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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 HH

# EXHIBIT HH

**Nevada Tax Commission Meeting**

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

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

ACTION WILL BE TAKEN ON THE ITEMS INDICATED IN BOLD

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

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

II. **BRIEFINGS:**

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

III. **Next Meeting Date**

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

V. **Adjourn**

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

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

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

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

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

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

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



**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R204-03**

November 20, 2003

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

AUTHORITY: §§1-19, NRS 360.090 and section 45 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.060).

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

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

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

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

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

**Sec. 6.** *"Employer" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

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Sec. 7. *"Health care deduction" means the deduction allowed by subsection 4 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).*

Sec. 8. *"Indian tribe" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

Sec. 9. *"Nonprofit organization" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

Sec. 10. *"Political subdivision" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

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

Sec. 12. *For the purposes of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), the Commission interprets the term:*

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

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

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

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

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

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

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

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

3. *"Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.*

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

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

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

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

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

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

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

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

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

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

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

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

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

3. *For an improvement to real property:*

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

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

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

1. *Except as otherwise provided in subsection 6 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.*

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

**Sec. 15.** 1. *An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).*

2. *Each employer shall:*

*(a) File with the Department each quarterly return required by paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), regardless of whether any tax is due from the employer for that quarter; and*

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

*Sec. 16. 1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department will notify an employer if the Department is unable to obtain that information pursuant to such an agreement.*

*2. An employer who is in compliance with section 19 of this regulation shall be deemed to have submitted any proof required by subsection 6 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).*

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

*Sec. 17. If an employer files a return pursuant to paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), which contains any errors, the employer shall:*

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

*Any corrections to:*

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

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

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

**Sec. 18.** 1. *An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.*

2. *Any person who claims to be a nonprofit organization exempt from the provisions of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), shall, upon the request of the Department:*

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

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

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

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

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



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

**PROPOSED REGULATION OF  
THE NEVADA TAX COMMISSION**

**LCB File No. R205-03**

November 20, 2003

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

AUTHORITY: §§1-41, NRS 360.090 and section 7 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 135 (NRS 363A.070).

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

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

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

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

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

**Sec. 6.** *"Employer" has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 133 (NRS 363A.030).*

Sec. 7. "Health care deduction" means the deduction allowed by subsection 4 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130).

Sec. 8. "Indian tribe" has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 133 (NRS 363A.030).

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

Sec. 10. "Nonprofit organization" has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 133 (NRS 363A.030).

Sec. 11. "Political subdivision" has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 133 (NRS 363A.030).

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

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

Sec. 14. 1. For the purposes of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050):

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

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

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

*Sec. 15. For the purposes of section 10.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 136 (NRS 363A.120), the Commission interprets the term "bank" to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.*

*Sec. 16. For the purposes of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), the Commission interprets the term:*

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

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

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

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

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

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

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

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

3. *"Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.*

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

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

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

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

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

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

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

2. The North American Industry Classification System, 1997 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$33.

Sec. 18. *In determining whether a person who is doing business in this state qualifies as a financial institution pursuant to paragraph (b) of subsection 1 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), the Department shall use the four-digit industry codes set forth in the SIC, or the corresponding provisions of the NAICS, as described in sections 19 to 33, inclusive, of this regulation.*

Sec. 19. 1. *Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (1) or (2) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6211 (Security Brokers, Dealers, and Flotation Companies), or the corresponding provisions of NAICS Code 52311, 52312, 52391 or 523999.*

2. *SIC Code 6211:*

*(a) Refers to establishments primarily engaged in the purchase, sale and brokerage of securities, and those, generally known as investment bankers, primarily engaged in originating, underwriting and distributing issues of securities. Establishments primarily engaged in issuing shares of mutual and money market funds, unit investment trusts and face amount certificates are classified in SIC Industry Group 672 (Investment Offices).*

*Establishments primarily engaged in providing investment advice on a contract or fee basis to establishments which deal in financial contracts are classified in SIC Code 6282 (Investment Advice).*

- (b) Includes, without limitation:*
- (1) Agents for mutual funds.*
  - (2) Bond dealers and brokers.*
  - (3) Distributors, security.*
  - (4) Floor traders, security.*
  - (5) Investment bankers.*
  - (6) Investment certificates, sale of.*
  - (7) Investment firm-general brokerage.*
  - (8) Mineral leases, dealers in.*
  - (9) Mineral royalties, dealers in.*
  - (10) Mortgages, buying and selling (rediscounting).*
  - (11) Mutual fund agents.*
  - (12) Mutual funds, selling by independent salesperson.*
  - (13) Note brokers.*
  - (14) Oil and gas lease brokers.*
  - (15) Oil royalties, dealers in.*
  - (16) Option dealers, stock.*
  - (17) Sale of partnership shares in real estate syndicates.*
  - (18) Security brokers.*
  - (19) Security dealers.*
  - (20) Security flotation companies.*
  - (21) Security traders.*



*(22) Security underwriters.*

*(23) Stock brokers and dealers.*

*(24) Tax certificate dealers.*

Sec. 20. 1. *Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (3) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6221 (Commodity Contracts Brokers and Dealers), or the corresponding provisions of NAICS Code 52313 or 52314.*

2. *SIC Code 6221:*

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

*(b) Includes, without limitation:*

*(1) Commodity brokers (contracts).*

*(2) Commodity dealers (contracts).*

*(3) Futures brokers, commodity.*

*(4) Futures dealers, commodity.*

*(5) Traders, commodity contract.*

*Sec. 21. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (4) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6231 (Security and Commodity Exchanges), or the corresponding provisions of NAICS Code 52321.*

*2. SIC Code 6231:*

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

*(b) Includes, without limitation:*

- (1) Commodity contract exchanges.*
- (2) Futures exchanges, contract.*
- (3) Option exchanges, stock.*
- (4) Security exchanges.*
- (5) Stock exchanges.*

*Sec. 22. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (5) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6282 (Investment Advice), or the corresponding provisions of NAICS Code 52392 or 52393.*

2. SIC Code 6282:

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

(b) Includes, without limitation:

(1) Futures advisory service.

(2) Investment advisory service.

(3) Investment counselors.

(4) Investment research.

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

Sec. 23. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (6) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6289 (Services Allied With the Exchange of Securities or Commodities, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 523991.

2. SIC Code 6289:

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

(b) Includes, without limitation:

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

*Sec. 24. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (7) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6712 (Offices of Bank Holding Companies), or the corresponding provisions of NAICS Code 551111.*

*2. SIC Code 6712:*

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

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

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

*Sec. 25. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (8) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6719 (Offices of Holding Companies, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 551112.*

*2. SIC Code 6719:*

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

*(b) Includes, without limitation:*

- (1) Holding companies, except bank.*
- (2) Investment holding companies, except bank.*
- (3) Personal holding companies, except bank.*
- (4) Public utility holding companies.*

Sec. 26. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (9) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6722 (Management Investment Offices, Open-End), or the corresponding provisions of NAICS Code 52591.

2. SIC Code 6722:

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

(b) Includes, without limitation:

(1) Management investment funds, open-end.

(2) Money market mutual funds.

(3) Mutual fund sales on own account.

Sec. 27. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (10) or (11) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6726 (Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices), or the corresponding provisions of NAICS Code 52599.

2. SIC Code 6726:

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

(b) Includes, without limitation:

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

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

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

2. SIC Code 6732:

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

(b) Includes, without limitation:

(1) Charitable trusts, management of.

(2) Educational trusts, management of.

(3) Religious trusts, management of.

Sec. 29. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (13) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6733 (Trusts, Except Educational, Religious, and Charitable), or the corresponding provisions of NAICS Code 52392, 523991 or 525.

2. SIC Code 6733:



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

*(b) Includes, without limitation:*

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

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

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

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

*(5) Vacation funds for employees.*

*Sec. 30. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (14) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6792 (Oil Royalty Traders), or the corresponding provisions of NAICS Code 52391 or 53311.*

*2. SIC Code 6792:*

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

*(b) Includes, without limitation:*

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

*(2) Oil royalty companies.*

Sec. 31. 1. *Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (15) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6794 (Patent Owners and Lessors), or the corresponding provisions of NAICS Code 53311.*

2. *SIC Code 6794:*

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

*(b) Includes, without limitation:*

- (1) Copyright buying and licensing.*
- (2) Franchises, selling or licensing.*
- (3) Music licensing to radio stations.*
- (4) Music royalties, sheet and record.*
- (5) Patent buying and licensing.*
- (6) Patent leasing.*
- (7) Performance rights, publishing and licensing of.*

Sec. 32. 1. *Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (16) of paragraph (b) of*

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

*2. SIC Code 6798:*

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

*(b) Includes, without limitation:*

- (1) Mortgage investment trusts.*
- (2) Mortgage trusts.*
- (3) Real estate investment trusts (REITs).*
- (4) Realty investment trusts.*
- (5) Realty trusts.*

*Sec. 33. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (17) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6799 (Investors, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 52391, 52392 or 52313.*

2. *SIC Code 6799:*

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

(b) *Includes, without limitation:*

(1) *Commodity contract pool operators.*

(2) *Commodity contract trading companies.*

(3) *Investment clubs.*

(4) *Security speculators for own account.*

(5) *Tax liens: holding, buying, and selling.*

(6) *Venture capital companies.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A useful life of 15 years; and

3. For an improvement to real property:

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

(b) A useful life of 50 years.

Sec. 36. The health care deduction does not:

1. Except as otherwise provided in subsection 6 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.

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

Sec. 37. 1. An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130).

