

**PROPOSED REGULATION OF THE
NEVADA GAMING COMMISSION**

LCB File No. R104-15

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice #2016-68

Issuer: Executive Secretary

DATE: August 22, 2016

TO: ALL LICENSEES AND OTHER INTERESTED PERSONS

**SUBJECT: 2015-06R: NOTICE OF HEARING FOR THE ADOPTION,
AMENDMENT AND REPEAL OF PERMANENT REGULATIONS OF
THE NEVADA GAMING COMMISSION RELATING TO THE
ADMINISTRATION OF THE LIVE ENTERTAINMENT TAX (LCB File
No. R104-15)**

The Nevada Gaming Commission (NGC) will hold a public hearing for the purpose of considering adoption, amendment or repeal of the regulation(s) stated below.

The public hearing will be held on or about the hour of 10:00 a.m. on **September 22, 2016** at the following locations:

**Grant Sawyer Building
Hearing Room 2450
555 East Washington Avenue
Las Vegas, Nevada**

**and via video conference at the
Gaming Control Board Office
1919 College Parkway
Carson City, Nevada**

(As a courtesy, these proceedings will be video cast to the Nevada Gaming Control Board offices in Carson City. In the event technical difficulties prevent these proceedings from being video

cast, the NGC, at its discretion, may conduct the hearing without the proceedings being video cast.)

2015-06R: POSSIBLE ADOPTION, AMENDMENT AND REPEAL OF PERMANENT REGULATIONS OF THE NEVADA GAMING COMMISSION RELATING TO THE ADMINISTRATION OF THE LIVE ENTERTAINMENT TAX

For Possible Action

PURPOSE: To receive comments from all interested persons regarding the adoption, amendment, and repeal of regulations that pertain to Chapter 368A of the Nevada Administrative Code (NAC) (Nevada’s Live Entertainment Tax). The NGC will receive testimony from all interested persons and consider and take action on the adoption, amendment, and repeal of proposed permanent regulations of the NAC as identified in **LCB File No. R104-15**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the NGC may proceed immediately to act upon on written submissions.

A. The Need for, and Purpose of, the Proposed Permanent Regulations

The need and purpose of the proposed permanent regulations identified in LCB File No. R104-15 are to add new provisions and revise, clarify, update, and remove existing provisions relating to the application and administration of Nevada’s Live Entertainment Tax (LET) on live entertainment provided within facilities located on the premises of licensed gaming establishments. These changes to NAC Chapter 368A were prompted by the NGC’s mandatory review of the existing regulations performed pursuant to NRS 233B.050(1)(e) and changes made to Chapter 368A of the Nevada Revised Statutes (NRS) pursuant to Senate Bill No. 266, which was enacted during the 78th (2015) Session of the Nevada Legislature.

B. Terms or Substance of the Proposed Permanent Regulations or Description of the Subjects and Issues Involved

1. **Sections 2-4** of the proposed regulation define the terms “operator,” “ticket broker” and “ticket service provider” for the purposes of the regulations governing the tax on live entertainment.
2. **Section 5** of the proposed regulation specifies that: (1) the licensed gaming establishment or the operator of the facility must collect the tax from a ticket broker or patron at the time of the sale of the admission; and (2) a ticket service provider must collect the tax from a patron at the time of the sale of the admission.

