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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

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25 DISTRICT COURT
26 CLARK COUNTY, NEVADA

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

Appellants,

vs.

NEVADA DEPARTMENT OF
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Respondents.

Case No.: A-11-648894-J
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Dept. 30

**Stipulation and Proposed
Amended Order**

1 [counsel continued]

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13 *LLC, d/b/a Little Darlings*

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19 *Counsel for Petitioner*
20 *SHAC, LLC*

21 This stipulation is entered into based on the following:

- 22 1. The petitioners in this case are erotic dance establishments in
23 Las Vegas, Nevada.
- 24 2. Originally, eight petitioners (clubs) were named: K-KEL, INC.,
25 dba Spearmint Rhino Gentlemen's Club ("Spearmint Rhino"); OLYMPUS
26 GARDEN, INC., dba Olympic Garden ("Olympic Garden"); SHAC, L.L.C. dba
27 Sapphire ("Sapphire"); THE POWER COMPANY, INC., dba Crazy Horse Too
28 Gentlemen's Club ("Crazy Horse Too"); D. WESTWOOD, INC., dba Treasures

1 ("Treasures"); D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores
2 ("Scores"); DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, dba Déjà Vu
3 ("Deja Vu"); and LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little
4 Darlings ("Little Darlings").
5

6 3. While this matter was pending, counsel for respondents and
7 counsel for petitioners agreed that certain clubs would be dismissed from the
8 action—specifically: Scores, Déjà Vu, and Little Darlings.
9

10 4. Upon information and belief, the parties advised the district
11 court of their intent and desire to dismiss these clubs from this case.
12

13 5. However, despite the parties' agreement, and providing notice to
14 the district court, the three clubs that were not seeking review were never
15 formally dismissed from the proceeding.
16

17 6. Thus, from the district court docket, it appears that Scores, Déjà
18 Vu, and Little Darlings, were still petitioners as this matter proceeded to
19 briefing, when in fact only five clubs were seeking review: Spearmint Rhino,
20 Olympic Garden, Sapphire, Crazy Horse Too, and Treasures. Their claims
21 were fully and finally adjudicated by the district court's order denying
22 judicial view (the "Order").
23
24

25 7. The clubs timely appealed the Order, but the failure to formally
26 dismiss certain parties (Scores, Déjà Vu, and Little Darlings), and the
27 omission of Crazy Horse Too as a named petitioner in the Order, created a
28

1 record suggesting the Order was not final and appealable under NRS
2 233B.150 because it does not resolve all the claims of all the parties.

3
4 8. For that reason, on March 30, 2016, the Nevada Supreme Court
5 entered an order to show cause why the appeal should not be dismissed on
6 the grounds that the Order is not, in fact, a final judgment because Scores'
7 and Crazy Horse Too's petitions have not yet been adjudicated.
8

9 9. As discussed, the Order does in fact fully and finally adjudicate
10 all the claims of the clubs that were actually seeking judicial review before
11 the district court, i.e.: Spearmint Rhino, Olympic Garden, Sapphire, Crazy
12 Horse Too, and Treasures. Hence, the Order disposes of all issues in the
13 district court case, and is therefore effectively a final appealable order.¹
14
15

16 10. Because of this, the parties submitted a proposed stipulation to
17 the Nevada Supreme Court remanding this case to the district court for the
18 sole purpose of, essentially, cleaning up the record—i.e., formally dismissing
19 Scores, Déjà Vu, and Little Darlings, and amending the Order to reflect that
20 it included Crazy Horse Too's claims as well. With these corrections, the
21
22

23
24 ¹ See, e.g., *Lee v. GNLV Corp.*, 116 Nev. 424, 426 (2000) (final order is "one
25 that disposes of the issues presented in the case ...and leaves nothing for the
26 future consideration of the court.") (internal quotes; citation omitted).
27
28

1 Order will accurately reflect that it fully and finally adjudicates all parties'
2 claims and thus, is final and appealable.

3
4 11. On May 11, 2016, the Nevada Supreme Court disapproved that
5 stipulation, reasoning that remand was unnecessary because the Order was
6 not final, thus the appeal was premature, and consequently the district court
7 was never divested of jurisdiction.
8

9 12. Additionally, the court provided the parties 45 days (meaning
10 until Monday, June 27, 2016) within which to "obtain a district court order
11 constituting a final judgment"²
12

13 13. Accordingly, the parties hereby stipulate to:

- 14 a. Dismissal of petitioners Déjà Vu, Little Darlings, and Scores,
15 with prejudice, and bearing their own fees and costs; and
16
17 b. Amendment of the Order by
18 i. Removing, as petitioners, Déjà Vu, Little Darlings, and
19 ii. Adding, as petitioner, Crazy Horse Too.
20
21
22

23 [Blank; continued on following page.]
24
25
26
27

28 ² Nevada Supreme Court order (filed May 11, 2016).

14. An appropriate proposed amended order is attached as Exhibit 1.

Dated: June 9, 2016

Respectfully submitted,

LAMBROSE | BROWN

By: /s/ William H. Brown

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*d/b/a Olympic Garden, and D. WESTWOOD, INC., d/b/a
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[Signatures continued on following page.]

[Signatures continued.]