2. Each employer shall:

(a) File with the Department each quarterly return required by paragraph (a) of subsection 3 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature,

*chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), regardless of whether any tax is due from the employer for that quarter; and*

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

*Sec. 38. 1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department shall notify an employer if the Department is unable to obtain that information pursuant to such an agreement.*

*2. An employer who is in compliance with section 41 of this regulation shall be deemed to have submitted any proof required by subsection 6 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130).*

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

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

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

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

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

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

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

*Sec. 40. 1. An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.*

*2. Any person who claims to be a nonprofit organization exempt from the provisions of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), shall, upon the request of the Department:*

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



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

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

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

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

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R204-03**

November 20, 2003

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

**AUTHORITY:** §§1-19, NRS 360.090 and section 45 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.060).

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

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

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

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

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

**Sec. 6.** *"Employer" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

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Sec. 7. "Health care deduction" means the deduction allowed by subsection 4 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).

Sec. 8. "Indian tribe" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).

Sec. 9. "Nonprofit organization" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).

Sec. 10. "Political subdivision" has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).

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

Sec. 12. For the purposes of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), the Commission interprets the term:

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

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

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

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

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

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

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

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

3. *"Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.*

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

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

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

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

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

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

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

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

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

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

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

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

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

3. *For an improvement to real property:*

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

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

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

1. *Except as otherwise provided in subsection 6 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.*

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

**Sec. 15.** 1. *An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).*

2. *Each employer shall:*

(a) *File with the Department each quarterly return required by paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), regardless of whether any tax is due from the employer for that quarter; and*

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

*Sec. 16. 1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department will notify an employer if the Department is unable to obtain that information pursuant to such an agreement.*

*2. An employer who is in compliance with section 19 of this regulation shall be deemed to have submitted any proof required by subsection 6 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).*

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

*Sec. 17. If an employer files a return pursuant to paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), which contains any errors, the employer shall:*



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

*Any corrections to:*

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

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

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

*Sec. 18. 1. An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.*

*2. Any person who claims to be a nonprofit organization exempt from the provisions of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), shall, upon the request of the Department:*

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

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

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

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

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

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

**PROPOSED REGULATION OF  
THE NEVADA TAX COMMISSION**

**LCB File No. R205-03**

November 20, 2003

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

**AUTHORITY:** §§1-41, NRS 360.090 and section 7 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 135 (NRS 363A.070).

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

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

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

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

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

**Sec. 6.** *"Employer" has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 133 (NRS 363A.030).*

Sec. 7. "Health care deduction" means the deduction allowed by subsection 4 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130).

Sec. 8. "Indian tribe" has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 133 (NRS 363A.030).

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

Sec. 10. "Nonprofit organization" has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 133 (NRS 363A.030).

Sec. 11. "Political subdivision" has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 133 (NRS 363A.030).

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

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

Sec. 14. 1. For the purposes of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050):

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

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

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

*Sec. 15. For the purposes of section 10.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 136 (NRS 363A.120), the Commission interprets the term "bank" to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.*

*Sec. 16. For the purposes of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), the Commission interprets the term:*

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

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

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

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

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

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

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

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

3. *"Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.*

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

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

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

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

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

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

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

2. The North American Industry Classification System, 1997 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$33.



Sec. 18. *In determining whether a person who is doing business in this state qualifies as a financial institution pursuant to paragraph (b) of subsection 1 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), the Department shall use the four-digit industry codes set forth in the SIC, or the corresponding provisions of the NAICS, as described in sections 19 to 33, inclusive, of this regulation.*

Sec. 19. 1. *Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (1) or (2) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6211 (Security Brokers, Dealers, and Flotation Companies), or the corresponding provisions of NAICS Code 52311, 52312, 52391 or 523999.*

2. *SIC Code 6211:*

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

- (b) Includes, without limitation:*
- (1) Agents for mutual funds.*
  - (2) Bond dealers and brokers.*
  - (3) Distributors, security.*
  - (4) Floor traders, security.*
  - (5) Investment bankers.*
  - (6) Investment certificates, sale of.*
  - (7) Investment firm-general brokerage.*
  - (8) Mineral leases, dealers in.*
  - (9) Mineral royalties, dealers in.*
  - (10) Mortgages, buying and selling (rediscounting).*
  - (11) Mutual fund agents.*
  - (12) Mutual funds, selling by independent salesperson.*
  - (13) Note brokers.*
  - (14) Oil and gas lease brokers.*
  - (15) Oil royalties, dealers in.*
  - (16) Option dealers, stock.*
  - (17) Sale of partnership shares in real estate syndicates.*
  - (18) Security brokers.*
  - (19) Security dealers.*
  - (20) Security flotation companies.*
  - (21) Security traders.*

*(22) Security underwriters.*

*(23) Stock brokers and dealers.*

*(24) Tax certificate dealers.*

*Sec. 20. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (3) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6221 (Commodity Contracts Brokers and Dealers), or the corresponding provisions of NAICS Code 52313 or 52314.*

*2. SIC Code 6221:*

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

*(b) Includes, without limitation:*

*(1) Commodity brokers (contracts).*

*(2) Commodity dealers (contracts).*

*(3) Futures brokers, commodity.*

*(4) Futures dealers, commodity.*

*(5) Traders, commodity contract.*

Sec. 21. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (4) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6231 (Security and Commodity Exchanges), or the corresponding provisions of NAICS Code 52321.

2. SIC Code 6231:

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

(b) Includes, without limitation:

- (1) Commodity contract exchanges.
- (2) Futures exchanges, contract.
- (3) Option exchanges, stock.
- (4) Security exchanges.
- (5) Stock exchanges.

Sec. 22. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (5) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6282 (Investment Advice), or the corresponding provisions of NAICS Code 52392 or 52393.

*2. SIC Code 6282:*

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

*(b) Includes, without limitation:*

*(1) Futures advisory service.*

*(2) Investment advisory service.*

*(3) Investment counselors.*

*(4) Investment research.*

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

*Sec. 23. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (6) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6289 (Services Allied With the Exchange of Securities or Commodities, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 523991.*

*2. SIC Code 6289:*

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

*(b) Includes, without limitation:*

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

Sec. 24. 1. *Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (7) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6712 (Offices of Bank Holding Companies), or the corresponding provisions of NAICS Code 551111.*

2. *SIC Code 6712:*

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

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

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

*Sec. 25. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (8) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6719 (Offices of Holding Companies, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 551112.*

*2. SIC Code 6719:*

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

*(b) Includes, without limitation:*

- (1) Holding companies, except bank.*
- (2) Investment holding companies, except bank.*
- (3) Personal holding companies, except bank.*
- (4) Public utility holding companies.*

Sec. 26. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (9) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6722 (Management Investment Offices, Open-End), or the corresponding provisions of NAICS Code 52591.

2. SIC Code 6722:

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

(b) Includes, without limitation:

(1) Management investment funds, open-end.

(2) Money market mutual funds.

(3) Mutual fund sales on own account.

Sec. 27. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (10) or (11) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6726 (Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices), or the corresponding provisions of NAICS Code 52599.



2. SIC Code 6726:

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

(b) Includes, without limitation:

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

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

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Appellants' Appendix

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

2. SIC Code 6732:

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

(b) Includes, without limitation:

(1) Charitable trusts, management of.

(2) Educational trusts, management of.

(3) Religious trusts, management of.

Sec. 29. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (13) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6733 (Trusts, Except Educational, Religious, and Charitable), or the corresponding provisions of NAICS Code 52392, 523991 or 525.

2. SIC Code 6733:

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

*(b) Includes, without limitation:*

- (1) Administrators of private estates (nonoperating).*
- (2) Personal investment trusts, management of.*
- (3) Trustees: except for educational, religious, or charitable trusts.*
- (4) Trusts except educational, religious, and charitable: management of.*
- (5) Vacation funds for employees.*

*Sec. 30. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (14) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6792 (Oil Royalty Traders), or the corresponding provisions of NAICS Code 52391 or 53311.*

*2. SIC Code 6792:*

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

*(b) Includes, without limitation:*

- (1) Oil leases, buying and selling on own account.*
- (2) Oil royalty companies.*

Sec. 31. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (15) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6794 (Patent Owners and Lessors), or the corresponding provisions of NAICS Code 53311.

2. SIC Code 6794:

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

(b) Includes, without limitation:

- (1) Copyright buying and licensing.
- (2) Franchises, selling or licensing.
- (3) Music licensing to radio stations.
- (4) Music royalties, sheet and record.
- (5) Patent buying and licensing.
- (6) Patent leasing.
- (7) Performance rights, publishing and licensing of.

Sec. 32. 1. Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (16) of paragraph (b) of

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

**2. SIC Code 6798:**

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

*(b) Includes, without limitation:*

- (1) Mortgage investment trusts.*
- (2) Mortgage trusts.*
- (3) Real estate investment trusts (REITs).*
- (4) Realty investment trusts.*
- (5) Realty trusts.*

**Sec. 33. 1.** *Except as otherwise provided in subsection 2 of section 5.5 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 134 (NRS 363A.050), a person who is doing business in this state qualifies as a financial institution pursuant to subparagraph (17) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6799 (Investors, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 52391, 52392 or 52313.*

2. *SIC Code 6799:*

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

*(b) Includes, without limitation:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A useful life of 15 years; and

3. For an improvement to real property:

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

(b) A useful life of 50 years.

Sec. 36. The health care deduction does not:

1. Except as otherwise provided in subsection 6 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.

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

Sec. 37. 1. An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130).

