

PROPOSED REGULATION OF THE NEVADA GAMING COMMISSION

LCB File No. R104-15

PROPOSED AMENDMENT TO NAC 368A

EXPLANATION – Matter in *blue bolded italics* is new language; matter between ~~red brackets with single strikethrough~~ is material to be omitted.

AUTHORITY – §§ 1-23, NRS 368A.140.

Section 1. Chapter 368A of NAC is hereby amended by adding the provisions set forth as sections 2 to 6, inclusive of this regulation, to the section thereof regarding the administration of the tax by the Nevada Gaming Control Board.

Sec. 2. Section Deleted.

Sec. 3. *“Operator” defined. (NRS 368A.140) “Operator” has the meaning ascribed to it at paragraph (c) of subsection 5 of NRS 368A.200, unless otherwise specified.*

Sec. 3.1. *“Ticket broker” defined. (NRS 368A.140) “Ticket broker” means a person unaffiliated with the taxpayer or operator who purchases an admission from the taxpayer or operator and resells the admission to a patron.*

Sec. 3.2. *“Ticket service provider” defined. (NRS 368A.140) “Ticket service provider” means a person who, pursuant to an agreement with the taxpayer or operator, sells an admission to a patron on behalf of the taxpayer or operator.*

Sec. 4. *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. Except as otherwise provided in subsection 4, 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 purposes of subsection 1, upon request, the taxpayer must provide the Board with records to support the lowest priced admission charge for the live entertainment event and the number of admission to the live entertainment event included in the license or rental fee.

3. Except as otherwise provided in subsection 4, 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.

4. A taxpayer may submit a written request to the Chairman to obtain approval to use an alternative method of calculating the tax under this section. The decision to approve or deny the request is at the discretion of the Chairman or the Chairman's designee.

Sec. 5. Advisory opinion. (NRS 368A.140)

1. A taxpayer may request an advisory opinion from the Board concerning matters relating to the tax imposed by NRS 368A.200.

2. A request for an advisory opinion must be in writing and set forth the following:

(a) A statement that an advisory opinion is requested

- (b) Where applicable, the name of the facility or facilities in which that live entertainment activity at issue is, or will be, provided;*
- (c) A succinct statement of all the facts and circumstances necessary to properly respond to the request;*
- (d) A clear, simple statement of the issue or question to be resolved;*
- (e) A statement of all statutes, regulations, or other authorities which the taxpayer believes may be relevant in disposing of the request; and*
- (f) A statement with supporting arguments and authorities of the taxpayer's opinion of the proper disposition of the request.*
- 3. Upon considering the request, the Board may issue a written advisory opinion on the subject or subjects contained in the request.*
- 4. Unless explicitly stated otherwise therein, an advisory opinion issued applies only to the taxpayer to whom it is issued and to the factual situation presented in the request.*
- 5. The Board, at its sole discretion may elect to publish the advisory opinion. In such cases, the Board shall prepare a version of the advisory opinion in which all references to the name of the taxpayer and the facilities involved have been removed.*
- 6. This section in no way forecloses or precludes a taxpayer from pursuing other remedies available to it, including, but not limited to, petitioning the Commission for a declaratory ruling pursuant to Nevada Gaming Commission Regulation 2A.*

Sec. 6. The subheading of the section of NAC chapter 368A that sets forth the regulations relating to the administration of the tax by the Nevada Gaming Control Board is hereby amended to read as follows:

ADMINISTRATION OF TAX BY ~~{STATE}~~ *NEVADA*

GAMING CONTROL BOARD

Sec. 7. NAC 368A.310 is hereby amended to read as follows:

NAC 368A.310 “Board” defined. (NRS 368A.140) “Board” means the ~~{State}~~
Nevada Gaming Control Board.

Sec. 8. NAC 368A.340 is hereby amended to read as follows:

NAC 368A.340 “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. 9. Section Deleted.

Sec. 10. NAC 368A.400 is hereby amended to read as follows:

NAC 368A.400 Interpretation of certain statutory terms *or phrases*. (NRS 368A.140) For the purposes of chapter 368A of NRS, the Board will interpret the term *or phrase*:

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}~~ *to mean the right or privilege to enter or have access to a facility where live entertainment is provided.*

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

3. ~~{“Casual assemblage” to include, without limitation:~~
~~(a) Participants in conventions, business meetings or tournaments governed by chapter 463 of NRS, and their guests; or~~

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

~~{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 6 games, or any combination of slot machines and games within those respective limits, any area or premises where the live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises; or~~

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

4. "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.