3. **Section 6** of the proposed regulation specifies that: (1) the licensed gaming establishment or the operator of the facility must collect the tax from a ticket broker or patron at the time of the sale of the admission; and (2) a ticket service provider must collect the tax from a patron at the time of the sale of the admission.
4. **Section 6** of the proposed regulation also provides that if a license or rental fee is paid for a luxury suite, box or similar product at a facility with a maximum occupancy of less than 7,500 persons, the entire amount of the proceeds from the license or rental fee is subject to the tax.
5. **Section 7** of the proposed regulation adopts procedures and requirements for the refund of overpayments of the tax on live entertainment.
6. **Section 8** of the proposed regulation authorizes a taxpayer to request an advisory opinion from the Board concerning issues related to the tax on live entertainment and adopts procedures for the issuance of such advisory opinions.
7. **Sections 9-10** of the proposed regulation update and add certain references to regulations and statutes.
8. **Section 11** of the proposed regulation replaces the term “refreshments” with the term “beverages” within the definition of “package.”
9. **Section 12** of the proposed regulation specifies the manner in which the Board will determine whether an activity constitutes a “performance” or a “marketing or promotional activity” for the purpose of determining whether the activity is subject to the tax.
10. **Section 12** of the proposed regulation further specifies how the Board will interpret certain other terms for the purposes of determining the applicability of the tax.
11. **Section 13** of the proposed regulation revises regulations which govern when a facility enters live entertainment status to state that an admission charge is subject to the tax when it is paid in exchange for admission to a facility where live entertainment is provided.
12. **Section 13** of the proposed regulation also authorizes the Chair of the Board, or his or her designee, to approve an alternative method for determining when an admission charge is taxable.
13. **Section 14** of the proposed regulation: (1) provides that the tax does not apply to an admission that occurs after the end of the last performance of the live entertainment;

and (2) adopts a provision contained in existing law which provides that the tax does not apply to an amount of consideration paid in addition to the admission charge to have access to a table, seat or chair within a facility where live entertainment is provided.

14. **Section 14** of the proposed regulation also removes provisions governing the taxation of food, refreshments and merchandise sold at a facility where live entertainment is provided.
15. **Section 15** of the proposed regulation updates provisions relating to how the Board is to determine maximum occupancy of a facility.
16. **Section 16** of the proposed regulation revises existing regulations governing the manner in which the amount of the tax is calculated to: (1) require the tax to be paid on all proceeds from the sale of an admission to a facility where live entertainment is provided which are received by a taxpayer or operator of the facility, including, without limitation, certain service charges and fees received by, or on behalf of, the taxpayer or operator; and (2) specify that any amounts excluded from taxation must be based on the actual amount imposed, collected and retained and not on estimates of those amounts.
17. **Section 16** of the proposed regulation also removes provisions governing the taxation of food, refreshments and merchandise sold at a facility where live entertainment is provided.
18. **Section 17** of the proposed regulation revises existing regulations governing certain statements on the face of a ticket to require the amount required to be shown on the ticket or displayed at the box office to be the amount required to be paid by a patron to enter the facility, excluding the amount of the tax, and to require the tax to be paid based on the amount displayed or shown.
19. **Section 17** of the proposed regulation also states that a receipt documenting the purchase of an admission to a facility constitutes a ticket for the purposes of this provision.
20. **Sections 18 and 19** of the proposed regulation: (1) specify how the Board will determine the number of tickets offered for sale or other distribution to events that offer multiple live entertainment events; and (2) require a nonprofit organization to provide to the Board documentation concerning the number of tickets available for sale or other distribution to patrons.

21. **Section 20** of the proposed regulation revises the date by which the taxpayer must file its monthly tax return.
22. **Sections 20 and 21** of the proposed regulation revise provisions governing the records to be kept by a taxpayer to require certain additional records to be kept and to provide that the taxpayer is responsible for ensuring that certain records are kept.
23. **Section 22** of the proposed regulation removes this exception and, instead, requires the licensee's internal auditor to submit two copies of the report of instances of noncompliance during the second half of the licensee's business year within 150 days after the end of that business year.
24. **Section 23** of the proposed regulation provides that NAC 368A.330 and 368A.430 are repealed.

C. How to Obtain the Approved or Revised Text of the Proposed Regulation Prepared by the Legislative Counsel Bureau

The text of the proposed regulation may be obtained online by visiting the State of Nevada Register or Administrative Regulations at:

<http://www.leg.state.nv.us/Register/2015Register/R104-15P.pdf>.