2. Each employer shall:

(a) File with the Department each quarterly return required by paragraph (a) of subsection 3 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature,



*chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), regardless of whether any tax is due from the employer for that quarter; and*

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

*Sec. 38. 1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department shall notify an employer if the Department is unable to obtain that information pursuant to such an agreement.*

*2. An employer who is in compliance with section 41 of this regulation shall be deemed to have submitted any proof required by subsection 6 of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130).*

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

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

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

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

*Any corrections to:*

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

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

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

*Sec. 40. 1. An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.*

*2. Any person who claims to be a nonprofit organization exempt from the provisions of section 11 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 137 (NRS 363A.130), shall, upon the request of the Department:*

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

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

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

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

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

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R212-03**

November 24, 2003

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

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

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

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

**Sec. 3.** *“Board” means the State Gaming Control Board.*

**Sec. 4.** *“Commission” means the Nevada Tax Commission.*

**Sec. 5.** *“Department” means the State Department of Taxation.*

**Sec. 6.** *“Executive Director” means the Executive Director of the Department.*

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

Sec. 8. *"Nonprofit organization" means any organization described in paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200).*

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

Sec. 10. *"Taxpayer" means any person described in section 75 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.110).*

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

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

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

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

4. *"Live entertainment":*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

2003, 20th Special Session, at page 147 (NRS 368A.200), live entertainment is provided by or entirely for the benefit of a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization as long as the person retains not more of the proceeds than is necessary to cover the direct, supportable costs of hosting, promoting or sponsoring the event at which the live entertainment is provided.

2. Subject to the provisions of subsection 1, a nonprofit organization providing live entertainment, or a person providing live entertainment entirely for the benefit of a nonprofit organization, incurs no liability for the excise tax on entertainment if the nonprofit organization or person contracts for goods or services with a person other than a nonprofit organization, even if the proceeds from the sale of food, refreshments or merchandise do not become the property of the nonprofit organization.

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

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

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

*Sec. 13. Any person who claims to be a nonprofit organization exempt from the provisions of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), or any person who claims to provide live entertainment entirely for the benefit of such a nonprofit organization, shall, upon the request of the Department:*

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

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

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

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

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

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

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

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

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

Sec. 16. *For the purposes of paragraph (c) of subsection 6 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including, without limitation, evidence of actual attendance, the number of tickets sold or offered for sale, the square footage of the facility, the physical needs or requirements of the patrons in relation to the nature of the live entertainment provided and any other evidence tending to establish the actual seating capacity of the facility.*

Sec. 17. 1. *As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 to 4, inclusive, of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200).*

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

3. A taxpayer shall:

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

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

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

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

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

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

Sec. 18. 1. If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the Department to collect the tax. The taxpayer shall thereafter collect and remit the tax to the Department in accordance the provisions of this chapter and sections 65 to 100, inclusive, of Senate Bill No. 8 of the 20th

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

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

# EXHIBIT II

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SUPP.ROA02497

# EXHIBIT II

DV000834




\$ 3,021.00 \$ 4,733.78

Total  
LET  
Reported

Performing Arts Centers  
Food, Drinks and Merchandise Sales

\$ - \$ - \$ 3,561.28

Total  
LET

Total	LET
	

\$ - \$ - \$ -

forming Arts Centers  
; Drinks and Merchandise Sales

Total  
LET  
Reported

\$ - \$ - \$ -



\$ 20,721.00	\$ 693.94	\$ 740.44	\$ 2,408.50	\$ 10,686.00	\$ 759.03	\$ 1,946.81
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**\$ 39,830.93**

## Reported

Total

**Coming Arts Centers  
Drinks and Merchandise Sales**

17,891.44

**\$ 8,706.02 \$ 10,807.00**

\$

**\$ 75,039.19**

## Reported

137

**Topic**

**1999-2000**

14-00000 1 1000000 1 1000000

11,007.15 \$ 11,007.15 \$ 740,674.75

**Abstract**

1001

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Appellants' Appendix

SUPP.ROA02503

6,205.52	\$	-	\$	-	\$	-	\$	-	\$	-	\$	1,403,761.76
Total												
Reported												
82,306.19												
86,359.64												
166,229.59												
223,326.26												
94,171.39												
581.00												
275,119.11												
845.75												
174,596.04												
144,022.27												
64,122.46												
92,082.06												

to - Raceways

2284

Seating Capacity

the year, will reopen if they can come into compliance.

4 \$ 939,488.38 \$ 738,141.88 \$ 1,208,268.98 \$ 127,348.38 \$ 18,838.38 \$ 472,121.81 \$ 38,288.00 \$ 5,204,017.98

Total

187

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SUPP.ROA02504

NY/0000841

to - Performing Arts Centers  
s, Food, Drinks and Merchandise Sales-Nightclubs

\$ - \$ 15,001.17 \$ - \$ -

Appellants' Appendix

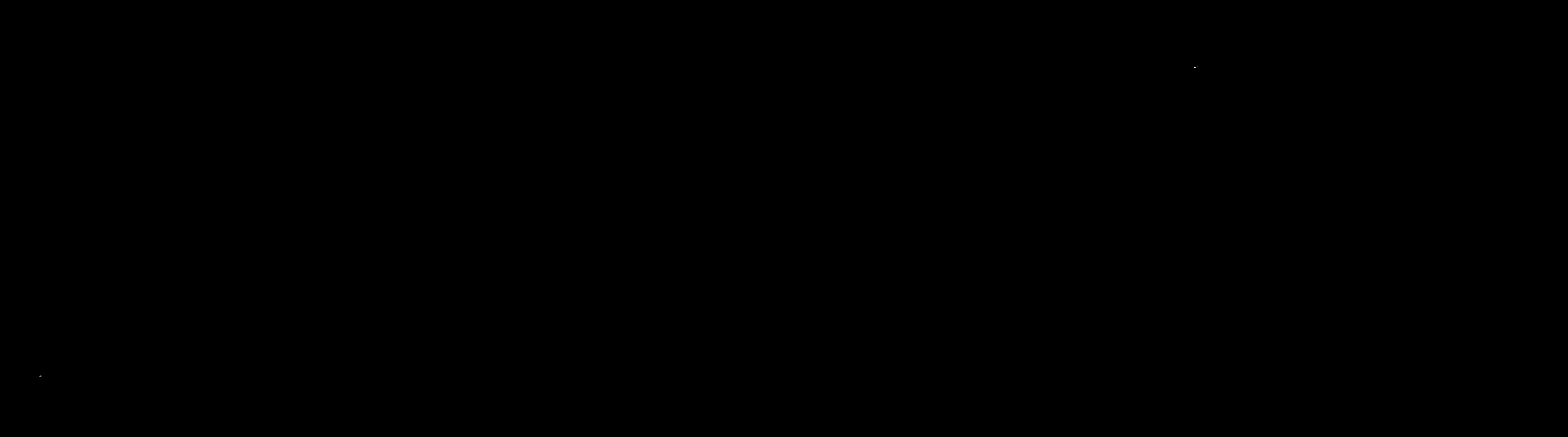
Page 2644

SUPP.ROA02505

PNV0000245







# Millennium

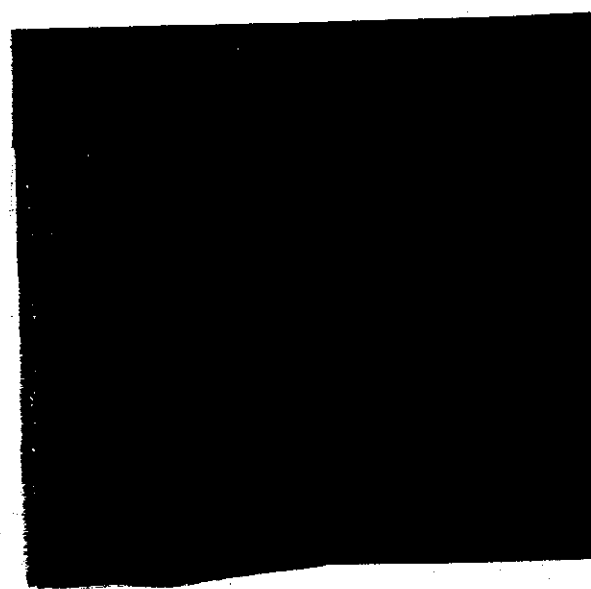
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\$ 15,001.17

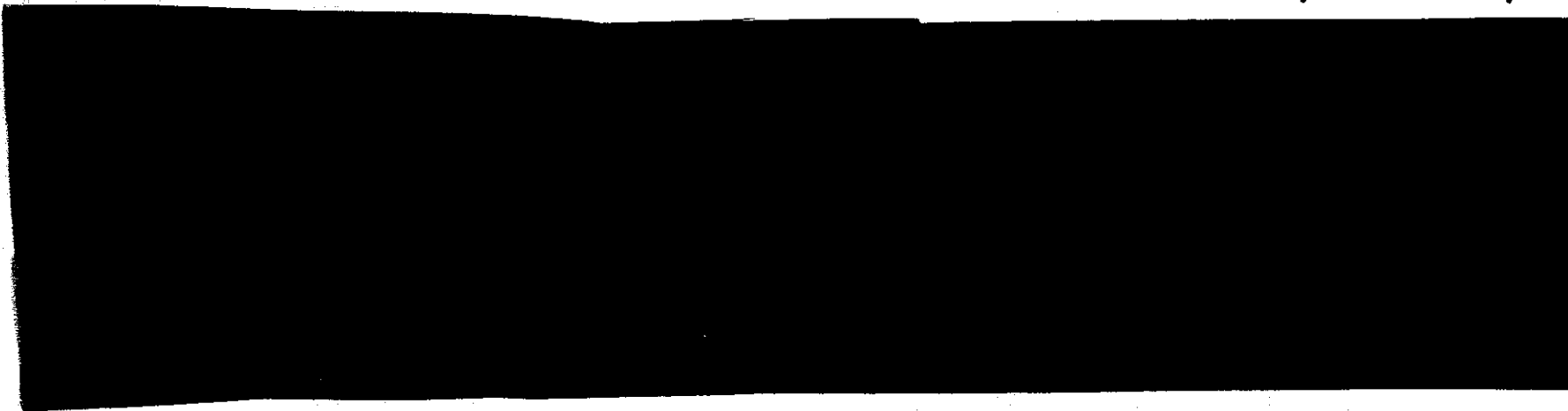
\$ 11,528.35  
\$ 3,472.82

Reported

Total



Reported  
LET  
Total



[REDACTED]

SUPP.ROA02510

12

[REDACTED]

**LET**  
**Reported**

## SUPP.ROA02512

**Total  
LET  
Reported**

DV0008

# EXHIBIT JJ

# EXHIBIT JJ





# EXHIBIT KK

# EXHIBIT KK

**PROPOSED REGULATION OF THE  
STATE GAMING CONTROL BOARD**

**LCB File No. R223-03**

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

AUTHORITY: §§1-27, sections 80 and 83 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 149 and 150, respectively (NRS 368A.140 and 368A.160, respectively).

