regulation itself and as a  
17 principal that's embodied in federal law anyway and already  
18 exists in federal law and I wasn't comfortable that that was  
19 something that would be appropriately included in a  
20 regulation.

21 As you noted, we have specifically addressed the  
22 ag credit organizations in the context of the modified  
23 business tax on financial institution and the bank excise  
24 tax. And the reason that we were able to do that is because  
25 the legislation specifically exempts federal credit unions

1 from the application of that -- of those two taxes so that  
2 we were basically able to expand upon this concept of a  
3 federal credit union I think permissibly within the  
4 regulatory context include the ag credit folks.

5 However, as you noted and as we both recognize,  
6 the modified business tax does not expressively exempt or  
7 provide for an exemption for federal credit unions or any  
8 similar type of organization. So that initially I thought  
9 it was problematic to try to create an exemption by  
10 regulations that didn't exist within the statute itself.

11 So ultimately what was discussed is that, you  
12 know, your client and similarly situated organizations could  
13 request an advisory opinion from the Department of Taxation,  
14 provide all the supporting documentation necessary and all  
15 the facts and the Department of Taxation can issue and does  
16 quite frequently issue advisory opinions wherein we would  
17 provide your client with an answer as to whether federal law  
18 does in fact preempt the imposition of the modified business  
19 tax.

20 CHAIRMAN CAMPBELL: Thank you, Mr. Zunino.

21 Do we have anyone that would like to testify  
22 here in Reno? How about back in Las Vegas?

23 MS. TAYLOR: No.

24 CHAIRMAN CAMPBELL: If we have no other comments  
25 is the Commission ready for a motion?

1 MEMBER KELESIS: This is George Kelesis. I'd  
2 move to approve the regulation.  
3 CHAIRMAN CAMPBELL: Do we have a second?  
4 MEMBER EVART: Second.  
5 CHAIRMAN CAMPBELL: A motion and second to  
6 approve the Regulation LCB File Number R204-03. I'll call  
7 for the vote. Commissioner Lambert?  
8 MEMBER LAMBERT: Aye.  
9 CHAIRMAN CAMPBELL: Commissioner Turner?  
10 MEMBER TURNER: Aye.  
11 CHAIRMAN CAMPBELL: Commissioner Evart?  
12 MEMBER EVART: Aye.  
13 CHAIRMAN CAMPBELL: Commissioner Kelesis?  
14 MEMBER KELESIS: Aye.  
15 CHAIRMAN CAMPBELL: Commissioner Marvel?  
16 MEMBER MARVEL: Aye.  
17 CHAIRMAN CAMPBELL: And the Chair votes aye.  
18 Motion passes.  
19 Mr. DiCianno.  
20 MR. DICIANNO: Thank you, Madam Chair. The next  
21 regulation for consideration of adoption of additions to  
22 permanent regulations by this Commission is LCB File Number  
23 R205-03, which is the modified business tax on financial  
24 institutions.  
25 As you've read through based upon your -- you

1 just adopted the modified business tax there is language  
2 that is mirrored in the regulation for the modified business  
3 tax on financial institution. I will not go over those  
4 items but I will highlight those portions of R205-03 that  
5 relate specifically to the financial institution.

6 With that, Madam Chair and Members of the  
7 Commission, if I could draw your attention to page two,  
8 Section 9, which defines what NAICS is, which is the North  
9 American Industry Classification System.

10 Section 13 which describes what a SIC is -- And  
11 not me today -- Standard Industrial classification Manual.

12 Section 14 which provides for exclusions. And I  
13 believe it's important that I read this into the record,  
14 Madam Chair. On Section 14, paragraph 1(a) the Commission  
15 interprets the term financial institution to exclude the  
16 federal land credit association, farm credit bank,  
17 agricultural credit association or similar institution  
18 organized under the provision of the Farm Credit Act.

19 Also in paragraph two it describes -- or excuse  
20 me -- it defines what a security interest with respect to  
21 NRS 104.1201.

22 Section 15 also further highlights what the  
23 Commission interprets as far as what a bank does not  
24 include. Again a federal land credit association, a farm  
25 credit bank, agricultural credit association, or similar

1 institution organized under the provision of the Farm and  
2 Credit Act.