Dated: June 9, 2016

Dated: June 9, 2016

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LITTLE DARLINGS OF LAS
VEGAS, LLC, d/b/a Little
Darlings, and OLYMPUS
GARDEN, INC., d/b/a Olympic
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Dated: June 9, 2016

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IT IS SO ORDERED

June 9, 2016

DISTRICT COURT JUDGE

EXHIBIT 1

1 **ODJR**

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9 Attorneys for Respondents

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 K-KEL, INC., d/b/a Spearmint Rhino)
Gentlemen's Club; OLYMPUS GARDEN,)
13 INC., d/b/a Olympic Garden; SHAC, L.L.C.,)
d/b/a Sapphire; D. WESTWOOD, INC.,)
14 d/b/a Treasures; DÉJÀ VU SHOWGIRLS)
OF LAS VEGAS, LLC, d/b/a Déjà vu; and)
15 LITTLE DARLINGS OF LAS VEGAS, LLC,)
d/b/a Little Darlings,)

16 Petitioners,)

17 v.)

18 STATE OF NEVADA, ex rel.)
DEPARTMENT OF TAXATION and TAX)
19 COMMISSION,)

20 Respondents.)
21)
22)

Case No.: A-11-648894-J

Dept. No.: XXX

Consolidated with:

Case No.: A-14-697515-J

23 **AMENDED ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION**

24 Before the Court are the Consolidated Petitions for Judicial Review of the decisions by
25 the Nevada Tax Commission (hereinafter "Commission"). Originally, eight Petitioners (local
26 erotic dance establishments) were named: K-KEL, INC., dba Spearmint Rhino Gentlemen's
27 Club ("Spearmint Rhino"); OLYMPUS GARDEN, INC., dba Olympic Garden ("Olympic
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1 Garden"); SHAC, L.L.C. dba Sapphire ("Sapphire"); THE POWER COMPANY, INC., dba
2 Crazy Horse Too Gentlemen's Club ("Crazy Horse Too"); D. WESTWOOD, INC., dba
3 Treasures ("Treasures"); D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores
4 ("Scores"); DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, dba Déjà Vu ("Deja Vu"); and
5 LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little Darlings ("Little Darlings").

6 Pursuant to the parties' stipulation, the claims of Petitioners Déjà Vu, Little Darlings,
7 and Scores are hereby dismissed with prejudice, leaving the claims of Petitioners, K-KEL,
8 INC., d/b/a Spearmint Rhino Gentlemen s Club, OLYMPUS GARDEN, INC., d/b/a Olympic
9 Garden, SHAC, LLC d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, and THE
10 POWER COMPANY INC. d/b/a Crazy Horse Too (collectively, "Petitioners").

11 Both sides filed briefs, and the Court heard oral argument. The Petitioners were
12 represented by William Brown Esq., Mark Ferrario, Esq. and Bradley Shafer, Esq.(admitted
13 Pro Hac Vice). The Nevada Tax Commission was represented by Vivienne Rakowsky,
14 Deputy Attorney General and David Pope, Senior Deputy Attorney General.

15 After supplemental briefing regarding the Supreme Court decision in Reed v Town of
16 Gilbert, Arizona, 135 U.S. 2218 (2015), and after oral argument, the Court took the matter
17 under advisement and issued a Minute Order on November 24, 2015 which is attached hereto
18 as Exhibit "A".

19 The procedural history of this matter dates back to a decision by the Nevada Tax
20 Commission dated October 12, 2007 upholding the Live Entertainment Tax ("NLET")(PJR-11-
21 648894-J), a remand in January 2012 to allow the Commission to review additional evidence
22 and determine whether it would amend, affirm or reverse its 2007 decision and re-open
23 discovery to allow depositions (PJR 14-697515-J), and supplemental briefing to determine
24 whether the standard of review for the NLET changed based on the U.S. Supreme Court
25 decision in Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (2015).

26 Based upon the pleadings and papers on file, after hearing oral argument, and good
27 cause appearing, the Court renders the following findings of fact:
28

1. The parties essentially agreed to the procedural history and underlying factual background of this case.
2. The three issues before this Court were:
 - a. Petition for Judicial Review of the Nevada Tax Commission October 12, 2007 decision denying Petitioners requests for refunds of NLET paid, and finding that the NLET does not violate the U.S. Constitution or Nevada Constitution, is not targeted at gentlemen's clubs, and is not a tax based on the content of the taxpayer's message.
 - b. Petition for Judicial Review of the Nevada Tax Commission's decision dated September 6, 2012 finding that discovery would not be reopened to allow depositions, and decision on February 12, 2014 upholding the Hearing Officers Hearing on Remand finding that the more than 1,500 pages of supplemental materials were insufficient to cause the Commission's October 12, 2007 decision to be reversed or amended.
 - c. Petitioner's supplemental briefing claiming that the U.S. Supreme Court decision in Reed v. Gilbert Arizona changed the standard of review for determining the constitutionality of the NLET to strict scrutiny.
3. The Petitioners made the following arguments:
 - a. That the NLET is unconstitutional because it is a direct tax on First Amendment activities and is statutorily gerrymandered to apply only to a narrowly defined group of speakers, and in doing so discriminates based on the content of the entertainment;
 - b. The Commission should have permitted Petitioners to conduct the requested depositions in order to shed further light on the drafting and amending of the NLET and to identify the purpose for each and every one of the exceptions to the definition of live entertainment set forth in NRS 368A; and
 - c. Based on the recent ruling in Reed v. Town of Gilbert, Arizona, __U.S. __, 135

1 S. Ct. 2218 (2015), strict scrutiny applies, and the NLET does not pass the
2 constitutional muster because there is a differentiation of the application of a
3 law based upon the content of the expression.