**Section 1.** Chapter 368A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 26, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 26, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Board” means the State Gaming Control Board.*

**Sec. 4.** *“Chairman” means the Chairman of the Board or a person designated by him.*

**Sec. 5.** *“Live entertainment status” means that condition which renders the selling of food, refreshments or merchandise subject to the tax imposed by chapter 368A of NRS.*

**Sec. 6.** *“Nonprofit organization” means any organization described in paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200).*

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SUPP.ROA02516

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DV000852

**Sec. 7.** *"Nonrestricted license" has the meaning ascribed to it in NRS 463.0177.*

**Sec. 8.** *"Package" means any aggregation of rights to rooms, food, refreshments, merchandise, entertainment, services or other items which is advertised to the public as a single unit and sold for a single price.*

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

**Sec. 10.** *"Restricted license" has the meaning ascribed to it in NRS 463.0189.*

**Sec. 11.** *"Taxpayer" means any person described in subsection 1 of section 75 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.110).*

**Sec. 12.** *For the purposes of sections 65 to 100, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.370, inclusive), the Board will interpret the term:*

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

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

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

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SUPP.ROA02517

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DV000853

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

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

*4. "Facility" to encompass, if live entertainment is provided at a licensed gaming establishment that is licensed for:*

*(a) Less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, any area or premises where the live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises; or*

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

*5. "Live entertainment" in the same manner as that term is interpreted pursuant to subsection 4 of section 11 of LCB File No. R212-03, which was adopted by the Nevada Tax Commission and filed with the Secretary of State on December 4, 2003. For the purposes of that subsection, the Board will interpret the term "recorded music" to include, without limitation, music on a cassette tape, compact disc, phonograph album, or video tape or disc, or on live television.*

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

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

**Sec. 13.** *For the purposes of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), merchandise shall be deemed to be sold inside a facility where live entertainment is provided if:*

1. *The purchase of a ticket or the payment of an admission fee, a cover charge, a minimum fee, or a similar charge or fee is required for a patron to gain access to the merchandise being sold; or*

2. *The merchandise is located in the area where the live entertainment is provided.*

**Sec. 14.** *The statement required by subsection 4 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), must be substantially in one of the following forms:*

1. *Includes Entertainment Tax;*

2. *Inc. Ent. Tax;*

3. *Includes Live Ent. Tax; or*

4. *L.E.T. included.*

**Sec. 15. 1.** *For the purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), live entertainment is provided by or entirely for the benefit of a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization as long as the person retains not more of the proceeds than is necessary to cover the direct, supportable costs of hosting, promoting or sponsoring the event at which the live entertainment is provided.*

**2.** *Subject to the provisions of subsection 1, a nonprofit organization providing live entertainment, or a person providing live entertainment entirely for the benefit of a nonprofit organization, incurs no liability for the excise tax on live entertainment if the nonprofit organization or person contracts for goods or services with a person other than a nonprofit organization, even if the proceeds from the sale of food, refreshments or merchandise do not become the property of the nonprofit organization.*

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

**4.** *Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in this chapter or sections 65 to 100 of Senate*

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SUPP.ROA02520

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DV000856

*Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.370, inclusive), the Board will assess and compute the excise tax in accordance with section 20 of this regulation.*

**Sec. 16.** *Any person who claims to be a nonprofit organization exempt from the provisions of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), or any person who claims to provide live entertainment entirely for the benefit of such a nonprofit organization, shall, upon the request of the Board:*

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

*2. If the person claims to be an exempt religious organization, or claims to have provided live entertainment entirely for the benefit of an exempt religious organization, provide to the Board such records as the Board deems necessary to demonstrate that the person or the organization for whose benefit the person provided live entertainment meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.*

**Sec. 17.** *For the purposes of paragraph (c) of subsection 6 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), if there is no governmental permit*



*designating the maximum occupancy of a facility where live entertainment is provided, the Board will 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 will consider all evidence provided by the taxpayer, including, without limitation, evidence of actual attendance, the number of tickets sold or offered for sale, the square footage of the facility, the physical needs or requirements of the patrons in relation to the nature of the live entertainment provided and any other evidence tending to establish the actual seating capacity of the facility.*

**Sec. 18. 1. Live entertainment status:**

**(a) Commences at the earlier of:**

**(1) The time when taxable live entertainment commences; or**

**(2) The time when any patron is required to pay an admission charge before the patron is allowed to enter a facility; and**

**(b) Ceases at the later of:**

**(1) The conclusion of the last performance of the taxable live entertainment; or**

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

**2. For the purposes of this section, there is no distinction between any period of dining and any period of entertainment at a restaurant of a licensed gaming establishment which is**

*not open on a continual time schedule and where live entertainment is provided and advertised as a dinner show.*

**Sec. 19. 1.** *Except as otherwise provided in section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), the tax imposed by that section:*

*(a) Applies to an admission charge for a patron regardless of whether the patron is present for any portion of the live entertainment.*

*(b) Applies to each sale of a ticket that affords a patron the right to be present for any taxable live entertainment, unless the taxpayer establishes that the patron has received a full refund of the amount paid for the ticket.*

*(c) Except as otherwise provided in paragraph (d), applies to the sale of food, refreshments and merchandise at a facility that operates under a continual time schedule with no admission charge, if the food, refreshments or merchandise are ordered while the facility is in live entertainment status.*

*(d) Applies to the sale of food, refreshments and merchandise at a facility which are ordered or purchased during an interval between performances of live entertainment at the facility, unless the taxpayer accounts separately for the volume of sales to persons who enter the facility during such an interval and leave the facility before the commencement of the next performance of live entertainment.*

*(e) Applies to the sale of food and refreshments at a facility which are ordered before the facility enters into live entertainment status if the sale is completed after the facility enters into live entertainment status, unless the taxpayer identifies through its recordkeeping system the*

*amount paid for food and refreshments ordered before the facility enters into live entertainment status.*

*(f) Applies to the sale of food and refreshments at a location in close proximity to a facility if the primary purpose of the location is to provide food or refreshments to the patrons of that facility who view the live entertainment provided at that facility.*

*(g) Applies, if an admission charge:*

*(1) Is collected for access to a facility and payment of the admission charge entitles a patron to enter an area of the facility where live entertainment is provided, to the sale of food, refreshments and merchandise at any location within the facility to which the patron has access as a result of the payment of the admission charge, regardless of whether the patron can clearly hear or see the live entertainment from the location within the facility where the food, refreshments or merchandise is sold.*

*(2) Is not collected for access to a facility, to the sale of food, refreshments and merchandise at any location within the facility, unless the taxpayer identifies through its recordkeeping system the sales to patrons who are unable to see or hear the live entertainment from the location within the facility where the food, refreshments or merchandise is sold.*

*2. As used in this section, "facility" means a facility where live entertainment is provided which has a maximum seating capacity of less than 7,500.*

*Sec. 20. For purposes of computing the amount of the tax due pursuant to chapter 368A of NRS:*

1. *The tax rate must be applied to the total amounts paid for taxable admission charges and taxable sales of food, refreshments and merchandise, excluding the amount of any federal, state or local taxes included in those payments.*
2. *The tax must be paid on all taxable sales of food, refreshments and merchandise while a facility is in live entertainment status and on all taxable admission charges, regardless of whether the taxable amounts are paid in cash or through an extension of credit. Any required minimum purchases of food, refreshments or merchandise must be accounted for solely:*
  - (a) *As part of the total amount paid for taxable admission charges; or*
  - (b) *As part of the total amount paid for taxable sales of food, refreshments and merchandise.*
3. *The amount of any service charges imposed in connection with the use of credit cards or debit cards which is excluded from taxation pursuant to subsection 2 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), must be determined from the actual amount collected and retained by persons other than the taxpayer and not from an estimate of that amount.*
4. *If any taxable tickets for live entertainment are sold by a person who:*
  - (a) *Is not an affiliate of:*
    - (1) *The person licensed to conduct gaming at the facility where the live entertainment is provided; or*
    - (2) *The operator of the facility where the live entertainment is provided,*

→ the tax must be paid on the portion of the proceeds of those sales which are remitted to the person licensed to conduct gaming at, or the operator of, the facility where the live entertainment is provided.

(b) Is an affiliate of:

(1) The person licensed to conduct gaming at the facility where the live entertainment is provided; or

(2) The operator of the facility where the live entertainment is provided,

→ the tax must be paid on all the proceeds of those sales.

5. Subject to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), the tax on any taxable ticket for live entertainment or ticket redeemable for taxable food or refreshments sold as a component of a package must be computed in accordance with the following provisions:

(a) Except as otherwise provided in paragraphs (b) and (c):

(1) The average retail value of the ticket must be prorated against the average retail value of all the components of the package, and the tax must be paid on the sum obtained by multiplying the resulting prorated fraction by the actual price paid for the package.