5. "Marketing or promotional activity" to mean a live entertainment activity provided for the primary purpose of drawing attention to a particular product, service or brand.

6. "Membership fee" to mean an amount paid for a membership that provides admission to a facility where live entertainment is provided.

7. "Performance" to mean, as used in subparagraph (5) of paragraph (b) of subsection 2 of NRS 368A.090:

(a) The presentation of an activity set forth in subparagraphs (1) through (8) of paragraph (a) of subsection 2 of NRS 368A.090, inclusive, that is the primary reason for which a patron or patrons paid an admission charge to access the facility.

(b) When determining if the presentation of an activity is the primary reason a patron or patrons paid an admission charge to access a facility, the Board may consider the following factors:

(1) Whether the activity is advertised, promoted, or otherwise marketed; and/or

(2) Whether the live entertainment activity garners the predominant attention of a patron or patrons of the facility.

8. “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 to a patron or group of patrons.

~~{5} 9. {“Live entertainment” in the same manner as that term is interpreted pursuant to subsection 5 of NAC 368A.100. For the purposes of that subsection, the Board will interpret the term} “{recorded} Recorded music”, as used in subparagraph (9) of paragraph (a) of section 2 of NRS 368A.090, to include, without limitation, music on a cassette tape, compact disc, phonograph album, *digital media*, or video tape or disc, or on live television.~~

10. “Service charge or any other fee or charge” to mean, as used in subsection 2 of NRS 368A.020, an amount imposed and received by, or on behalf of, a taxpayer or operator for which the patron could not obtain admission to the facility without its payment. The phrase does not include an amount imposed and retained by a ticket broker or a ticket service provider.

~~{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.}~~

11. “Ticket” to mean a physical or electronic record that grants a person admission to a facility where live entertainment is provided.

~~{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. 11. NAC 368A.410 is hereby amended to read as follows:

NAC 368A.410 Applicability of tax~~{: Live entertainment status; dinner show}~~. (NRS 368A.140)

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.}~~

Except as otherwise provided in subsection 3, an admission charge is subject to the tax imposed by NRS 368A.200 when it is paid in exchange for admission to a facility where live entertainment is provided, regardless of when the live entertainment actually commences.

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.}~~ *The tax imposed by NRS 368A.200 does not apply to an admission charge paid after the conclusion of the last performance of the live entertainment activity.*

3. *A taxpayer may submit a written request to the Chairman to obtain approval to use an alternative method to determine what admission charges are subject to the tax under this section. The decision to approve or deny the request is at discretion of the Chairman or the Chairman's designee.*

Sec. 12. NAC 368A.420 is hereby amended to read as follows:

NAC 368A.420 Applicability of tax: Particular circumstances. (NRS 368A.140)

~~{H.}~~ Except as otherwise provided in NRS 368A.200, the tax imposed by that section:

~~{(a)}~~ 1. Applies to an admission charge for a patron regardless of whether the patron is present for any portion of the live entertainment.

~~{(b)}~~ 2. Applies to each sale of ~~{a ticket}~~ *an admission* that affords a patron the right to ~~{be present for any taxable live entertainment}~~ *enter the facility*, unless the taxpayer establishes that the patron has received a full refund of the amount paid for the ~~{ticket}~~ *admission*.

~~{(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.~~

3. Does not apply, for purposes of paragraph (b) of subsection 3 of NRS 368A.020, to an amount paid in addition to the admission charge to access a table, seat or chair within a facility.