D. Estimated Economic Effect of the Proposed Permanent Regulation on the Businesses which it will Regulate and the Public

1. Adverse and Beneficial Effects:

The proposed permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to the businesses or to the general public beyond the effects, if any, presented by Chapter 368A of the NRS. The proposed permanent regulation simply addresses the application and administration of the LET set forth under Chapter 368A of the NRS. The regulation does not impose a direct and significant economic burden upon small businesses or restrict the formation, operation or expansion of small businesses beyond the burdens, if any, presented by Chapter 368A of the NRS.

2. Immediate and Long-Term Effects:

There are not anticipated immediate or long-term economic effects on facilities located on the premises of a gaming licensee that provide live entertainment beyond the effects, if any, presented by Chapter 368A of the NRS.

E. The Methods Used by the Agency in Determining the Impact on a Small Business

Staff of the Board evaluated the changes made to Chapter 368A of the NRS pursuant to Senate Bill No. 266 (enacted during the 78th (2015) Session of the Nevada Legislature) and reached the conclusion that the changes made to the statute, which prompted the need to adopt these regulations, did not add any negative burden on small businesses that hold gaming licenses (the small businesses under the NGC's jurisdiction). To the contrary, Board staff determined that the changes actually lessened the burden on some small businesses to which LET applies.

The statutory changes did not increase the number of small businesses affected by LET, nor the amount of LET that customers of those businesses would have to pay. In fact, the statutory changes reduced the tax rate, limited the imposition to just those venues that imposed an admission charge, and only imposed the tax on admissions, whereas the previous version of the LET statutes imposed LET on food, beverages and merchandise. Based on this, Board staff determined that the statutory changes had a positive financial impact on small businesses that held gaming licenses.

In addition, Board staff determined that the proposed permanent regulations, LCB File No. R104-15, will not impose any additional reporting or administration requirements on small businesses that are licensed gaming establishments. Instead the proposed permanent regulations reduce such requirements since under the statutory changes such businesses would no longer need to impose the tax on the sale of food, beverages, or merchandise, but instead only impose it on admission charges. This reduces the record keeping requirements. Further, because the tax only applies if an admission charge is imposed, this reduces the number of events for which LET would have to be imposed.

Based on the analysis described above, Board staff reached the conclusion that the proposed permanent regulations, LCB File No. R104-15, will not impose a direct and significant economic burden upon any small businesses under the NGC's jurisdiction, nor directly restrict the formation, operation or expansion of said businesses.

F. Estimated Cost to Agency for Enforcement of the Proposed Permanent Regulation

The enforcement of the proposed permanent regulations will not increase the costs already expended by the agency relating to the administration of the LET.

G. Regulations of Other State or Local Governmental Agencies which the Proposed Permanent Regulation Overlaps or Duplicates and their Necessity

The NGC is the sole agency charged with the administration of the LET for live entertainment events that occur on the premises of a licensed gaming establishment. While the Nevada Tax Commission also has a set of regulations governing its administration of the LET, those regulations only pertain to live entertainment events occurring on the premises of establishments that are not licensed to offer gaming in this State (the Nevada Tax Commission's proposed permanent regulations are found under LCB File No. R062-15). Because the two agencies administer the LET for different taxpayers, the proposed permanent regulations of both agencies are necessary and they do not overlap or duplicate one another.

H. If the Regulation is Required Pursuant to Federal Law, a Citation and Description of the Federal Law

The proposed permanent regulation is not required pursuant to federal law.

I. If the Regulation Includes Provisions which are More Stringent than a Federal Regulation that Regulates the Same Activity, a Summary of Such Provisions

The proposed permanent regulation does not include provisions which are more stringent than a federal law.

J. Establishment of New Fees or Existing Fee Increases

The proposed permanent regulations do not establish new fees or increase existing fees.