(2) Any value advertised to the public as the retail value of a component of a package is rebuttably presumed to constitute the actual retail value of that component.

(3) If no average retail value can be established for a component of a package, the cost of the component to the taxpayer must be used to carry out subparagraph (1).

*(b) The tax on any ticket redeemable for taxable food or refreshments with an average retail value of less than \$5 must be computed on the full retail value of the ticket and not as a component of a package.*

*(c) This subsection does not prohibit a taxpayer from paying, at the option of the taxpayer, the tax on the full retail value of the taxable components of a package.*

**Sec. 21. 1.** *If live entertainment that is taxable under chapter 368A of NRS is provided at a licensed gaming establishment, the person licensed to conduct gaming at that establishment is responsible for the payment of the tax, even if another person is affording that entertainment. In such a case, the person licensed to conduct gaming at that establishment is responsible for collecting the tax from the person affording that entertainment and for remitting the tax based upon the records of the person affording that entertainment.*

**2.** *If live entertainment that is taxable under chapter 368A of NRS is provided at a facility within a licensed gaming establishment in connection with any sale of food, refreshments or merchandise that is taxable under chapter 368A of NRS, and the facility is not operated by the person licensed to conduct gaming at that establishment, that person shall:*

*(a) Keep all pertinent records required by section 83 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 150 (NRS 368A.160), chapter 463 of NRS and Regulation 6 of the Nevada Gaming Commission and State Gaming Control Board; and*

*(b) Obtain and keep, or require the person that operates that facility to obtain and keep, any other pertinent records required by sections 2 to 26, inclusive, of this regulation.*

3. *If live entertainment that is taxable under chapter 368A of NRS is provided at 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 at that establishment, or by an affiliate of that person, the person licensed to conduct gaming at that establishment is responsible for the payment of the tax and shall include all taxable amounts in the reports required by section 81 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 149 (NRS 368A.220).*

4. *Each person that holds:*

*(a) A nonrestricted license shall file with the Board, on or before the 24th day of each month, a report pursuant to section 81 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 149 (NRS 368A.220), showing the amount of all receipts for the preceding month which are taxable pursuant to chapter 368A of NRS.*

*(b) A restricted license shall file with the Board, on or before the 10th day of the month following each calendar quarter, a report pursuant to section 81 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 149 (NRS 368A.220), showing the amount of all receipts for the preceding calendar quarter which are taxable pursuant to chapter 368A of NRS.*

**Sec. 22.** *A taxpayer shall:*

1. *Record all sales which are taxable pursuant to chapter 368A of NRS in a manner that reflects the amount of each taxable sale, unless the taxpayer uses an alternative accounting procedure approved by the Chairman.*

2. *Keep records evidencing any exemption from the tax imposed by chapter 368A of NRS of live entertainment provided at the licensed gaming establishment of the taxpayer.*

3. *Make its records available for audit by the Board at any reasonable time.*

**Sec. 23. 1. Each:**

*(a) Group I licensee that provides live entertainment shall:*

*(1) Include in its system of internal control, submitted pursuant to Regulation 6.090 of the Nevada Gaming Commission and State Gaming Control Board, a description of the procedures adopted by the licensee to comply with sections 2 to 26, inclusive, of this regulation; and*

*(2) Comply with that system of internal control and any minimum standards for internal control for entertainment adopted by the Chairman pursuant to Regulation 6.090 of the Nevada Gaming Commission and State Gaming Control Board.*

*(b) Group II licensee that provides live entertainment and each taxpayer that holds a restricted license shall comply with any procedures for internal control for entertainment adopted by the Chairman pursuant to Regulation 6.100 of the Nevada Gaming Commission and State Gaming Control Board.*

*➤ Except as otherwise approved in writing by the Chairman, a taxpayer shall not carry out any procedures for internal control that deviate from any standards or procedures for internal control for entertainment adopted and published by the Chairman.*



2. *Each group I licensee that provides live entertainment shall direct its independent accountant to perform observations, examinations of documents and inquiries of employees, using any applicable guidelines, checklists and other criteria established by the Chairman, to determine compliance with the requirements for entertainment. The independent accountant shall report his findings as part of the report required by subsection 9 of Regulation 6.090 of the Nevada Gaming Commission and State Gaming Control Board.*

3. *The internal auditor of each group I licensee that provides live entertainment shall:*

(a) *Using any applicable guidelines, checklists and other criteria established by the Chairman, perform observations, examinations of documents and inquiries of employees to determine compliance with the requirements for entertainment.*

(b) *Submit to the Board within 120 days after the last day of the first 6 months of the business year of the licensee two copies of a report by the internal auditor summarizing all instances of noncompliance with the requirements for entertainment during the first 6 months of the business year of the licensee and any applicable responses by the management of the licensee, including any work required to be performed during the reporting period and any additional procedures that were performed.*

(c) *Unless the instances of noncompliance are to be disclosed in the report submitted by the independent accountant for the licensee pursuant to subsection 9 of Regulation 6.090 of the Nevada Gaming Commission and State Gaming Control Board, submit to the Board within 120 days after the last day of the final 6 months of the business year of the licensee two copies of a report by the internal auditor summarizing all instances of noncompliance with the requirements for entertainment during the final 6 months of the business year of the licensee*

*and any applicable responses by the management of the licensee, including any work required to be performed during the reporting period and any additional procedures that were performed.*

*4. As used in this section:*

*(a) "Group I licensee" and "group II licensee" have the meanings ascribed to those terms in Regulation 6.010 of the Nevada Gaming Commission and State Gaming Control Board.*

*(b) "Requirements for entertainment" means the provisions of sections 2 to 26, inclusive, of this regulation, chapter 368A of NRS and any minimum standards for internal control for entertainment adopted by the Chairman.*

*Sec. 24. The provisions of NRS 463.387 shall be deemed to apply to a claim pursuant to section 90 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 153 (NRS 368A.260), by a taxpayer for the refund of any overpayment of taxes, except that:*

*1. The claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made; and*

*2. No interest will be allowed on the overpayment if the Board determines that the overpayment was made intentionally or by reason of carelessness.*

*Sec. 25. Any taxpayer liable for the payment of the tax imposed by chapter 368A of NRS who willfully fails to report, pay or truthfully account for the tax is liable for a penalty in the amount of the tax evaded or not paid, to be assessed and collected in the same manner as charges, taxes, licenses and penalties are assessed and collected pursuant to chapter 463 of NRS.*

**Sec. 26.** *A violation of any of the provisions of sections 2 to 26, inclusive, of this regulation or chapter 368A of NRS constitutes an unsuitable method of operation subjecting a licensed gaming establishment to the suspension or revocation of its gaming license.*

**Sec. 27.** This regulation becomes effective on January 1, 2004.

**NOTE:** Pursuant to subsection 4 of section 11 of LCB File No. R212-03, which was adopted by the Nevada Tax Commission and filed with the Secretary of State on December 4, 2003, the Nevada Tax Commission interprets the term:

4. "Live entertainment":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R212-03**

Effective December 4, 2003

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

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

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

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

**Sec. 3.** *“Board” means the State Gaming Control Board.*

**Sec. 4.** *“Commission” means the Nevada Tax Commission.*

**Sec. 5.** *“Department” means the State Department of Taxation.*

**Sec. 6.** *“Executive Director” means the Executive Director of the Department.*

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

**Sec. 8.** *“Nonprofit organization” means any organization described in paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada*

*Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200).*

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

**Sec. 10.** *"Taxpayer" means any person described in section 75 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.110).*

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

- 1. "Admission charge" to include, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.*
- 2. "Boxing contest or exhibition" to have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."*
- 3. "Facility" to encompass any area or premises where live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises.*
- 4. "Live entertainment":*

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

- (1) Music or vocals provided by one or more professional or amateur musicians or vocalists;*
- (2) Dancing performed by one or more professional or amateur dancers or performers;*
- (3) Acting or drama provided by one or more professional or amateur actors or players;*
- (4) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;*
- (5) Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph (7) of paragraph (b);*
- (6) Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes or sportsmen;*
- (7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;*
- (8) A show or production involving any combination of the activities described in subparagraphs (1) to (8), inclusive; and*
- (9) A performance involving one or more of the activities described in this paragraph by a disc jockey who presents recorded music. For the purposes of this subsection, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this paragraph if the disc jockey generally limits his interaction with patrons to introducing the recorded music, making announcements of general interest to patrons, and explaining, encouraging or directing participatory activities between patrons.*

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



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

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

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

*(4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a 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, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;*

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

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

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

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

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

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

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

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

**Sec. 12.** *1. For the purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), live entertainment is provided by or entirely for the benefit of a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization as long as the person retains not more of the proceeds than is necessary to cover the direct, supportable costs of hosting, promoting or sponsoring the event at which the live entertainment is provided.*

*2. Subject to the provisions of subsection 1, a nonprofit organization providing live entertainment, or a person providing live entertainment entirely for the benefit of a nonprofit*

*organization, incurs no liability for the excise tax on entertainment if the nonprofit organization or person contracts for goods or services with a person other than a nonprofit organization, even if the proceeds from the sale of food, refreshments or merchandise do not become the property of the nonprofit organization.*

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

*4. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in this chapter or sections 65 to 100 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.350, inclusive), the Department shall assess and compute the excise tax in accordance with section 15 of this regulation.*

**Sec. 13.** *Any person who claims to be a nonprofit organization exempt from the provisions of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), or any person who claims to provide live entertainment entirely for the benefit of such a nonprofit organization, shall, upon the request of the Department:*

*1. If the person does not claim to be an exempt religious organization, provide to the Department a documentation from the Internal Revenue Service deemed appropriate by the*

*Department indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or*

*2. If the person claims to be an exempt religious organization, or claims to have provided live entertainment entirely for the benefit of an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person or the organization for whose benefit the person provided live entertainment meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.*

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

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

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

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

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

*Sec. 15. 1. Pursuant to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, at page 147 (NRS 368A.200), the Department shall apply the tax rate to the total admission*

*charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.*

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

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

**Sec. 16.** *For the purposes of paragraph (c) of subsection 6 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including, without limitation, evidence of actual attendance, the number of*

*tickets sold or offered for sale, the square footage of the facility, the physical needs or requirements of the patrons in relation to the nature of the live entertainment provided and any other evidence tending to establish the actual seating capacity of the facility.*

**Sec. 17. 1.** *As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200), or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 to 4, inclusive, of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200).*

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

*3. A taxpayer shall:*

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

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

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

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

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

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

**Sec. 18. 1.** *If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the Department to collect the tax. The taxpayer shall thereafter collect and remit the tax to the Department in accordance the provisions of this chapter and sections 65 to 100, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.350, inclusive).*

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

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R212-03**

The Nevada Tax Commission adopted regulation assigned LCB File No. R212-03, which pertain to chapter 368A of the Nevada Administrative Code on NOVEMBER 25, 2003.