3 Now, Madam Chair, if I may draw your attention  
4 to page -- section -- page five, Section 17, it further  
5 describes what the Standard Industrial Classification Manual  
6 is. It was published in 1987.

7 Section 17, paragraph two defines the North  
8 American Industry Classification System. And if I may,  
9 Madam Chair, offer an amendment, the North American Industry  
10 Classification book has been updated as of 2002. I would  
11 suggest that we strike 1997 and put in 2002. We would have  
12 to -- I would have to research whether or not the price is  
13 still \$33 and I can have that verified and if there is a  
14 change necessary, Madam Chair, we'll make that change.

15 Section 18 describes the language whether or not  
16 a person is doing business in this state qualifies as a  
17 financial institution with respect to paragraph B of  
18 subsection one of Section 5.5 of Senate Bill 8.

19 Based upon either using the four digit industry  
20 code for SIC or the corresponding provisions under NAICS.

21 Section 19 through 33, which runs from page six  
22 through page 19 provides for the cross-classification under  
23 either the SIC code or the NAICS code with respect to the  
24 provisions highlighted in Senate Bill 8, which is Section  
25 5.5 paragraph 1(b) subparagraphs one through 18.

1 MR. MULNAR: Dino, can I interrupt you? George  
2 Mulnar for the record from the Department. Unfortunately  
3 your fax stopped at page 15 yesterday. We don't have the  
4 rest of those pages here with us.

5 MR. DiCIANNO: Do you have access to a network  
6 PC there?

7 MS. RESNICK: Dino, this is Pauline Resnick for  
8 the record. The copy that you handed me Friday, is that  
9 exactly the same that you were faxing?

10 MR. DiCIANNO: Yes.

11 MS. RESNICK: I have that here.

12 MR. DiCIANNO: If you can have copies made I  
13 would appreciate it.

14 CHAIRMAN CAMPBELL: Pauline, how long will it  
15 take you to get copies made?

16 MS. RESNICK: About ten minutes.

17 CHAIRMAN CAMPBELL: We're going to need to take  
18 a break so the persons in Las Vegas can have access to all  
19 the regulations. So let's go off the record just for a few  
20 minutes until we get those copies made.

21 (Recess was taken)

22 CHAIRMAN CAMPBELL: Dino, do you want to  
23 continue on? We're on page 19.

24 MR. DiCIANNO: Thank you, Madam Chair. First of  
25 all, I'd like to apologize for that to those folks down in

1 Las Vegas. Hopefully you all have those copies now.

2 On page 19 -- Let me back up a little bit.

3 Section 19 begins the cross-classification between SIC and  
4 the NAICS code with respect to Section 5.5 paragraph 1(b)  
5 subparagraphs one through 18 of Senate Bill 8.

6 On page 19, Madam Chair and Members of the  
7 Commission, is Section 34, which is the dispute or appeal  
8 process with respect to a misclassification with respect  
9 either to the Division or the Department of Taxation and the  
10 process associated with that or a taxpayer who disputes  
11 their clarification which flows through all the way into  
12 page 20.

13 And then, Madam Chair, on the remainder of those  
14 sections of LCB R205-03 mirror the language contained in  
15 R204-03 for the modified business tax. If you have any  
16 questions, Madam Chair, I'd be more than happy to respond.

17 CHAIRMAN CAMPBELL: Thank you, Mr. DiCianno.  
18 Let's open it up for comment either in support or against  
19 the proposed regulations. In Las Vegas.

20 MR. SWAIN: Madam Chair, Members of the  
21 Commission, Scott Swain appearing on behalf of Ag Credit  
22 Financial. I just want to point out as has already been  
23 stated by Mr. Zunino and Mr. DiCianno, Section 14.1A of  
24 these proposed regulations includes -- or I should say  
25 excludes from the definition of a financial institution



1       those organizations of which I am concerned.

2               Similarly Section 15 of the same -- on the same  
3       page exempts from the definition of a bank those same  
4       organizations. And therefore I am satisfied with the  
5       language in those two provisions and would recommend the  
6       adoption of these regulations including Sections 14.1A and  
7       Section 15 as drafted. Thank you.