4 4. The Department made the following arguments:

- 5 a. That the NLET is Constitutional revenue raising tax and not a tax on a First
6 Amendment right, and the tax has not been applied to the Petitioners in an
7 unconstitutional manner. The Nevada Supreme Court found that the NLET is
8 constitutional on its face in Deja Vu Showgirls v. Department of Taxation, 334
9 P.3d 392 (2014). In that case, the Nevada Supreme Court established that
10 the standard of review for the NLET is a rational basis analysis, because it
11 does not regulate live entertainment, it does not discriminate on the basis of
12 the taxpayers' speech, and it does not target a small group of speakers or
13 threaten to suppress viewpoints. Deja vu, 334 P.3d at 401;
- 14 b. That the Commission's decision on remand to deny depositions should be
15 upheld because, while NRS 233B.131(2) provides for additional evidence
16 under very specific conditions, it does not provide for additional evidence
17 after receiving an adverse decision. Moreover, the information that the
18 Petitioners were seeking was available in 2007. On January 24, 2012, the
19 Court remanded the case to the Commission for review of evidence, not to
20 allow additional evidence to be gathered; and
- 21 c. The standard used by the court to review a tax matter has been in place
22 more than 125 years and has not changed on the basis of a sign ordinance
23 case (Reed). The Court in Deja Vu had already ruled that heightened
24 scrutiny does not apply to tax classification unless the classification is hostile
25 and oppressive discrimination against particular person and classes.

26 The Court made the following conclusions of law:

- 27 5. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of
28

- 1 the agency as to the weight of evidence on a question of fact. NRS 233B.135(3).
- 2 6. Pursuant to NRS 233B.135(3), the Court can remand, affirm, or set aside the
- 3 Commission's decision if the substantial rights of the petitioner have been
- 4 prejudiced because the agency's decision is in violation of statutory provisions, in
- 5 excess of the statutory authority of the agency, made upon unlawful procedure,
- 6 affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse
- 7 of discretion.
- 8 7. The Commission did not find Petitioner's argument with respect to reopening
- 9 discovery to allow depositions meritorious because all the information that
- 10 Petitioners sought recently was available prior to 2007, and the information sought
- 11 was consistently determined to be irrelevant. The Commission's decision did not
- 12 violate the constitution or a statute, was not in excess of its statutory authority, was
- 13 not made upon unlawful procedure, was not affected by other error of law, was not
- 14 clearly erroneous, and was not arbitrary, capricious, or an abuse of discretion.
- 15 These findings of fact by the Commission may not be disturbed by this Court. The
- 16 Commission's determination with regard to the request to take depositions is hereby
- 17 AFFIRMED.
- 18 8. The construction of a statute is a question of law, and therefore, independent review
- 19 is appropriate. However, the court will not readily disturb an administrative
- 20 interpretation of statutory language. City of Reno v. Reno Police Protective Ass'n.,
- 21 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is
- 22 constitutional as applied to the Petitioners is supported by the fact that the Nevada
- 23 Supreme Court has determined that the NLET does not regulate live entertainment
- 24 and is simply a tax on a business transaction, and not a tax on the expressive
- 25 activity taking place within the facility.
- 26 9. Petitioners have failed to meet their burden to show that the NLET has attacked the
- 27 content of their message.
- 28

10. The Commission did not exceed their authority by concluding that NLET, as applied to Petitioners, is not an impermissible differential tax, and does not place a burden on a narrowly defined group of speakers.

11. Reed v Town of Gilbert, Arizona, 135 U.S. 2218 (2015), does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. This Court does not find any evidence here that NLET triggers the application of Reed.


12. The Commission's decision that NLET is not a content-based tax on first amendment activity, but a legitimate tax scheme, evenly applied, and used to raise state revenue shall not be disturbed.

ORDER

Based upon the foregoing, this Court Orders that there was substantial evidence supporting the Commission's decisions and that the Commission's decisions did not violate NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. As to all remaining Petitioners, the Petition for Judicial Review is DENIED.

IT IS SO ORDERED

DATED this 22 day of June, 2016.


DISTRICT COURT JUDGE

Respectfully Submitted By:

/s/ Vivienne Rakowsky

VIVENNE RAKOWSKY
Deputy Attorney General



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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- 18 8. The construction of a statute is a question of law, and therefore, independent review
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11. Reed v Town of Gilbert, Arizona, 135 U.S. 2218 (2015), does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. This Court does not find any evidence here that NLET triggers the application of Reed.


12. The Commission's decision that NLET is not a content-based tax on first amendment activity, but a legitimate tax scheme, evenly applied, and used to raise state revenue shall not be disturbed.

ORDER

Based upon the foregoing, this Court Orders that there was substantial evidence supporting the Commission's decisions and that the Commission's decisions did not violate NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. As to all remaining Petitioners, the Petition for Judicial Review is DENIED.

IT IS SO ORDERED

DATED this 22 day of June, 2016.


DISTRICT COURT JUDGE

Respectfully Submitted By:

/s/ Vivienne Rakowsky

VIVENNE RAKOWSKY
Deputy Attorney General


CLERK OF THE COURT

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12 *d/b/a Olympic Garden, and D.*
13 *WESTWOOD, INC., d/b/a Treasures*

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22 *Co-Counsel Pro Hac Vice for all*
23 *Petitioners except SHAC, LLC*

24 [Counsel continued, following page]

25 DISTRICT COURT
26 CLARK COUNTY, NEVADA

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

Petitioners,

vs.

NEVADA DEPARTMENT OF
TAXATION, et al.,

Respondents.

Case No.: A-11-648894-J
Consolidated with A-14-697515-J
Dept. 30

**Notice of Entry of Amended
Order Denying Judicial Review
of Administrative Decision**

1 [counsel continued]

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11 *VEGAS, LLC, d/b/a/ Déjà vu, and*
12 *LITTLE DARLINGS OF LAS VEGAS,*
13 *LLC, d/b/a Little Darlings*

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23 *SHAC, LLC*

24
25 **Notice of Entry of Amended Order Denying Judicial Review of**
26 **Administrative Decision**

27 Please take notice that an amended order denying judicial review of
28 administrative decision was entered on June 23, 2016, a copy of which is
attached hereto.