**Notice date:** 10/24/2003  
**Hearing date:** 11/25/2003

**Date of adoption by agency:** 11/25/2003  
**Filing date:** 12/4/2003

**INFORMATIONAL STATEMENT**

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

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

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

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

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

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Adopted Regulation R212-03

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

**(a) Attended the hearing: 50**

**(b) Testified at the hearing: 3**

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

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

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

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

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

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

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

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

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

Same as #5(a) above.

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

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

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

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

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

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

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

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

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R196-05**

Effective February 23, 2006

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

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

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

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

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

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

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

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

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

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

~~2.1~~ "Boxing contest or exhibition" to have the meaning ascribed in NRS 467.0107 to the term "unarmed combat."

~~3. "Casual assemblage" to include, without limitation:~~

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

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

~~4.1~~ 2. "Facility" to encompass any area or premises where live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises.

~~5. "Live entertainment":~~

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

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

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

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

~~(4) Aerobatics or stunts provided by one or more professional or amateur aerobats, performers or stunt persons;~~

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

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

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

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

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

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

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

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

~~—— (3) Performances by performers of any type if the performance occurs in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51~~

~~slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, as long as the performers stroll continuously throughout the facility;~~

~~— (4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;~~

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

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

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

~~— 6. "Shopping mall" to include any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises;~~

~~— 7. "Trade show" to mean an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services or discussing matters of interest to members of that trade or industry.}~~

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

368A.110 1. If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the Department to collect the tax.

The taxpayer shall thereafter collect and remit the tax to the Department in accordance with the provisions of this chapter and chapter 368A of NRS.

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

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

368A.130 For the purposes of paragraph (c) of subsection ~~{6}~~ 7 of NRS 368A.200, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least ~~{300}~~ 200 persons and less than 7,500 ~~{1}~~ persons. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than ~~{300 or 7,500 or more}~~ 200 persons or at least 7,500 persons. In determining whether the taxpayer has successfully rebutted the presumption, the Department shall consider all evidence provided by the taxpayer, including, without limitation, evidence of actual attendance, the number of tickets sold or offered for sale, the square footage of the facility, the physical needs or requirements of the patrons in relation to the nature of the live entertainment provided and any other evidence tending to establish the actual seating capacity of the facility.

Sec. 6. NAC 368A.160 is hereby amended to read as follows:

368A.160 Any person who claims to be a nonprofit organization exempt from the provisions of NRS 368A.200, or any person who claims to provide live entertainment entirely for the benefit of such a nonprofit organization, shall, upon the request of the Department, ~~{}~~

~~1. If the person does not claim to be an exempt religious organization, provide to the Department documentation from the Internal Revenue Service deemed appropriate by the Department indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c)(3); or~~

~~2. If the person claims to be an exempt religious organization, or claims to have provided live entertainment entirely for the benefit of an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person *who claims to be a nonprofit organization* or the organization for whose benefit the person provided live entertainment {meets} :~~

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

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

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

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

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#### TEXT OF REPEALED SECTIONS

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

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



**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R196-05**

The Nevada Tax Commission adopted regulations assigned LCB File No. R196-05 which pertain to chapter 368A of the Nevada Administrative Code on January 9, 2006.

**Notice date:** 12/7/2005  
**Hearing date:** 1/9/2006

**Date of adoption by agency:** 1/9/2006  
**Filing date:** 2/23/2006

**INFORMATIONAL STATEMENT**

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

Notices of hearing for the adoption and amendment of the proposed regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada.

A copy of the notice of hearing and the proposed regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on January 9, 2006 video conferenced between the Nevada Legislative Building, 401 S. Carson Street, Room 3138, Carson City, Nevada and the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 684-2096 or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on January 5, 2006. Thus, the proposed regulation, for practical

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Adopted Regulation R196-05

Appellants' Appendix

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purposes, was discussed at one workshop and has been heard and considered at one public hearing of the Nevada Tax Commission.

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

- (a) Attended the hearing:** 41
- (b) Testified at the hearing:** 1
- (c) Submitted to the Tax Commission written comments:** No written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission.

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

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 240 interested businesses and persons on the Department of Taxation's mailing list.

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

The proposed regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes were necessary.

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

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

The proposed regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. There may be some beneficial economic effects to certain taxpayers which are the subject of the adopted regulation. Those anticipated benefits are not quantifiable at this time.

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

Same as #5(a) above.

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

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

**7. A description of any regulations of other state or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is**

**necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

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

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

There are no known federal regulations pertaining to Nevada's live entertainment tax, which is the subject of the proposed regulation.

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

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

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CHAIR MCGINNESS:

We will close the hearing on S.B. 127 and open the hearing on S.B. 247.

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

SENATOR TITUS:

After two Special Sessions, many late nights, a lot of political battles, some Supreme Court decisions and some pretty messy compromises, we came up with a tax package that was quickly found to be full of problems. One of those problems was with the entertainment tax, which turned out to be a bookkeeping nightmare. It also failed to generate the anticipated revenue, and it did not adequately bring in a group some of us intended to be included, namely, the striptease clubs which have proliferated in southern Nevada. For those reasons, I introduce a reform for the entertainment tax, which is what is before you today in S.B. 247. Since I was one of the ones who pushed to include the striptease clubs, I felt some obligation to try to clean up the mess made in that last bill.

I have handed out an amendment, which is, in effect, a rewrite of S.B. 247 (Exhibit H, original is on file at the Research Library). I have also handed out a packet of letters in support of the new entertainment tax (Exhibit I). These letters come from people who produce sporting events, which will be excluded from the entertainment tax under the new bill, as I will explain. There are letters from the Las Vegas 51's baseball team, Las Vegas Motor Speedway, Wranglers hockey team and Feld Entertainment, Incorporated, which sponsors circuses.

Under the new bill, you will virtually take the old entertainment tax and divide it into two parts, or, two taxes. We will call one live entertainment and the other, adult entertainment. We will go over the details of the live-entertainment tax first, which is a continuation of the old tax, but with some revisions. The live-entertainment tax would apply only to nonrestricted gaming facilities, and would be administered by the Gaming Control Board. Sporting events that occur in gaming facilities would be exempt, but the bill would leave in place the 10-percent charge on admissions, drink, food, and souvenirs. This would eliminate the seating requirement and eliminate any facilities other than gaming facilities with nonrestricted licenses.

Senator Titus:

The second part of the bill deals with the adult-entertainment tax, which is defined in section 11. It would charge the same 10 percent on everything; drinks, admissions and souvenirs, in nonrestricted gaming and in non-gaming facilities that provide adult entertainment. It would be administered by the Department of Taxation and would include houses of prostitution.

This new approach is better than the old live-entertainment tax for several reasons. It eliminates the seating requirements which were problematic in the old bill. It also eliminates sporting events, which are family-oriented and have a lot of local attendance. Having this exemption will help us get a second National Association for Stock Car Auto Racing, Incorporated, (NASCAR) race, which everybody seems to love, as well as a professional baseball team in Las Vegas. It also eliminates taverns and restaurants, which often have weekend entertainment. It will provide a better way of capturing adult live entertainment, which is an industry that puts additional burdens on our society, and therefore, is justified in being taxed. One of those burdens is more need for law enforcement because of the activities often surrounding the neighborhoods in these areas. Also, these facilities do not provide any kind of workmens' compensation or benefits, so the people who work in them often become a burden on the State. Any loss in revenue that might occur from eliminating sporting events, which were only charged 5 percent on admission anyway, will be more than made up for in an increase in revenue from adult entertainment.

GEORGE W. TREAT FLINT (Nevada Brothel Owners Association):

Before the 2003 Session, I was approached with the question of whether the brothels would be willing to be included in the live-entertainment tax. We have always been willing to participate, and through the last Session, and right up to the end, in S.B. No. 8 of the 20th Special Session, we felt we were included in the bill. There was a concern, at that time, about what would happen with the small venues that only had live entertainment on Friday and Saturday nights consisting of, maybe, an accordion or guitar player. The result was to create a 300-seat threshold, which effectively not only exempted my client, but probably about 90 percent of those other venues Senator Titus has addressed here today.

We had made plans all through last Session to institute an admissions fee into the brothel live-entertainment area. It was not our intention to be exempted. As a matter of fact, we were surprised by it. During the interim, a couple of

Legislators asked if we would fulfill the agreement we had made before, and we said we would. We are the only sex-related business in the State that has been up front and forward and asked to be included in the tax. As we were willing before, we are willing again.