8               CHAIRMAN CAMPBELL: Thank you, Mr. Swain.

9               Is there anyone here in Reno that would like to  
10       testify? We have no one here. Anyone else in Las Vegas?

11              MS. TAYLOR: No, ma'am.

12              CHAIRMAN CAMPBELL: All right. Any questions  
13       from commissioners? Are we prepared for a motion?

14              MEMBER TURNER: I would offer -- I have one  
15       comment, Madam Chair, and I would offer an amendment to the  
16       regulation. Let me do that first. On page five in the  
17       paragraph that Mr. DiCianno previously indicated that he  
18       wanted to make a change in, Section 17, paragraph 2, and  
19       also in Section 17, paragraph one, I would propose that we  
20       modify the language of those two paragraphs to in paragraph  
21       one to delete the language for the price of \$40. I don't  
22       think that's necessary for our regulations. We can't  
23       control what the federal price is and it may change. The  
24       same change in paragraph 2.

25              What I would also possibly modify paragraph two

1 that Mr. DiCianno suggested that we change that to 2002 from  
2 1997 to the most recently published edition.

3 My other comment relates to the process that we  
4 went through, and I certainly compliment everybody that's  
5 been involved whether it be other commissioners or members  
6 of the Department, the attorney general's office, Senator  
7 Townsend. My concern is to the lengths we went to try and  
8 define legislative. And I'm concerned that maybe we've set  
9 a precedent and we may have gone too far. I think we've  
10 reached legislative intent but I'm a little concerned that  
11 maybe we set a precedent that we maybe shouldn't have.  
12 That's my only comment.

13 CHAIRMAN CAMPBELL: Thank you, Mr. Turner. If  
14 you look at --

15 MEMBER LAMBERT: Thank you, Madam Chair. Joan  
16 Lambert. I'm concerned about adopting the language, the  
17 most recent edition. What if the recent edition changed the  
18 SIC or NAICS code and our regulation isn't in tune with  
19 that? Wouldn't it be better to have the regulations listed  
20 in the -- the code edition listed in the regulation but has  
21 the codes we are using to define the financial institution.  
22 So if a future edition changed those codes we would be able  
23 to change the codes in our regulation and then change the  
24 edition.

25 MR. DiCIANNO: Madam Chair, through you to

1 Commissioner Lambert, that is a miscued observation because  
2 what I've done is when we got the regulations back from LCB  
3 Legal I was provided a copy of the 2002 manual from ESD and  
4 I cross-referenced. I found them to be the same, however,  
5 your concern is legitimate. Maybe we need to discuss  
6 amongst this Commission and with the public as to whether or  
7 not we wish to change this to 2002, leave it as 1997, and  
8 have that discussion with LCB Legal to be absolutely sure  
9 that we mirrored the cross-references contained within  
10 Senate Bill 8 especially in Section 5.5 subparagraphs 1(b)  
11 all the way through that. I'll leave that open to  
12 discussion.

13 CHAIRMAN CAMPBELL: Mr. DiCianno, now you said  
14 you've cross-referenced, and you cross-referenced to which  
15 edition?

16 MR. DiCIANNO: 2002.

17 CHAIRMAN CAMPBELL: So you are comfortable that  
18 2002 is the exact language that's in this regulation?

19 MR. DiCIANNO: That's correct.

20 CHAIRMAN CAMPBELL: All right. And I would  
21 agree with Mrs. Lambert. Let's reference a specific edition  
22 since we know the cross-reference is correct. A more recent  
23 edition may change that and mean that we have to open up the  
24 regulation again just for the purpose of hassling it.

25 MEMBER TURNER: I have no problem with that.

1 CHAIRMAN CAMPBELL: I would concur also with  
2 Mr. Turner to delete the price in both of those manuals  
3 since we have no control on that.

4 MR. ZUNINO: If I may. Greg Zunino for the  
5 record. Quite frankly I think that LCB has a reason for  
6 putting the price in there and I've seen this done in other  
7 regulations, not just these regulations. And it's fairly  
8 common that they do this whenever a manual or something --  
9 some publication is incorporated by reference.