Dated: June 24, 2016

By: /s/ William H. Brown
WILLIAM H. BROWN
Nevada Bar No.: 7623
LAMBROSE | BROWN
wbrown@lambrosebrown.com
Attorney for Petitioner K-Kel, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Entry of Amended Order Denying Judicial Review of Administrative Decision** was filed with the Clark County Nevada District Court by way of the Court's electronic filing system, the operation of which will cause service upon:

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Counsel for Respondents
Nevada Department of Taxation
and Nevada Tax Commission

Dated: June 24, 2016

/s/ Deidra Hufnagle
An employee of
LAMBROSE | BROWN



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DISTRICT COURT

CLARK COUNTY, NEVADA

K-KEL, INC., d/b/a Spearmint Rhino
Gentlemen's Club; OLYMPUS GARDEN,
INC., d/b/a Olympic Garden; SHAC, L.L.C.,
d/b/a Sapphire; D. WESTWOOD, INC.,
d/b/a Treasures; DÉJÀ VU SHOWGIRLS
OF LAS VEGAS, LLC, d/b/a Déjà vu; and
LITTLE DARLINGS OF LAS VEGAS, LLC,
d/b/a Little Darlings,

Petitioners,

v.

STATE OF NEVADA, ex rel.
DEPARTMENT OF TAXATION and TAX
COMMISSION,

Respondents.

Case No.: A-11-648894-J
Dept. No.: XXX

Consolidated with:
Case No.: A-14-697515-J

AMENDED ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

Before the Court are the Consolidated Petitions for Judicial Review of the decisions by the Nevada Tax Commission (hereinafter "Commission"). Originally, eight Petitioners (local erotic dance establishments) were named: K-KEL, INC., dba Spearmint Rhino Gentlemen's Club ("Spearmint Rhino"); OLYMPUS GARDEN, INC., dba Olympic Garden ("Olympic

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

1 Garden"); SHAC, L.L.C. dba Sapphire ("Sapphire"); THE POWER COMPANY, INC., dba
2 Crazy Horse Too Gentlemen's Club ("Crazy Horse Too"); D. WESTWOOD, INC., dba
3 Treasures ("Treasures"); D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores
4 ("Scores"); DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, dba Déjà Vu ("Deja Vu"); and
5 LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little Darlings ("Little Darlings").

6 Pursuant to the parties' stipulation, the claims of Petitioners Déjà Vu, Little Darlings,
7 and Scores are hereby dismissed with prejudice, leaving the claims of Petitioners, K-KEL,
8 INC., d/b/a Spearmint Rhino Gentlemen s Club, OLYMPUS GARDEN, INC., d/b/a Olympic
9 Garden, SHAC, LLC d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, and THE
10 POWER COMPANY INC. d/b/a Crazy Horse Too (collectively, "Petitioners").

11 Both sides filed briefs, and the Court heard oral argument. The Petitioners were
12 represented by William Brown Esq., Mark Ferrario, Esq. and Bradley Shafer, Esq.(admitted
13 Pro Hac Vice). The Nevada Tax Commission was represented by Vivienne Rakowsky,
14 Deputy Attorney General and David Pope, Senior Deputy Attorney General.

15 After supplemental briefing regarding the Supreme Court decision in Reed v Town of
16 Gilbert, Arizona, 135 U.S. 2218 (2015), and after oral argument, the Court took the matter
17 under advisement and issued a Minute Order on November 24, 2015 which is attached hereto
18 as Exhibit "A".

19 The procedural history of this matter dates back to a decision by the Nevada Tax
20 Commission dated October 12, 2007 upholding the Live Entertainment Tax ("NLET")(PJR-11-
21 648894-J), a remand in January 2012 to allow the Commission to review additional evidence
22 and determine whether it would amend, affirm or reverse its 2007 decision and re-open
23 discovery to allow depositions (PJR 14-697515-J), and supplemental briefing to determine
24 whether the standard of review for the NLET changed based on the U.S. Supreme Court
25 decision in Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (2015).

26 Based upon the pleadings and papers on file, after hearing oral argument, and good
27 cause appearing, the Court renders the following findings of fact:
28

1. The parties essentially agreed to the procedural history and underlying factual background of this case.
2. The three issues before this Court were:
 - a. Petition for Judicial Review of the Nevada Tax Commission October 12, 2007 decision denying Petitioners requests for refunds of NLET paid, and finding that the NLET does not violate the U.S. Constitution or Nevada Constitution, is not targeted at gentlemen's clubs, and is not a tax based on the content of the taxpayer's message.
 - b. Petition for Judicial Review of the Nevada Tax Commission's decision dated September 6, 2012 finding that discovery would not be reopened to allow depositions, and decision on February 12, 2014 upholding the Hearing Officers Hearing on Remand finding that the more than 1,500 pages of supplemental materials were insufficient to cause the Commission's October 12, 2007 decision to be reversed or amended.
 - c. Petitioner's supplemental briefing claiming that the U.S. Supreme Court decision in Reed v. Gilbert Arizona changed the standard of review for determining the constitutionality of the NLET to strict scrutiny.
3. The Petitioners made the following arguments:
 - a. That the NLET is unconstitutional because it is a direct tax on First Amendment activities and is statutorily gerrymandered to apply only to a narrowly defined group of speakers, and in doing so discriminates based on the content of the entertainment;
 - b. The Commission should have permitted Petitioners to conduct the requested depositions in order to shed further light on the drafting and amending of the NLET and to identify the purpose for each and every one of the exceptions to the definition of live entertainment set forth in NRS 368A; and
 - c. Based on the recent ruling in Reed v. Town of Gilbert, Arizona, __U.S. __, 135

1 S. Ct. 2218 (2015), strict scrutiny applies, and the NLET does not pass the
2 constitutional muster because there is a differentiation of the application of a
3 law based upon the content of the expression.