The section in which the proposed amendment includes us is at the top of page 31 of Exhibit H. There will be an admission fee created, not for those persons coming in to have a drink or buy a souvenir, but for those who come into the bedroom area. Additionally, we will start charging a 10-percent excise fee on our bars, souvenirs and restaurants. Restaurants are becoming fairly common in some of the brothels. I sat down a couple days ago and tried to figure what fiscal advantage this would have for the State, and I came up with a figure of \$1,640,000. It turned out to be close to the figure estimated by the Department of Taxation, which was \$1,600,000. Much of that, of course, depends on how good business is. Business continues to be better in southern Nevada than it is in the northern part of the State.

We are anxious to participate for several reasons. One of those is ultimately, possibly next Session, we may come back and ask you to give us some benefits we do not have now, such as limited advertising. I hope this will send a message to those other sexually oriented businesses, particularly in southern Nevada, it is time to come on board and pay their fair share.

Additionally, we are appearing tomorrow before the Assembly with a similar bill, which only includes us and does not expand, as this bill does, into other areas. It is Assembly Bill (A.B.) 317 and is completely contained within the lines to which I alluded on page 31 of the amendment proposed by Senator Titus.

**ASSEMBLY BILL 317:** Provides for imposition of tax on live entertainment provided by all houses of prostitution. (BDR 32-926)

SENATOR CARE:

What are your motives for wanting to be included in this tax?

MR. FLINT:

I would be less than honest if I did not say we feel the State will become used to our contribution and, maybe, even look forward to it. Then, when someone comes along and says it is time to take a look at continuing to keep us legal,

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you may be the first to point out that we are not creating any problems for the State and are contributing quite a bit.

SENATOR TITUS:

In the past, there has been some discussion whether limiting adult entertainment would be contrary to the First Amendment of the U.S. Constitution. The First Amendment is not an absolute freedom. It has been interpreted to exclude certain things, and I believe you could make a good argument that adult entertainment puts a special kind of burden on the State, which justifies its being taxed in this way. Also, there is a severability clause in the bill that says if the American Civil Liberties Union (ACLU), or somebody decides to challenge this tax on adult entertainment, and it is found to be unconstitutional, we would just go back to the old tax.

H. NORTH SWANSON, (Naturist Action Committee):

The language in S.B. 247 is disturbing to the Naturist Action Committee, particularly section 10. Live adult entertainment means "any activity provided for pleasure, enjoyment, recreation, relaxation, diversion," et cetera. That language would adversely affect a legitimate business like a naturist resort, which is a family-oriented resort and in no way resembles adult entertainment. Body parts do show in these places, but every effort is made to make it nonsexual. That language needs to be changed.

SENATOR TITUS:

The bill was not intended to get at family nudist colonies.

SENATOR LEE:

If this were my bill, I would probably outlaw brothels, but I understand you are leaving them in to make money off of them. How much revenue do you think this is going to generate?

SENATOR TITUS:

The calculations made last Session were tremendous. It was \$75.4 million in fiscal year 2005. This is a huge business in southern Nevada, and they make a lot of money, mostly from tourists. This tax would be paid mostly by tourists, and not so much by local people. Because they are enjoying the climate of our State, it just seems appropriate for them to be paying their share. The new theme for Las Vegas of "What happens in Las Vegas, stays in Las Vegas," promotes even more of this kind of activity.

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SENATOR LEE:

This money would go into the State General Fund. Is that correct?

SENATOR TITUS:

Yes.

SENATOR LEE:

We mentioned the responsibility lies at the local level to maintain and correct the problems and challenges this industry creates. Would it not be best for the money to stay at the local level, where these activities are managed rather than the State benefiting?

SENATOR TITUS:

At the local level, they do have specialized licenses. We do not have specialized licenses at the State level for these facilities. I would point out to you, while the local law enforcement would be involved, it is a burden on State services when it comes to lack of unemployment benefits and lack of health care. All of those are provided for by State social services, not local.

SENATOR LEE:

I know this bill is very important, but it seems like we are selectively going after a group or a business. No matter what business it is, I have a challenge with understanding that type of activity.

TAYLOR DEW: (National Hula Girls)

As you recall, the live-entertainment tax last Session was meant only to tax adult entertainment, but unintentionally affected us Hula Girls, Elvis impersonators, jugglers, singers, bands and virtually every type of entertainer. Obviously, the wording will need to be changed. There have been some compromises proposed by the Nevada Gaming Control Board, the State Gaming Commission and the Department of Taxation, but those were shot down.

If both of these bills are passed, S.B. 247 and A.B. 317, they would be very contradictory, which also worries me. Senate Bill 247 would be far superior because it defines adult entertainment as A.B. 317 does not. Senate Bill 247 taxes only a facility where live adult entertainment is provided and removes the tax on all other forms of live entertainment. This bill cleans up the language and, legislatively, makes a clear distinction between entertainment and adult



entertainment. This is absolutely vital to solving this serious and seemingly endless problem.

On page 1 of S.B. 247, lines 9 through 12 clearly state that if this were to go to judiciary, it is not clear whether the courts would require uniformity on appealing the tax. Also, it is difficult to tell if it goes to the courts, if live entertainers would even have a means to fight the expensive court battles. Entertainers would really like "adult entertainers" and "entertainers" to be defined. The State has an ample surplus of money, and I am not looking forward to any more taxes, but if a bill does pass, I would be in favor of S.B. 247.

ALLEN LICHTENSTEIN (General Counsel, American Civil Liberties Union of Nevada): I am here to speak against S.B. 247. We at the ACLU have a great deal of respect for the hard work and the contributions of Senator Titus. However, in this particular case, this bill is way off base from a constitutional standpoint. She mentioned if it is challenged and if it is declared unconstitutional, it would revert back to the existing situation. Clearly, it will be challenged, and it will be declared unconstitutional. The courts, including the U.S. Supreme Court, have made it very clear we are dealing with First Amendment-protected activities. These adult businesses, such as strip clubs and the like, are clearly involved in First Amendment-protected activity. You cannot single them out, based on content, for special treatment in terms of taxes. One of the Committee members asked how much revenue this would generate, and the figure was \$75.4 million. This is not revenue neutral. Its purpose, as testimony suggests, is to generate revenue for the State. You justify it by saying dancers do not have workmens' compensation or health care. You cannot justify it on that basis unless you treat all businesses not providing workers' compensation or health care in the same way. You cannot single out a business to generate revenue because you do not like it. This is not a new issue. It may be new in this State, but there is considerable case law when it comes to First Amendment issues.

Section 29 of S.B. 247 says this cannot be challenged in court. Again, there is case law that says you have laws that burden First Amendment rights. Federal courts have jurisdiction to look at the constitutionality of those particular laws and enjoin, temporarily and permanently, provisions that do violate the U.S. Constitution. Certainly, businesses involved in adult entertainment can be part of the general tax. However, that is not what we have here. This specifies these businesses on the basis of content and, frankly, that just will not fly.

SENATOR COFFIN:

You may be right in your assertion there will be some challenge. If we were to designate these businesses as a privileged business like we do with the gaming business, would your same constitutional protest apply?

MR. LICHTENSTEIN:

There are two points to make. One is unless there is some privileged activity, such as gaming or the sale of alcohol, these cannot be privileged businesses because you have a right to First Amendment activity. The court cases are quite clear. Gaming is an activity the State could choose to ban completely. Gaming is not a right. Alcohol sales and prostitution could also be banned by the State under Amendment XXI of the U.S. Constitution. On the other hand, erotic dance cannot be banned completely. If the Legislature were to say we do not want erotic dance any more, or we do not like it, so we are going to ban it, it would be unconstitutional because erotic dance is a right and not a privilege. There can be regulation of those businesses, but they cannot be banned and, therefore, cannot be considered privileged.

SENATOR TITUS:

I see this as a regulation and not a ban, so I think what you are saying is rather contradictory. I know local governments have special-privilege licenses or special-privilege charges and those seem to have stood. I am a strong supporter of the First Amendment, but there are exceptions to the First Amendment. Obscenity is not protected by the First Amendment, nor is sedition, subversion or fighting words. It is not an absolute right. It is subject to interpretation and, I think, in a case like this, we can interpret it in such a way to be able to deal with certain burdens these types of businesses put on the State. If this Committee is worried about constitutionality, I hope you would at least use this bill to clean up some of the problems with regard to entertainers like the Hula Girls, the sporting activities and those types of things.

MR. LICHTENSTEIN:

On the local level, there are business-license fees, as there are for all businesses. They have to be revenue neutral in the sense they cannot unduly burden any particular types of businesses. There may be a yearly fee of a few hundred dollars, but it is not the \$75.4-million kind of cash cow being suggested here as a way of gaining revenue from particular businesses.

Your second point, regarding the First Amendment not being absolute, is true, but we are not talking about activities or businesses or expressions that are obscene, or fighting words or something else illegal. We are talking about licensed, legal businesses offering constitutionally protected expression. The U.S. Supreme Court has said we are dealing with the First Amendment, and you cannot unduly tax expression based on the content. That is exactly what is being offered here.

SENATOR TITUS:

I will just remind this Committee, this is not an undue tax or a different tax. This will be applied the exact same way as the live-entertainment tax in the nonrestricted-gaming areas. It is the same 10-percent tax and not some special higher tax that is an extra burden. It is the same one being applied to other businesses.

SENATOR LEE:

Would it be possible, if the State did not want proliferation of this type of business but also realizes it is here, for the State to then charge a fee? In other words, could the State say, "If you are going to be in this type of business, there will be a \$250,000 fee for you to be in business in the State of Nevada?"

