

**PROPOSED REGULATION OF THE
DEPARTMENT OF TAXATION**

LCB File No. R062-15

PROPOSED AMENDMENT TO NAC 368A

Draft date 7/28/2015

ADMINISTRATION OF TAX BY DEPARTMENT OF TAXATION

Section 1. Chapter 368A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive of this regulation.

Sec. 2. *“Ambient activity” defined. (NRS 368A.140) “Ambient activity” means live entertainment that is presented in the background of a facility in a manner that only serves to enhance or complement the mood, character, quality, tone or atmosphere of the facility.*

Sec. 3. *Scope of exclusion for luxury suites, boxes or similar products; computation of tax; documentation required. (NRS 368A.140) For purposes of subsection 4 of NRS 368A.020:*

1. For facilities with a maximum occupancy of at least 7,500 persons, when the license or rental fee for luxury suites, boxes or similar products includes the admission of a certain number of patrons to a facility, the amount of proceeds subject to the tax imposed by NRS 368A.200 is equal to the lowest priced admission charge for the live entertainment event multiplied by the number of admissions to the live entertainment event included in the license fee or rental fee, regardless of how many of the included admissions are actually utilized for the live entertainment event.

2. For facilities with a maximum occupancy of less than 7,500 persons, the tax must be paid on the proceeds received for the license or rental fee for luxury suites, boxes or similar products.

Sec. 4. NAC 368A.070 “Nonprofit organization” defined. (NRS 368A.140) “Nonprofit organization” means any organization described in paragraph *(a) of subsection 2 and paragraph ~~(b)~~ (d)* of subsection ~~(5) 4~~ of NRS 368A.200.

Sec. 5. NAC 368A.080 “Patron” defined. (NRS 360.090, 368A.140)

1. “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 *being present in the facility or for* providing live entertainment at the facility.

2. *Participation in a contest between patrons does not convert the event to Live Entertainment even when prizes are awarded.*

Sec. 6. NAC 368A.100 Interpretation of certain statutory terms. (NRS 360.090, 368A.140) For the purposes of chapter 368A of NRS, the Commission will interpret the term:

1. “Boxing contest or exhibition” to have the meaning ascribed in NRS 467.0107 to the term “unarmed combat.”

2. “Facility” to encompass

a. 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.

b. Any location in this State where live entertainment is provided by an escort.

3. *“Shopping mall” to include any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether they gather inside a facility or outdoors.*

4. *“Complimentary” to mean the granting of admission to a facility where live entertainment is provided without the receipt of any form of payment or consideration by the taxpayer or an operator from any unaffiliated person.*

5. *“Go-go dancing” to mean dancing presented by a person or group of persons in a manner that qualifies as an ambient activity, except for dancing performed in a nude or partially nude state.*

6. *“Lowest priced admission charge” to mean, for purposes of subsection 4 of NRS 368A.020, the lowest priced admission to the live entertainment event available to the general public for purchase.*

7. *“Marketing or promotional activity” to mean a live entertainment activity provided for the primary purpose of drawing attention to a particular product or brand.*

8. *“Membership fee” to mean an amount paid for a membership, or other similar item, that provides certain amenities, including, but not limited to, admission to a facility or facilities where live entertainment is provided on a regular basis although not necessarily every day.*

9. *“Performance” to mean a live entertainment activity, other than an ambient activity, provided by a person or group of persons to a patron or group of patrons.*

10. *“Performance by a disc jockey” to mean the playing of recorded music, the mixing of audio or the adding of sound, video and lighting effects by a person or group of persons who are physically present to a patron or group of patrons.*

11. *“Recorded music” to include, without limitation, music on a cassette tape, compact disc, phonograph album, digital media, or video tape or disc, or on live television.*

12. “Service charge or any other fee or charge” to mean, as used in subsection 2 of NRS 368A.020, a fee or charge required to be paid by a patron in exchange for admission to a facility where live entertainment is provided, including any fee or charge that is included in the total sales price at the completion of the purchase transaction. For purposes of that subsection, a fee or charge is considered required even if a person could avoid paying the fee or charge by electing to purchase the admission through another method, from a different seller or at a different location.

13. “Ticket” to mean a physical or electronic document that provides a person admission to a facility where live entertainment is provided.

Sec.7. NAC 368A.110 Taxpayers: General requirements. (NRS 360.090, 368A.140)

1. If a taxpayer intends to provide live entertainment at a facility or 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 Nevada Gaming Commission.

3. An escort or escort service as defined in section 1.03 and 1.07 respectively of SB No. 266 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.

4. An escort or escort service shall maintain the following records, relating to the business of escorting a person or persons, for a period of at least 4 years after the date on which the record is created:

(a) the date of the service

(b) the full amount charged for the service

5. An escort or escort service shall make those records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 8. NAC 368A.130 Determination of tax rate when maximum occupancy has not been designated. (NRS 360.090, 368A.140) *Except for license or rental fees for luxury suites, boxes, or similar products at facilities,* for the purposes of paragraph ~~[(e)]~~ *b* of subsection ~~[7]~~ *5* 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 200 persons and ~~[less]~~ *more* than 7,500 persons. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 200 persons *or less* than ~~[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. 9. NAC 368A.140 Computation of tax; ~~[inclusion of tax in sales price of food, refreshments or merchandise]~~. (NRS 360.090, 368A.140)

1. Pursuant to the provisions of subsection ~~44~~ **1** of 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 *entire amount charged for the service of escorting a person or persons by an escort or escort service*. ~~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. 10 NAC 368A.150 Scope of exemption for nonprofit organizations; assessment and computation of tax by Department. (NRS 360.090, 368A.140)

1. For the purposes of paragraph ~~(b)~~ **d** of subsection ~~45~~ **4** of 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.}~~ **2.** Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, *and the number of tickets offered for sale is less than 7,500* and except as otherwise provided in this chapter or chapter 368A of NRS, the Department shall assess and compute the excise tax in accordance with NAC 368A.140.

3. For purposes of deciding the number of tickets “offered for sale”:

a) Tickets that are eventually given as complimentary to volunteers or others are included.

b) Each event or game in a series will be counted separately.

Sec.11 NAC 368A.060 is hereby repealed.

Sec. 12. NAC 368A.120 is hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 368A.060 “Live entertainment status” defined. (NRS 360.090, 368A.140) “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.

NAC 368A.120 Applicability of tax: Live entertainment status; sale of food, refreshments or merchandise. (NRS 360.090, 368A.140)

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.