10 I'm not entirely sure what the rationale is but  
11 I think it has something to do with the fact that were this  
12 not in here I think there's an argument to be made that the  
13 agency then becomes responsible for providing the manual to  
14 the public free of charge. I think that's the concern that  
15 they're trying to address with this language. Whether it's  
16 founded or not I do not know, but I do believe that they  
17 have a specific rationale for including it.

18 MEMBER TURNER: Madam Chair, could I suggest in  
19 the alternative language that it may be purchased from  
20 without referencing a price in both paragraphs?

21 CHAIRMAN CAMPBELL: Okay. That's in Section  
22 17.1, the third line down would read the manual may be  
23 purchased rather than obtained, and that's the same in  
24 Section 17.2. Just to make it perfectly clear why don't we  
25 put taxpayers may purchase a copy of the -- No. Just a

1 minute.

2 All right. So the amendment then in both 17.1  
3 and 17.2 starting at the second line it will read a copy of  
4 the manual may be purchased from the superintendent of  
5 documents. And then we will delete for a price of \$40. And  
6 the same change would be made in 17.2. Also in 17.2 the  
7 edition year is being changed from 1997 to 2002.

8 MR. DiCIANNO: Madam Chair, I believe there's a  
9 comment.

10 MR. TOWNSEND: Thank you, Madam Chairman.  
11 Randolph Townsend, State Senate. I just spoke with our  
12 counsel, Brenda Urdose, and the reference to '02 is  
13 necessary. It's an inappropriate delegation of authority  
14 for you to say the current edition. And also if -- you  
15 know, we don't want to drag out the NRS here but under 233B  
16 it requires you to put the actual price in.

17 I think Mr. Turner's point is much more cogent,  
18 however, the law requires it. So I thought I'd share that  
19 with you.

20 CHAIRMAN CAMPBELL: All right. Under Section  
21 17.1 and 2 -- Well, no changes in Section 17.1. The only  
22 change will be in 17.2 with the reference to the year 2002  
23 as the edition that we're referencing. Do we have any other  
24 questions from commissioners? Mr. Marvel, Mr. Kelesis, any  
25 questions from you?

1 MEMBER MARVEL: No, ma'am.  
2 MEMBER KELESIS: No, ma'am.  
3 CHAIRMAN CAMPBELL: All right. Are we ready for  
4 a motion?  
5 MEMBER LAMBERT: I would move that we adopt LCB  
6 File Number R205-03 with the change on page five and 17.2  
7 from 1997 to 2002.  
8 CHAIRMAN CAMPBELL: We have a motion. Is there  
9 a second?  
10 MEMBER KELESIS: Second.  
11 CHAIRMAN CAMPBELL: And that's Mr. Kelesis; is  
12 that correct?  
13 MEMBER KELESIS: Yes.  
14 CHAIRMAN CAMPBELL: And I'll call for the vote.  
15 Commissioner Lambert?  
16 MEMBER LAMBERT: Aye.  
17 CHAIRMAN CAMPBELL: Commissioner Turner?  
18 MEMBER TURNER: Aye.  
19 CHAIRMAN CAMPBELL: Commissioner Evart?  
20 MEMBER EVART: Aye.  
21 CHAIRMAN CAMPBELL: Commissioner Kelesis?  
22 MEMBER KELESIS: Aye.  
23 CHAIRMAN CAMPBELL: Commissioner Marvel?  
24 COMMISSIONER MARVEL: Aye.  
25 CHAIRMAN CAMPBELL: The Chair votes aye. The

1 motion passes.

2 The last regulation for review this morning is  
3 LCB File Number R212-03.

4 MR. DiCIANNO: Thank you, Madam Chair. Again  
5 for the record Dino Dicianno, Deputy Director for Compliance  
6 for the Department. LCB File Number R212-03, the sections 3  
7 through Section 10 defines what the Board is, the  
8 Commission, the Department, the executive director, and also  
9 defines the live entertainment status, what a non-profit  
10 organization is, what a patron is, and what a taxpayer is.