4 4. The Department made the following arguments:

- 5 a. That the NLET is Constitutional revenue raising tax and not a tax on a First
6 Amendment right, and the tax has not been applied to the Petitioners in an
7 unconstitutional manner. The Nevada Supreme Court found that the NLET is
8 constitutional on its face in Deja Vu Showgirls v. Department of Taxation, 334
9 P.3d 392 (2014). In that case, the Nevada Supreme Court established that
10 the standard of review for the NLET is a rational basis analysis, because it
11 does not regulate live entertainment, it does not discriminate on the basis of
12 the taxpayers' speech, and it does not target a small group of speakers or
13 threaten to suppress viewpoints. Deja vu, 334 P.3d at 401;
- 14 b. That the Commission's decision on remand to deny depositions should be
15 upheld because, while NRS 233B.131(2) provides for additional evidence
16 under very specific conditions, it does not provide for additional evidence
17 after receiving an adverse decision. Moreover, the information that the
18 Petitioners were seeking was available in 2007. On January 24, 2012, the
19 Court remanded the case to the Commission for review of evidence, not to
20 allow additional evidence to be gathered; and
- 21 c. The standard used by the court to review a tax matter has been in place
22 more than 125 years and has not changed on the basis of a sign ordinance
23 case (Reed). The Court in Deja Vu had already ruled that heightened
24 scrutiny does not apply to tax classification unless the classification is hostile
25 and oppressive discrimination against particular person and classes.

26 The Court made the following conclusions of law:

- 27 5. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of
28

- 1 the agency as to the weight of evidence on a question of fact. NRS 233B.135(3).
- 2 6. Pursuant to NRS 233B.135(3), the Court can remand, affirm, or set aside the
- 3 Commission's decision if the substantial rights of the petitioner have been
- 4 prejudiced because the agency's decision is in violation of statutory provisions, in
- 5 excess of the statutory authority of the agency, made upon unlawful procedure,
- 6 affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse
- 7 of discretion.
- 8 7. The Commission did not find Petitioner's argument with respect to reopening
- 9 discovery to allow depositions meritorious because all the information that
- 10 Petitioners sought recently was available prior to 2007, and the information sought
- 11 was consistently determined to be irrelevant. The Commission's decision did not
- 12 violate the constitution or a statute, was not in excess of its statutory authority, was
- 13 not made upon unlawful procedure, was not affected by other error of law, was not
- 14 clearly erroneous, and was not arbitrary, capricious, or an abuse of discretion.
- 15 These findings of fact by the Commission may not be disturbed by this Court. The
- 16 Commission's determination with regard to the request to take depositions is hereby
- 17 AFFIRMED.
- 18 8. The construction of a statute is a question of law, and therefore, independent review
- 19 is appropriate. However, the court will not readily disturb an administrative
- 20 interpretation of statutory language. City of Reno v. Reno Police Protective Ass'n.,
- 21 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is
- 22 constitutional as applied to the Petitioners is supported by the fact that the Nevada
- 23 Supreme Court has determined that the NLET does not regulate live entertainment
- 24 and is simply a tax on a business transaction, and not a tax on the expressive
- 25 activity taking place within the facility.
- 26 9. Petitioners have failed to meet their burden to show that the NLET has attacked the
- 27 content of their message.
- 28

10. The Commission did not exceed their authority by concluding that NLET, as applied to Petitioners, is not an impermissible differential tax, and does not place a burden on a narrowly defined group of speakers.

11. Reed v Town of Gilbert, Arizona, 135 U.S. 2218 (2015), does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. This Court does not find any evidence here that NLET triggers the application of Reed.


12. The Commission's decision that NLET is not a content-based tax on first amendment activity, but a legitimate tax scheme, evenly applied, and used to raise state revenue shall not be disturbed.

ORDER

Based upon the foregoing, this Court Orders that there was substantial evidence supporting the Commission's decisions and that the Commission's decisions did not violate NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. As to all remaining Petitioners, the Petition for Judicial Review is DENIED.

IT IS SO ORDERED

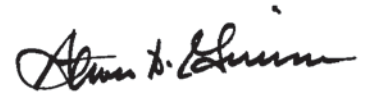
DATED this 22 day of June, 2016.


DISTRICT COURT JUDGE

Respectfully Submitted By:

/s/ Vivenne Rakowsky

VIVENNE RAKOWSKY
Deputy Attorney General



CLERK OF THE COURT

ANOA

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Petitioners,
vs.

NEVADA DEPARTMENT OF
TAXATION, and NEVADA TAX
COMMISSION,

Respondents.

Case No.: A-11-648894-J
Consolidated with A-14-697515-J

Dept. 30

Amended Notice of Appeal

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10 *Counsel for Petitioner*
11 *SHAC, LLC*

12 Amended Notice of Appeal

13 Notice is hereby given that petitioners hereby appeal to the Supreme
14 Court of Nevada from the amended order denying judicial review of
15 administrative decision filed on June 23, 2016, notice of entry filed on June
16 24, 2016.

17 Date: June 24, 2016

18 Respectfully submitted,

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I hereby certify that the foregoing **Amended Notice of Appeal** was filed with the Clark County Nevada District Court by way of the Court's electronic filing system, the operation of which will cause service upon:

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Date: June 24, 2016

By: /s/ Deidra Hufnagle
An employee of
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23 *Petitioners except SHAC, LLC*

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25 DISTRICT COURT
26 CLARK COUNTY, NEVADA

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

Petitioners,

vs.