The proposed regulation changes will be considered by the NGC in accordance with the provisions of NRS 463.145, which provides that on the date and at the time and place designated, any interested person, or their duly authorized representative, or both, shall be afforded the opportunity to present statements, arguments or contentions in writing, with or without the opportunity to present the same orally. Persons wishing to comment on the proposed action of the NGC may appear at the above-scheduled public hearing or may address their comments, data, views or arguments, in written form, to the NGC. ***Written submissions must be received by the NGC on or before September 16, 2016.***

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the following locations for inspection and copying by members of the public during regular business hours:

1. Offices of the Nevada Gaming Control Board:
 - a. 1919 College Parkway, Carson City, Nevada;

- b. 557 West Silver Street, Suite 207, Elko, Nevada;
 - c. 3650 South Pointe Circle, Suite 203, Laughlin, Nevada;
 - d. 555 East Washington Avenue, Suite 2600, Las Vegas, Nevada; and
 - e. 9790 Gateway Drive, Suite 100, Reno, Nevada.
- 2. Churchill County Library, 553 South Maine Street, Fallon, Nevada
 - 3. Douglas County Public Library, 1625 Library Lane Minden, Nevada
 - 4. Esmeralda County Library, 10 Montezuma Way, Silverpeak, Nevada
 - 5. Eureka Branch Library, 210 South Monroe, Eureka, Nevada
 - 6. Humboldt County Library, 85 East 5th Street, Winnemucca, Nevada
 - 7. Lincoln County Library, 63 Main Street, Pioche, Nevada
 - 8. Lyon County Central Library, 20 Nevin Way, Yerington, Nevada
 - 9. Mineral County Library, 110 1st Street, Hawthorne, Nevada
 - 10. Pershing County Library, 1125 Central Avenue, Lovelock, Nevada
 - 11. Storey County Library, 95 South R Street, Virginia City, Nevada
 - 12. Tonopah Library, 167 South Central Street, Tonopah, Nevada
 - 13. White Pine County Library, 950 Campton Street, Ely, Nevada

Copies of the notice and the regulation to be adopted are also available on the Nevada Gaming Control Board's website, "Regulation Activity" page at:
<http://gaming.nv.gov/index.aspx?page=52>.

Any questions should be directed to Jaime Black, Esq. at (775) 684-7778 or via email at jblack@gcb.nv.gov.

This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>.

Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Pursuant to NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issues a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

These items will be heard by the NGC at the September 22, 2016 meeting, and may be continued and heard at subsequent meetings of the Nevada Gaming NGC as required to effectuate the above-stated purposes.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Executive Secretary's office in writing at the Nevada Gaming Commission, P.O. Box 8003, Carson City, Nevada 89702-8003 or by calling (775) 684-7750 as soon as possible.

This notice of hearing has been posted at the following locations:

1. Nevada Gaming Control Board	1919 College Parkway	Carson City, NV 89706
2. Nevada Gaming Control Board	557 West Silver Street, Suite 207	Elko, NV 89801
3. Nevada Gaming Control Board	3650 South Pointe Circle	Laughlin, NV 89029
4. Nevada Gaming Control Board	555 E Washington Ave, Suite 2600	Las Vegas, NV 89101
5. Nevada Gaming Control Board	9790 Gateway Drive, Suite 100	Reno, NV 89521
6. Carson City Court House	885 East Musser Street	Carson City, NV 89701
7. Blasdel Building	209 East Musser Street	Carson City, NV 89701
8. State Library and Archives	100 North Stewart Street	Carson City, NV 89701
9. Churchill County Library	553 South Maine Street	Fallon, NV 89406
10. Douglas County Public Library	1625 Library Lane	Minden, NV 89423
11. Esmeralda County Library	10 Montezuma Way	Silverpeak, NV 89047
12. Eureka Branch Library	210 South Monroe	Eureka, NV 89316
13. Humboldt County Library	85 East 5th Street	Winnemucca, NV 89445
14. Lincoln County Library	63 Main Street	Pioche, NV 89043
15. Lyon County Central Library	20 Nevin Way	Yerington, NV 89447
16. Mineral County Library	110 1st Street	Hawthorne, NV 89415
17. Pershing County Library	1125 Central Avenue	Lovelock, NV 89419
18. Storey County Library	95 South R Street	Virginia City, NV 89440
19. Tonopah Library	67 South Central Street	Tonopah, NV 89049
20. Pine White County Library	950 Campton Street	Ely, NV 89301