11 And I believe it's important that I highlight  
12 Section 7, Madam Chair. The live entertainment status means  
13 that condition which renders the admission to a facility or  
14 the selling of food, refreshments, or merchandise subject to  
15 the tax imposed by Chapter 368A of NRS which is the live  
16 entertainment tax.

17 Section 11 further defines what an admission  
18 charge is to include without limitation an entertainment  
19 fee, a cover charge, a table reservation fee, or a required  
20 minimum purchase of food, refreshments, or merchandise.  
21 Further defines what a boxing contest or exhibition is on  
22 page three, what a facility is -- And I believe it's  
23 important that I enter this into the record, Madam Chair --  
24 a facility, quote unquote, to encompass any area or premises  
25 where live entertainment is provided and for which

1 consideration is collected from one or more patrons for the  
2 right or privilege of entering that area or those premises  
3 even if additional consideration is collected for the right  
4 or privilege of entering a smaller venue within that area or  
5 those premises.

6 Paragraph 4A, subparagraphs one through nine  
7 defines what is included with respect to live entertainment.  
8 On page four starting with paragraph 4B, subparagraphs one  
9 through seven highlights what is included by live  
10 entertainment without limitation -- excuse me -- exclude  
11 without limitation any one or more of the following  
12 activities.

13 On page five further defines a shopping mall,  
14 further defines a trade show, and further defines what a  
15 casual assemblage means.

16 Starting with Section 12 at the bottom of page  
17 five, Madam Chair, through the top of page seven with  
18 respect to non-profits and how it relates to the live  
19 entertainment tax and how it is to be administered.

20 Section 13 on page seven provides for the record  
21 retention requirements for non-profits and other similarly  
22 situated organizations.

23 Section 14 further clarifies what live  
24 entertainment status means. And I need to read this into  
25 the record, Madam Chair. Live entertainment status



1 commences when any patron is required to pay an admission  
2 charge before he is allowed to enter a facility regardless  
3 of when the live entertainment actually commences. Live  
4 entertainment status ceases at the latter of A, the  
5 conclusion of the live entertainment, or B, the time a  
6 facility for which an admission charge was required to  
7 completely -- is completely vacated by admitted patrons or  
8 is open to the general public free of any admission charge.

9 And subparagraph three highlights whether the  
10 tax applies to the sale of food, refreshments, or  
11 merchandise at a facility with the seating capacity of less  
12 than 7500.

13 Section 15 is for the Department or from the  
14 administrative standpoint as to the collection of a tax and  
15 how the rate applies.

16 On page nine, Section 16 deals with the  
17 occupancy of calculations with respect to those particular  
18 types of venues and does provide for a rebuttable  
19 presumption with respect to a taxpayer in establishing to  
20 the reasonable satisfaction of the Department what the  
21 actual seating capacity of the facility is, less than 300 or  
22 more than 7500.

23 Section 17 deals with over-collection of the tax  
24 and a refund provision. It's at the bottom of page nine and  
25 flows all the way through to page ten.

1           Section 18 is the registration requirement with  
2   respect to a taxpayer that is not a licensed gaming  
3   establishment. Paragraph -- which is Section 18, paragraph  
4   one.

5           Section 18, paragraph two is with -- a facility  
6   that provides live entertainment that has gaming.

7           With that, Madam Chair, if you have any  
8   questions I'll be happy to respond.

9           CHAIRMAN CAMPBELL: Thank you, Mr. DiCianno.

10          Before I open this up for comments I want to  
11   recognize Chairman Neilander from the Gaming Control Board.  
12   He is here in the Reno hearing room and I want to extend my  
13   thanks to him and his staff and Chairman Bernhard.

14          We do have two independent agencies that will be  
15   administering and collecting this tax and I truly want to  
16   thank them for their cooperation in working with us on the  
17   joint hearings. We have come to what I believe is consensus  
18   language for both agencies and with that again, Chairman  
19   Neilander, thank you very much for your help in this.

20          With that I will open it up for comment either  
21   for or against the regulations and we'll start in Las Vegas.