NEVADA DEPARTMENT OF
TAXATION, et al.,

Respondents.

Case No.: A-11-648894-J
Consolidated with A-14-697515-J
Dept. 30

**Notice of Entry of Stipulation
and Proposed Amended Order**

1 [counsel continued]

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23 *SHAC, LLC*

24 **Notice of Entry of Stipulation and Proposed Amended Order**

25 Please take notice that a stipulation and proposed amended order was
26 entered on June 23, 2016, a copy of which is attached hereto.

27 Dated: June 24, 2016

28 By: /s/ William H. Brown
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Attorney for Petitioner K-Kel, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Entry of Stipulation and Proposed Amended Order** was filed with the Clark County Nevada District Court by way of the Court's electronic filing system, the operation of which will cause service upon:

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Counsel for Respondents
Nevada Department of Taxation
and Nevada Tax Commission

Dated: June 27, 2016

/s/ Deidra Hufnagle
An employee of
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CLERK OF THE COURT

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25 DISTRICT COURT
26 CLARK COUNTY, NEVADA

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

Appellants,

vs.

NEVADA DEPARTMENT OF
TAXATION, et al.,

Respondents.

Case No.: A-11-648894-J
Consolidated with A-14-697515-J
Dept. 30

**Stipulation and Proposed
Amended Order**

1 [counsel continued]

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20 *SHAC, LLC*

21 This stipulation is entered into based on the following:

- 22 1. The petitioners in this case are erotic dance establishments in
23 Las Vegas, Nevada.
- 24 2. Originally, eight petitioners (clubs) were named: K-KEL, INC.,
25 dba Spearmint Rhino Gentlemen's Club ("Spearmint Rhino"); OLYMPUS
26 GARDEN, INC., dba Olympic Garden ("Olympic Garden"); SHAC, L.L.C. dba
27 Sapphire ("Sapphire"); THE POWER COMPANY, INC., dba Crazy Horse Too
28 Gentlemen's Club ("Crazy Horse Too"); D. WESTWOOD, INC., dba Treasures

1 ("Treasures"); D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores
2 ("Scores"); DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, dba Déjà Vu
3 ("Deja Vu"); and LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little
4 Darlings ("Little Darlings").
5

6 3. While this matter was pending, counsel for respondents and
7 counsel for petitioners agreed that certain clubs would be dismissed from the
8 action—specifically: Scores, Déjà Vu, and Little Darlings.
9

10 4. Upon information and belief, the parties advised the district
11 court of their intent and desire to dismiss these clubs from this case.
12

13 5. However, despite the parties' agreement, and providing notice to
14 the district court, the three clubs that were not seeking review were never
15 formally dismissed from the proceeding.
16

17 6. Thus, from the district court docket, it appears that Scores, Déjà
18 Vu, and Little Darlings, were still petitioners as this matter proceeded to
19 briefing, when in fact only five clubs were seeking review: Spearmint Rhino,
20 Olympic Garden, Sapphire, Crazy Horse Too, and Treasures. Their claims
21 were fully and finally adjudicated by the district court's order denying
22 judicial view (the "Order").
23
24

25 7. The clubs timely appealed the Order, but the failure to formally
26 dismiss certain parties (Scores, Déjà Vu, and Little Darlings), and the
27 omission of Crazy Horse Too as a named petitioner in the Order, created a
28

1 record suggesting the Order was not final and appealable under NRS
2 233B.150 because it does not resolve all the claims of all the parties.

3
4 8. For that reason, on March 30, 2016, the Nevada Supreme Court
5 entered an order to show cause why the appeal should not be dismissed on
6 the grounds that the Order is not, in fact, a final judgment because Scores'
7 and Crazy Horse Too's petitions have not yet been adjudicated.

8
9 9. As discussed, the Order does in fact fully and finally adjudicate
10 all the claims of the clubs that were actually seeking judicial review before
11 the district court, i.e.: Spearmint Rhino, Olympic Garden, Sapphire, Crazy
12 Horse Too, and Treasures. Hence, the Order disposes of all issues in the
13 district court case, and is therefore effectively a final appealable order.¹

14
15
16 10. Because of this, the parties submitted a proposed stipulation to
17 the Nevada Supreme Court remanding this case to the district court for the
18 sole purpose of, essentially, cleaning up the record—i.e., formally dismissing
19 Scores, Déjà Vu, and Little Darlings, and amending the Order to reflect that
20 it included Crazy Horse Too's claims as well. With these corrections, the
21
22

23
24 ¹ See, e.g., *Lee v. GNLV Corp.*, 116 Nev. 424, 426 (2000) (final order is "one
25 that disposes of the issues presented in the case ...and leaves nothing for the
26 future consideration of the court.") (internal quotes; citation omitted).
27
28

1 Order will accurately reflect that it fully and finally adjudicates all parties'
2 claims and thus, is final and appealable.

3
4 11. On May 11, 2016, the Nevada Supreme Court disapproved that
5 stipulation, reasoning that remand was unnecessary because the Order was
6 not final, thus the appeal was premature, and consequently the district court
7 was never divested of jurisdiction.
8

9 12. Additionally, the court provided the parties 45 days (meaning
10 until Monday, June 27, 2016) within which to "obtain a district court order
11 constituting a final judgment"²
12

13 13. Accordingly, the parties hereby stipulate to:

- 14 a. Dismissal of petitioners Déjà Vu, Little Darlings, and Scores,
15 with prejudice, and bearing their own fees and costs; and
16
17 b. Amendment of the Order by
18 i. Removing, as petitioners, Déjà Vu, Little Darlings, and
19 ii. Adding, as petitioner, Crazy Horse Too.
20
21
22

23 [Blank; continued on following page.]
24
25
26
27

28 ² Nevada Supreme Court order (filed May 11, 2016).