Sec. 13. NAC 368A.440 is hereby amended to read as follows:

NAC 368A.440 Determination of ~~tax rate when~~ maximum occupancy *when it* has not been designated. (NRS 368A.140) For the purposes of *subsection 4 of NRS 368A.020 and* 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 Board will ~~compute the tax rate on the presumption~~ *presume* that the actual seating capacity of the facility is at least ~~300~~ *200* and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Board, that the actual seating capacity of the facility is less than ~~300~~ *200* or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Board will consider all evidence provided by the taxpayer, including, without limitation, evidence of actual attendance, the number of ~~tickets~~ *admissions* 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. 14. NAC 368A.450 is hereby amended to read as follows:

NAC 368A.450 Computation of amount of tax due. (NRS 368A.140) 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~~ *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}~~ *fees* imposed in connection with the use of credit cards or debit cards which is excluded from taxation pursuant to *paragraph (c) of* subsection 2 of NRS 368A.200, must be determined from the actual amount *imposed*, collected and retained by ~~{persons other than the taxpayer}~~ *the independent financial institution* 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~~ *The* tax must be paid on all ~~the~~ proceeds ~~of those sales~~ *received by a taxpayer or operator for the sale of an admission. The amount of proceeds collected by a taxpayer or operator includes any service charge or other fee or charge imposed and received by, or on behalf of, a taxpayer or operator, except for any fee excluded from taxation pursuant to paragraph (c) of subsection 2 of NRS 368A.200.*

5. ~~Subject to the provisions of subsection 4 of NRS 368A.200, the~~ *The* tax on any taxable ~~ticket for live entertainment or ticket redeemable for taxable food or refreshments~~ *admission* sold as a component of a package must be computed in accordance with the following provisions:

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

(1) The average retail value of the ~~ticket~~ *admission* 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.~~

~~(e)}~~ (b) 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}~~ *admission component* of a package.

6. The amount of any charges which are excluded from taxation pursuant to subsections 3 and 4 of NRS 368A.020 must be determined from the actual amount imposed, collected and retained and not from an estimate of that amount.

7. The tax is imposed on the sale of an admission at the time the ticket is sold:

(a) By a taxpayer or operator to a ticket broker or a patron; or

(b) By a ticket service provider to a patron.

8. When an admission is sold by a taxpayer or operator to a ticket broker, the tax will be imposed on and collected from the ticket broker.

9. When an admission is sold by a ticket service provider to a patron, the tax will be imposed on and collected from the patron.

Sec. 15. NAC 368A.460 is hereby amended to read as follows:

NAC 368A.460 ~~{Inclusion of tax in price of ticket; Form of required statement}~~

Disclosure of admission charge; computation of tax. (NRS 368A.140)

1. The ~~{statement}~~ amount on the ticket or display required by subsection ~~{4}~~ *3* of 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~~ *disclose the amount of the admission charge to be paid by the patron to enter the facility that excludes the amount of live entertainment tax.*

2. The taxpayer shall pay the tax based on the admission charge.

3. For purposes of this section, a receipt documenting the purchase of admission to a facility qualifies as a ticket.

Sec. 16. NAC 368A.470 is hereby amended to read as follows:

NAC 368A.470 Scope of exemption for nonprofit organizations; assessment and computation of tax by Board; *determination of number of tickets offered for sale or distribution.* (NRS 368A.140)

1. For the purposes of paragraph ~~{(b)}~~ *(d)* of subsection ~~{5}~~ *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 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.~~ 2. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in this chapter or chapter 368A of NRS, the Board will assess and compute the excise tax in accordance with NAC 368A.450.

3. For purposes of paragraph (a) of subsection 2 and paragraph (d) of subsection 4 of NRS 368A.200, in determining the total number of tickets offered for sale or distribution:

(a) If a single ticket provides admission to multiple live entertainment events, such ticket constitutes a ticket for each event.

(b) If a ticket is required for admission to an individual live entertainment event that is part of a multiple live entertainment event offering, such individual live entertainment event shall constitute a separate live entertainment event.

Sec. 17. NAC 368A.480 is hereby amended to read as follows:

NAC 368A.480 Documentation required for exemption of nonprofit organization.

(NRS 368A.140) 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 Board:

1. If the person does not claim to be an exempt religious organization, provide to the Board 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~~H~~; *and*

3. Provide to the Board documentation to support the number of admission tickets available for sale or other distribution to patrons, either directly or indirectly through a partner, subsidiary, client, affiliate or other collaborator.