22          MS. TAYLOR: I'd like to introduce Gaming  
23   Chairman Bernhard from the Gaming Commission is also here.

24          CHAIRMAN CAMPBELL: Thank you. My thanks to  
25   both of you as well.

1                   CHAIRMAN BERNHARD: Thank you, Madam Chair. If  
2 I may just for the record reflect my appreciation as well  
3 for all of the work that the Nevada Tax Commission, the  
4 Department and staff has accomplished through this exercise.  
5 And I know that the live entertainment portions of SB 8 are  
6 a small part of the task which the Nevada Tax Commission has  
7 faced in the last several months and I think I can speak for  
8 Madam Chair Campbell that I think we all rejoice when we  
9 hear our elected officials say that the 2005 session will  
10 not see a major tax bill coming through. I don't think any  
11 of us really anticipated the amount of time and effort  
12 required. And I appreciate all the effort that has gone  
13 into this process.

14                   If I may just for the record reflect that on  
15 November 20th of this year the Nevada Gaming Commission  
16 authorized me to provide input to the Nevada Tax Commission  
17 today, and the only point I would wish to make is that with  
18 respect to the singing and dancing by patrons which appears  
19 on page five as an exclusion from the tax on Subsection  
20 11.4B6, this is a change from the current practice under the  
21 casino entertainment tax. And activities which had been  
22 taxable under the CET will not be taxable under this  
23 definition.

24                   We believe that the level of the Gaming  
25 Commission that the underlying purpose of our task is to

1 provide some predictability to our licensees on what is and  
2 is not taxable as well as some guidance to our auditors on  
3 what to do when they go out and audit.

4 And I appreciate all the input which we've  
5 received from the public and I believe that any interested  
6 party has had more than enough opportunity and many  
7 interested parties have actually exercised that opportunity  
8 to provide insight into their business operations and how  
9 this legislation and the proposed regulations will affect  
10 their business operations.

11 And I think once this regulation is adopted and  
12 implemented the gaming licensees will understand and will  
13 have that degree of predictability which they need to know  
14 what types of activities will subject them to the collection  
15 and obligation to pay the live entertainment tax. And thank  
16 you very much again for all of your assistance.

17 CHAIRMAN CAMPBELL: Thank you, Chairman  
18 Bernhard. Also some of the taxpayers are aware, I've spoken  
19 with Chairman Neillander and we are aware that over a period  
20 of time taxpayers will be coming to the Department of  
21 Taxation and the Gaming Control Board seeking advisory  
22 opinions on whether or not they fall under one agency or the  
23 other.

24 We have agreed that as we issue those advisory  
25 letters that we will be copying the Gaming Control Board and

1 working with them so that we know that our opinions and  
2 advice are consistent with each other. If there are  
3 problems, we will be addressing them up front instead of  
4 after the fact.

5 So again, I appreciate that communication that's  
6 going to be taking place and I commend both of the agencies  
7 for being able to do that.

8 So again, I'm going to open it up for public  
9 comment here in Reno. Anyone that would like to speak for  
10 or against the regulation? We don't have anyone here in  
11 Reno. Is there anyone in Las Vegas?

12 MR. BIBLE: Madam Chair, for the record I'm Bill  
13 Bible with the Nevada Resort Association and I wanted to  
14 encourage the Tax Commission to adopt the regulation as it  
15 appears before you today and to commend members of the Tax  
16 Commission, the members of the Nevada Gaming Commission, and  
17 the members of the board and the respective staffs for the  
18 development of this particular regulation.

19 And particularly, Madam Chair, I wanted to  
20 commend you for your efforts and the time that you put into  
21 the development of this regulation. I believe that it will  
22 serve the interest of the state very well. Again thank you.