14. An appropriate proposed amended order is attached as Exhibit 1.

Dated: June 9, 2016

Respectfully submitted,

LAMBROSE | BROWN

By: /s/ William H. Brown

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*d/b/a Olympic Garden, and D. WESTWOOD, INC., d/b/a
Treasures*

[Signatures continued on following page.]

[Signatures continued.]

Dated: June 9, 2016

Dated: June 9, 2016

/s/ Bradley J. Shafer
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INC., d/b/a Treasures, DEJA
VU SHOWGIRLS OF LAS
VEGAS, LLC, d/b/a/ Déjà vu,
LITTLE DARLINGS OF LAS
VEGAS, LLC, d/b/a Little
Darlings, and OLYMPUS
GARDEN, INC., d/b/a Olympic
Garden

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Dated: June 9, 2016

Dated: June 9, 2016

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IT IS SO ORDERED

June 9, 2016

DISTRICT COURT JUDGE

EXHIBIT 1

1 **ODJR**

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Attorneys for Respondents

DISTRICT COURT

CLARK COUNTY, NEVADA

12 K-KEL, INC., d/b/a Spearmint Rhino)
13 Gentlemen's Club; OLYMPUS GARDEN,)
14 INC., d/b/a Olympic Garden; SHAC, L.L.C.,)
15 d/b/a Sapphire; D. WESTWOOD, INC.,)
16 d/b/a Treasures; DÉJÀ VU SHOWGIRLS)
17 OF LAS VEGAS, LLC, d/b/a Déjà vu; and)
18 LITTLE DARLINGS OF LAS VEGAS, LLC,)
19 d/b/a Little Darlings,)

20 Petitioners,)

21 v.)

22 STATE OF NEVADA, ex rel.)
23 DEPARTMENT OF TAXATION and TAX)
24 COMMISSION,)

25 Respondents.)

Case No.: A-11-648894-J

Dept. No.: XXX

Consolidated with:

Case No.: A-14-697515-J

AMENDED ORDER DENYING JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

26 Before the Court are the Consolidated Petitions for Judicial Review of the decisions by
27 the Nevada Tax Commission (hereinafter "Commission"). Originally, eight Petitioners (local
28 erotic dance establishments) were named: K-KEL, INC., dba Spearmint Rhino Gentlemen's
Club ("Spearmint Rhino"); OLYMPUS GARDEN, INC., dba Olympic Garden ("Olympic

1 Garden"); SHAC, L.L.C. dba Sapphire ("Sapphire"); THE POWER COMPANY, INC., dba
2 Crazy Horse Too Gentlemen's Club ("Crazy Horse Too"); D. WESTWOOD, INC., dba
3 Treasures ("Treasures"); D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores
4 ("Scores"); DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, dba Déjà Vu ("Deja Vu"); and
5 LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little Darlings ("Little Darlings").

6 Pursuant to the parties' stipulation, the claims of Petitioners Déjà Vu, Little Darlings,
7 and Scores are hereby dismissed with prejudice, leaving the claims of Petitioners, K-KEL,
8 INC., d/b/a Spearmint Rhino Gentlemen s Club, OLYMPUS GARDEN, INC., d/b/a Olympic
9 Garden, SHAC, LLC d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, and THE
10 POWER COMPANY INC. d/b/a Crazy Horse Too (collectively, "Petitioners").

11 Both sides filed briefs, and the Court heard oral argument. The Petitioners were
12 represented by William Brown Esq., Mark Ferrario, Esq. and Bradley Shafer, Esq.(admitted
13 Pro Hac Vice). The Nevada Tax Commission was represented by Vivienne Rakowsky,
14 Deputy Attorney General and David Pope, Senior Deputy Attorney General.

15 After supplemental briefing regarding the Supreme Court decision in Reed v Town of
16 Gilbert, Arizona, 135 U.S. 2218 (2015), and after oral argument, the Court took the matter
17 under advisement and issued a Minute Order on November 24, 2015 which is attached hereto
18 as Exhibit "A".

19 The procedural history of this matter dates back to a decision by the Nevada Tax
20 Commission dated October 12, 2007 upholding the Live Entertainment Tax ("NLET")(PJR-11-
21 648894-J), a remand in January 2012 to allow the Commission to review additional evidence
22 and determine whether it would amend, affirm or reverse its 2007 decision and re-open
23 discovery to allow depositions (PJR 14-697515-J), and supplemental briefing to determine
24 whether the standard of review for the NLET changed based on the U.S. Supreme Court
25 decision in Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (2015).