Sec. 18. NAC 368A.490 is hereby amended to read as follows:

NAC 368A.490 Responsibilities of persons licensed to conduct gaming: Payment of tax; records; reports. (NRS 368A.140, 368A.160)

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~~ *an admission* 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 NRS 368A.160, chapter 463 of NRS and Regulation 6 of the Nevada Gaming Commission and ~~{State}~~ *Nevada* 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 NAC 368A.300 to 368A.540, inclusive; *and*

(c) Obtain and keep, or require a person who operates the facility to obtain and keep, any executed contracts that have been entered into with a ticket service provider regarding the selling or distribution of admissions.

3. Responsibility for the preparation of accurate tax reports and conformity with all applicable statutes lies solely with the taxpayer. Lack of finding through any contact by the Board with the taxpayer, including, but not limited to, audits, reviews or other inquiries does not represent tacit approval or acceptance by the Board of any reporting policy or procedure of the taxpayer.

~~{3-}~~ *4.* 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 NRS 368A.220.

~~{4-}~~ *5.* Each person that holds:

(a) A nonrestricted license shall file with the Board, on or before the ~~{24th}~~ *15th* day of each month, a report pursuant to 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~~ 15th day of the month following each calendar quarter, a report pursuant to NRS 368A.220, showing the amount of all receipts for the preceding calendar quarter which are taxable pursuant to chapter 368A of NRS.

Sec. 19. NAC 368A.500 is hereby amended to read as follows:

NAC 368A.500 Maintenance and availability of records of taxpayers. (NRS 368A.140, 368A.160) A taxpayer, *operator and ticket service provider* 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. *The taxpayer is responsible for ensuring that any operator or ticket service provider transacting the sale of an admission to live entertainment activities provided at the licensed gaming establishment of the taxpayer properly record all sales that are taxable pursuant to chapter 368A of NRS and that all required documentation is being created and retained by those persons.*

3. *The taxpayer is responsible for obtaining and keeping all detailed transaction reports of an operator or a ticket service provider who sell or distribute taxable admissions to live entertainment activities occurring on the licensed gaming establishment of the taxpayer.*

4. *The taxpayer is responsible for obtaining and keeping all executed contracts with an operator or a ticket service provider who sell or distribute taxable admissions to live entertainment activities occurring on the licensed gaming establishment of the taxpayer.*

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

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

Sec. 20. NAC 368A.510 is hereby amended to read as follows:

NAC 368A.510 Procedures for internal control. (NRS 368A.140)

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}~~ *Nevada* Gaming Control Board, a description of the procedures adopted by the licensee to comply with NAC 368A.300 to 368A.540, inclusive; 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}~~ *Nevada* 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}~~ *Nevada* 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}~~ *Nevada* 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}~~ *Submit to the Board within 150 days after the end 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~~ *Nevada* Gaming Control Board.

(b) “Requirements for entertainment” means the provisions of NAC 368A.300 to 368A.540, inclusive, chapter 368A of NRS and any minimum standards for internal control for entertainment adopted by the Chairman.

Sec. 21. NAC 368A.520 is hereby amended to read as follows:

NAC 368A.520 Refund of overpayment of taxes. (NRS 368A.140) The provisions of NRS 463.387 shall be deemed to apply to a claim pursuant to 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.

3. Any refund of any overpayment of taxes that were collected from a patron must, if possible, be refunded by the taxpayer to the patron from whom it was collected.

4. In regards to overpayment of taxes that were collected from a patron, a taxpayer shall:

(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 3 and the name and address of the person to whom the refund is to be made.

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

5. If a taxpayer is unable for any reason to refund an overpayment of taxes, the taxpayer shall pay the overpayment of taxes to the Board for deposit in the State Treasury for credit to the State General Fund.

6. If an audit of a taxpayer reveals the existence of an overpayment of taxes, the Board shall:

(a) Credit the overpayment of taxes toward any deficiency that results from the audit, if the taxpayer furnishes the Board with satisfactory evidence that the taxpayer will be refunding the overpayment of taxes as required by subsection 3.

(b) Within 60 days after receiving notice from the Board 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 Board.

Sec. 22. NAC 368A.330 is hereby repealed.

Sec. 23. NAC 368A.430 is hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 368A.330 “Live entertainment status” defined. (NRS 368A.140) “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.

NAC 368A.430 Applicability of tax: When merchandise is deemed to be sold inside facility. (NRS 368A.140) For the purposes of 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.