MR. LICHTENSTEIN:

No. Legal businesses can be regulated in terms of separation requirements, or in terms of not having density, but you cannot tax them or put extra fees on businesses because you do not like the content. That is the U.S. Constitution, and it is the same Constitution that protects your, my and everyone's right to speak.

SENATOR CARE:

Two years ago, we levied a tax on banks. Banks were distinguished in two ways. There is an additional payroll tax as well as a branch tax. Those do not apply to any other industry in the State. Yet, there is no First Amendment implication. It only applies to the banks. Is it your position what we did with banks is okay because it does not involve the First Amendment expression, but we may not do it with the establishments set forth in part of this bill?

MR. LICHTENSTEIN:

It is not my position. As a lawyer yourself, you know we follow case law, and the case law is pretty clear on this. For example, say the State Legislature

decides it wants to go after the newspapers, for whatever reason, and levy an extra tax on newsprint, which was an actual case in Minnesota. The court said it could not be done because of the First Amendment. So, yes, it is different when you have constitutionally protected expression as opposed to other types of businesses. I am not going to suggest whether what you do with banking is right or wrong. I have not looked at that, but again, I do know, very clearly, in the First Amendment area, that cannot be done.

SENATOR TITUS:

I appreciate the argument for newsprint. I think there is a difference between newsprint and striptease clubs, and the court has made that kind of distinction in some of its rulings over the years. This is worth doing, and it is worth taking a chance in court. It would probably go to federal court, but maybe also to the State Supreme Court. I cannot see the Nevada Supreme Court turning over this kind of tax.

TERRY GRAVES (The Beach):

As Senator Townsend can attest, we spent a lot of time during the interim working on the regulatory process with both the tax and gaming commissions. We applied what Senator Titus is trying to do here, though I have not seen the proposed amendment. I would like to ask the maker of the bill if issues like disc jockeys, celebrity disc jockeys, singing song-leader waiters and waitresses have been addressed in the bill.

SENATOR TITUS:

Yes, that would be my intent.

MR. GRAVES:

In that case, we would support S.B. 247.

BOB WILLIAMS:

I am a local entertainer who plays the piano and sings. However, since this original tax was passed in 2003, I have been prohibited from singing because singing is classified as entertainment. Entertainers in a regular casino, such as the place I work, are considered taxable. Is that correct?

SENATOR TITUS:

Yes, entertainment in casinos would still be covered by the entertainment tax.

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MR. WILLIAMS:

Am I correct in saying the entertainment tax is not affected by this amendment?

SENATOR TITUS:

It depends on where you sing. If you are singing in the showroom of a casino, you would still be covered by this tax. If you are singing in a restaurant or a lounge, you would not be covered.

MR. WILLIAMS:

What about an entertainer in a lounge, or in an area adjacent to, or heard by people playing slot machines? There is a lot of gray area here.

SENATOR TITUS:

Yes, I know. This is a very difficult bill to work out.

MR. NEILANDER:

The existing law was patterned, somewhat, after the old casino-entertainment tax. Conceptually, under the old tax there was no distinction made between areas where there is an admission charge and those where there is not. In Mr. Williams' example, if it was a free area, it did not matter under the old law. The tax was applicable whether there was an admission fee or not. If I understand what Senator Titus is suggesting, she is proposing to amend it so the tax would only be applicable in a nonrestricted casino environment if there was an admission fee to get into that particular venue. What you are talking about are principally showrooms and ticketed events, but not necessarily lounges, where people can come for free. If that is what her intention was, it would address that situation.

MR. WILLIAMS:

This I can understand. The differentiation between a ticketed event and a non-ticketed event is clear for most of the casinos to understand. Entertainment is the lifeblood of Las Vegas, not gambling. People can gamble in their living rooms on the Internet. They come to Las Vegas to get good entertainment. Entertainment in open, non-ticketed lounges and entertainment in dining rooms is what vintage Las Vegas was all about.

NORMAN KAYE (Poet Laureate of Nevada):

I serve Nevada as its poet laureate. I was with the Mary Kaye Trio since we came here in 1947. We were the first entertainers in the lounge at the Frontier

Hotel. The tax on entertainers in the lounges is not correct. There is a different variation of talent within every person who works in the lounge. A 10-percent tax on entertainment, which in a sense is passive, is wrong.

SENATOR TITUS:

I love live music, too. As a matter of fact, I am a member of the Jazz Society. I want to be sure we understand what is happening here. There has been an entertainment tax for many years on all entertainment in casinos, including the lounges. It was originally a federal tax called the rooftop-cabaret tax. Congress repealed it, and the State picked it up in 1961. Then, last Session, there was some tinkering done to it. What I am trying to do now is not to impose a new tax, but clean up an old tax and take it away from some of the places where it used to apply. I want to be sure everyone understands this is not a new 10-percent tax on entertainment that would bring in the non-showroom aspects of entertainment. It is just the opposite.

CHAIR MCGINNESS:

We will close the hearing on S.B. 247 and open the hearing on S.B. 388.

**SENATE BILL 388:** Revises provisions governing applicability of requirements for state business license and certain taxes on businesses. (BDR 32-821)

MS. VILARDO:

By nature of whom we represent and the issues with which we are involved, we followed S.B. No. 8 of the 20th Special Session through the process and through all of the hearings as was indicated on the earlier bill. Our members kept calling about different issues. One of the most interesting issues was the fact everybody realized it was to be a tax on business. However, there was never a definition of a business in the bill. In S.B. 392, heard earlier today, you accommodated one of the issues that arose, which was a health-care provider. Two different cases were specified. In one case was an invalid, and the other case was a woman who had full-time medical care for her mother. These were people who hired and paid employment security on the wages they paid because they were full-time employees of the person. Both of them had to pay over \$700 in payroll tax. They were not providing a service, but were consuming a service.

We found the same issue where a couple both worked and they had children. Because the children were young, the couple employed a sitter for enough hours

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## LIVE ENTERTAINMENT TAX: Nearly all brothels exempt

Nevada Brothel Association shows willingness to accept share of taxes

By ED VOGEL

REVIEW-JOURNAL CAPITAL BUREAU

**CARSON CITY --** It comes as a surprise to some lawmakers that most brothels are exempted from paying a new tax on live entertainment approved last month as part of a record tax increase.

"I thought we included brothels," said Senate Minority Leader Dina Titus, D-Las Vegas. "It was one of the unintended consequences when we changed the bill. Brothels weren't part of the discussion."

Assemblywoman Chris Giunchigliani, D-Las Vegas, also thought brothels were included. "We may have unintentionally left them out," she said. "We were trying to tax strip clubs that never have paid a dime. That was a big win for us. We will have to pick up brothels next time."

Legislators amended Senate Bill 8 to exempt entertainment associated with bars with 300 or fewer seats from the 10 percent live entertainment tax. The tax would apply to admissions, drinks and merchandise sold by affected businesses.

The change was made after Sen. Joe Neal, D-North Las Vegas, complained the tax would hurt small neighborhood bars that sometimes offer bands to entertain their customers. George Flint, executive director of the Nevada Brothel Association, said the change frees all but two or three of the 26 legal brothels in the state from paying the tax. Until now, brothels -- allowed only in rural Nevada -- mainly paid fees to counties where they are licensed to operate. Nevada is the only state with legal prostitution.

During hearings on tax bills, no opposition was expressed to proposals to tax brothels. Assemblywoman Sheila Leslie, who first suggested that the state tax brothels, said she was aware that the 300-seat exemption would free most brothels from the tax.

"It was a choice between taxing the strip clubs in Vegas or the brothels," she said. Adult strip clubs will be subject to the tax when the law goes into effect Jan. 1.

She praised Flint and the brothel association for their willingness to accept a tax. Leslie, D-Reno, vowed to work with Flint on a brothel tax that can be adopted at the next Legislature in 2005. With more acceptance of the industry, Flint hopes in the future lawmakers will remove a ban on advertising by brothels.

Each brothel in Nevada has a bar that doubles as a waiting room for customers. Patrons walk into a bar, where they are greeted by prostitutes. The patrons generally have drinks and talk with prostitutes, choose a woman and go to an adjacent bedroom. Some patrons order only drinks.

In calculating seats in brothels, Flint said he was counting the number of seats in the actual brothel bar, along with the number of bedrooms.

He added the new law also will exempt most topless bars in Reno from the tax. Most Las Vegas clubs will have to pay the tax.

"It takes out a tremendous cross-section of live entertainment," Flint said, "that someone getting in the business will make sure."

Appellants' Appendix



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Throughout the legislative session, Flint pledged the support of brothels for a share of the state tax burden. He estimated they would contribute about \$2 million a year.

Although brothels do not charge admission, Flint testified he thought most would begin imposing a \$30 charge to men who visited prostitutes in their bedrooms. Then the state could collect a 10 percent tax on admission.

He said this week that removing brothels from the live entertainment tax was a mistake that he wishes could be corrected in hearings before the state Tax Commission.

"There were so many writes and rewrites to the tax plan at the end of the session and the special session that you didn't know from one day to the next what any of them would say," Flint said. "I don't believe it was the intent of the Legislature to take us out."

His board of directors authorized him Thursday to seek to impose the tax on brothels through Tax Commission regulations.

The Tax Commission meets at 9 a.m. Monday at 2590 Lindell Road in Las Vegas to discuss problems with the new tax law. The hearing will be teleconferenced to Reno.

The gaming industry and other businesses are concerned that the law mistakenly was written in a way that could force them to pay nearly three times as much in payroll taxes as they anticipated.

Brenda Erdoes, the legislative counsel, said there is no way that the Tax Commission could write regulations to tax brothels since the law specifically exempts live entertainment associated with bars with fewer than 300 seats. If a brothel has more than 300 seats, it pays the tax; if not, it doesn't.

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