26 Based upon the pleadings and papers on file, after hearing oral argument, and good
27 cause appearing, the Court renders the following findings of fact:
28

1. The parties essentially agreed to the procedural history and underlying factual background of this case.
2. The three issues before this Court were:
 - a. Petition for Judicial Review of the Nevada Tax Commission October 12, 2007 decision denying Petitioners requests for refunds of NLET paid, and finding that the NLET does not violate the U.S. Constitution or Nevada Constitution, is not targeted at gentlemen's clubs, and is not a tax based on the content of the taxpayer's message.
 - b. Petition for Judicial Review of the Nevada Tax Commission's decision dated September 6, 2012 finding that discovery would not be reopened to allow depositions, and decision on February 12, 2014 upholding the Hearing Officers Hearing on Remand finding that the more than 1,500 pages of supplemental materials were insufficient to cause the Commission's October 12, 2007 decision to be reversed or amended.
 - c. Petitioner's supplemental briefing claiming that the U.S. Supreme Court decision in Reed v. Gilbert Arizona changed the standard of review for determining the constitutionality of the NLET to strict scrutiny.
3. The Petitioners made the following arguments:
 - a. That the NLET is unconstitutional because it is a direct tax on First Amendment activities and is statutorily gerrymandered to apply only to a narrowly defined group of speakers, and in doing so discriminates based on the content of the entertainment;
 - b. The Commission should have permitted Petitioners to conduct the requested depositions in order to shed further light on the drafting and amending of the NLET and to identify the purpose for each and every one of the exceptions to the definition of live entertainment set forth in NRS 368A; and
 - c. Based on the recent ruling in Reed v. Town of Gilbert, Arizona, __U.S. __, 135

1 S. Ct. 2218 (2015), strict scrutiny applies, and the NLET does not pass the
2 constitutional muster because there is a differentiation of the application of a
3 law based upon the content of the expression.

4 4. The Department made the following arguments:

- 5 a. That the NLET is Constitutional revenue raising tax and not a tax on a First
6 Amendment right, and the tax has not been applied to the Petitioners in an
7 unconstitutional manner. The Nevada Supreme Court found that the NLET is
8 constitutional on its face in Deja Vu Showgirls v. Department of Taxation, 334
9 P.3d 392 (2014). In that case, the Nevada Supreme Court established that
10 the standard of review for the NLET is a rational basis analysis, because it
11 does not regulate live entertainment, it does not discriminate on the basis of
12 the taxpayers' speech, and it does not target a small group of speakers or
13 threaten to suppress viewpoints. Deja vu, 334 P.3d at 401;
- 14 b. That the Commission's decision on remand to deny depositions should be
15 upheld because, while NRS 233B.131(2) provides for additional evidence
16 under very specific conditions, it does not provide for additional evidence
17 after receiving an adverse decision. Moreover, the information that the
18 Petitioners were seeking was available in 2007. On January 24, 2012, the
19 Court remanded the case to the Commission for review of evidence, not to
20 allow additional evidence to be gathered; and
- 21 c. The standard used by the court to review a tax matter has been in place
22 more than 125 years and has not changed on the basis of a sign ordinance
23 case (Reed). The Court in Deja Vu had already ruled that heightened
24 scrutiny does not apply to tax classification unless the classification is hostile
25 and oppressive discrimination against particular person and classes.

26 The Court made the following conclusions of law:

- 27 5. NRS 233B.135 indicates that the Court shall not substitute its judgment for that of
28

- 1 the agency as to the weight of evidence on a question of fact. NRS 233B.135(3).
- 2 6. Pursuant to NRS 233B.135(3), the Court can remand, affirm, or set aside the
- 3 Commission's decision if the substantial rights of the petitioner have been
- 4 prejudiced because the agency's decision is in violation of statutory provisions, in
- 5 excess of the statutory authority of the agency, made upon unlawful procedure,
- 6 affected by other error of law, clearly erroneous, or an arbitrary or capricious abuse
- 7 of discretion.
- 8 7. The Commission did not find Petitioner's argument with respect to reopening
- 9 discovery to allow depositions meritorious because all the information that
- 10 Petitioners sought recently was available prior to 2007, and the information sought
- 11 was consistently determined to be irrelevant. The Commission's decision did not
- 12 violate the constitution or a statute, was not in excess of its statutory authority, was
- 13 not made upon unlawful procedure, was not affected by other error of law, was not
- 14 clearly erroneous, and was not arbitrary, capricious, or an abuse of discretion.
- 15 These findings of fact by the Commission may not be disturbed by this Court. The
- 16 Commission's determination with regard to the request to take depositions is hereby
- 17 AFFIRMED.
- 18 8. The construction of a statute is a question of law, and therefore, independent review
- 19 is appropriate. However, the court will not readily disturb an administrative
- 20 interpretation of statutory language. City of Reno v. Reno Police Protective Ass'n.,
- 21 118 Nev. 889, 900 (2002). The Commission's determination that the NLET is
- 22 constitutional as applied to the Petitioners is supported by the fact that the Nevada
- 23 Supreme Court has determined that the NLET does not regulate live entertainment
- 24 and is simply a tax on a business transaction, and not a tax on the expressive
- 25 activity taking place within the facility.
- 26 9. Petitioners have failed to meet their burden to show that the NLET has attacked the
- 27 content of their message.
- 28

10. The Commission did not exceed their authority by concluding that NLET, as applied to Petitioners, is not an impermissible differential tax, and does not place a burden on a narrowly defined group of speakers.

11. Reed v Town of Gilbert, Arizona, 135 U.S. 2218 (2015), does not apply to tax classification unless the classification is hostile and oppressive discrimination against particular person and classes. This Court does not find any evidence here that NLET triggers the application of Reed.


12. The Commission's decision that NLET is not a content-based tax on first amendment activity, but a legitimate tax scheme, evenly applied, and used to raise state revenue shall not be disturbed.

ORDER

Based upon the foregoing, this Court Orders that there was substantial evidence supporting the Commission's decisions and that the Commission's decisions did not violate NRS 233B.135, and consequently, the Commission's decisions are hereby AFFIRMED. As to all remaining Petitioners, the Petition for Judicial Review is DENIED.

IT IS SO ORDERED

DATED this 22 day of June, 2016.


DISTRICT COURT JUDGE

Respectfully Submitted By:

/s/ Vivenne Rakowsky

VIVENNE RAKOWSKY
Deputy Attorney General