23 CHAIRMAN CAMPBELL: Thank you, Mr. Bible.

24 Is there anyone else in Las Vegas that would  
25 like to speak?

1 MS. TAYLOR: No, Madam Chair.

2 CHAIRMAN CAMPBELL: All right. No one else here  
3 in Reno.

4 With that is there a motion to accept the  
5 regulation?

6 MEMBER KELESIS: This is George Kelesis. I'd  
7 move to adopt the regulation.

8 MEMBER TURNER: I'll second, Madam Chair.

9 CHAIRMAN CAMPBELL: We have a motion and a  
10 second to accept LCB File R212-03. Commissioner Lambert?

11 MEMBER LAMBERT: Aye.

12 CHAIRMAN CAMPBELL: Commissioner Turner?

13 MEMBER TURNER: Aye.

14 CHAIRMAN CAMPBELL: Commissioner Evart?

15 MEMBER EVART: Aye.

16 CHAIRMAN CAMPBELL: Commissioner Kelesis?

17 MEMBER KELESIS: Aye.

18 CHAIRMAN CAMPBELL: Commissioner Marvel?

19 MEMBER MARVEL: Aye.

20 CHAIRMAN CAMPBELL: Chair votes aye. The motion  
21 passes.

22 I believe that covers most of the big issues  
23 that everyone was here for today. We're now on the agenda  
24 under Section 2 for briefings.

25 MR. CHINNOCK: Madam Chair, the next item is

1 briefings to and from the Commission from the Deputy  
2 Attorney General.

3 MR. ZUNINO: I would just note that it's very  
4 nice to have these regulations adopted. We do still need to  
5 formally adopt the business license regulation. We adopted  
6 the emergency regulations but those are only effective I  
7 believe for 90 days or 120 days.

8 Anyhow, we've made some changes to those  
9 business license regulations because there was some problems  
10 quite frankly with the original draft of the emergency  
11 regulations. So that's another item that needs to be  
12 addressed in the near future. Other than that I have  
13 nothing.

14 CHAIRMAN CAMPBELL: Mr. Zunino, on behalf of the  
15 entire Commission I want to commend and thank you for all of  
16 the long hours that you put into this because it's been your  
17 fine hand that's produced the language that we see here  
18 today. And so again I'm going to extend our thank you to  
19 you.

20 MR. CHINNOCK: Madam Chair, the next item on the  
21 agenda is briefing from myself. And I would only add here  
22 that as a result of the three regulations that you passed  
23 here we will have those final regulations posted to our  
24 website by close of business today.

25 I would also note that as a result of this we

1 can now go on and complete our programming as far as with  
2 any agency information technology and I continue to get the  
3 word out to the taxpayers. We will continue moving into our  
4 new space. We'll continuing hiring and generally we are  
5 more than well on our way to implementing the taxes in  
6 general and this kind of allows us to put the final piece of  
7 the puzzle in there for us.

8 CHAIRMAN CAMPBELL: Thank you, Mr. Chinnock.  
9 And again on behalf of myself and the Commission I want to  
10 thank you and Mr. DiCianno and all the staff and team  
11 leaders that helped us get where we are today. Very much  
12 appreciated.

13 Our next meeting date is December 8th.

14 MR. CHINNOCK: Yes, ma'am, it's December 8th and  
15 it will be right here at this location. I'm not sure if  
16 it's this room.

17 MS. FIERRO: Yes.

18 MR. CHINNOCK: Yes, it is. December 8th.

19 CHAIRMAN CAMPBELL: Next item on the agenda is  
20 public comment. Do we have anyone in Las Vegas that would  
21 like to offer public comment?

22 MS. TAYLOR: It doesn't appear.

23 CHAIRMAN CAMPBELL: Any public comment here in  
24 Reno?

25 Well, with that I'll adjourn the meeting. And



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thank you every one for all your input and effort on this.

(Meeting was adjourned at 10:23 a.m.)

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STATE OF NEVADA            )  
                                  ) ss.  
COUNTY OF WASHOE        )

I, CHRISTY Y. HAMREY, Official Court Reporter  
for the State of Nevada, Department of Taxation, Nevada Tax  
Commission, do hereby certify:

That on Tuesday, the 25th day of November,  
2003, I was present at the Desert Research Institute, Reno,  
Nevada, for the purpose of reporting in verbatim stenotype  
notes the within-entitled public meeting;

That the foregoing transcript, consisting of  
pages 1 through 39, inclusive, includes a full, true, and  
correct transcription of my stenotype notes of said public  
meeting.

Dated at Reno, Nevada, this 12th day of  
December, 2003.

  
CHRISTY Y. HAMREY, CCR #625