

**PROPOSED REGULATION OF THE
NEVADA GAMING COMMISSION**

LCB File No. R104-15

August 5, 2016

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

AUTHORITY: §§1-23, NRS 368A.140.

A REGULATION relating to taxation; revising provisions governing the tax on live entertainment provided at a facility that is located on the premises of a licensed gaming establishment; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes an excise tax on admission to certain facilities where live entertainment is provided. (NRS 368A.200) Under existing law, if live entertainment is provided at a facility that is located on the premises of a licensed gaming establishment, the Nevada Gaming Control Board administers and collects the tax and the Nevada Gaming Commission is required to adopt such regulations as are necessary to carry out the provisions of law governing the tax. (NRS 368A.140) This regulation revises various existing regulations governing the administration and collection of the tax on live entertainment provided at a facility that is located on the premises of a licensed gaming establishment.

Existing law requires the tax on live entertainment to be collected from the purchaser at the time of the purchase of an admission to a facility where live entertainment is provided, whether or not the admission is purchased for resale. (NRS 368A.200) **Section 5** of this 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. **Sections 2-4** of this regulation define the terms “operator,” “ticket broker” and “ticket service provider” for the purposes of the regulations governing the tax on live entertainment.

Existing law provides that if the license or rental fee paid for a luxury suite, box or similar product at a facility with a maximum occupancy of at least 7,500 persons includes the admission of a certain number of persons to the facility, the taxable admission charge is an amount equal to the lowest priced admission charge multiplied by the number of admissions to the live entertainment event included in the license or rental fee. (NRS 368A.020) **Section 6** of this regulation defines the term “lowest priced admission charge” for the purposes of this provision and requires a taxpayer to provide to the Board, upon request, records to support the lowest priced admission charge. **Section 6** 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.

Section 7 of this regulation adopts procedures and requirements for the refund of overpayments of the tax on live entertainment.

Section 8 of this 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.

Existing law excludes certain activities from the definition of live entertainment and, thus, the tax on live entertainment does not apply to such activities. The activities excluded from the tax include, without limitation: (1) an activity that does not constitute a performance; and (2) a marketing or promotional activity. (NRS 368A.090) **Section 12** of this 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. **Section 12** further specifies how the Board will interpret certain other terms for the purposes of determining the applicability of the tax.

Existing law was amended to provide that: (1) the tax on live entertainment is imposed only if consideration is collected for admission to a facility where live entertainment is provided; and (2) the tax no longer applies to food, refreshments and merchandise sold at such a facility. (NRS 368A.060) **Section 13** of this 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. In addition, **section 13** authorizes the Chair of the Board, or his or her designee, to approve an alternative method for determining when an admission charge is taxable. **Section 14** of this 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. **Sections 14, 16 and 18** of this regulation remove provisions governing the taxation of food, refreshments and merchandise sold at a facility where live entertainment is provided.

Under existing law, the amount of the taxable admission charge includes any service charge or other fee or charge that is required to be paid in exchange for admission to a facility where live entertainment is provided. (NRS 368A.020) **Section 16** 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.

Existing law requires that the admission charge be stated on the ticket for admission to a facility where live entertainment is provided or that the admission charge be prominently

displayed at the box office. (NRS 368A.200) **Section 17** of this 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. **Section 17** states that a receipt documenting the purchase of an admission to a facility constitutes a ticket for the purposes of this provision.

Existing law provides that the tax does not apply to live entertainment that is provided by, or entirely for the benefit of, certain nonprofit organizations only if less than 7,500 tickets to the live entertainment are offered for sale or other distribution to patrons. (NRS 368A.200) **Sections 18 and 19** of this 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.

Existing law provides that when live entertainment is provided at a facility that is located on the premises of a licensed gaming establishment, the person who is licensed to conduct gaming at that establishment is the taxpayer. (NRS 368A.110) Under existing regulation, when that licensee is not the operator of a facility on the premises of the licensed gaming establishment, the licensee is responsible for: (1) collecting the tax and remitting the tax to the Board; and (2) obtaining and keeping certain records or requiring the operator of the facility to maintain and keep those records. (NAC 368A.490, 368A.500) **Sections 20 and 21** of this 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. In addition, **section 20** revises the date by which the taxpayer must file its monthly tax return.

Existing regulations require the internal auditor of a person licensed to conduct gaming at certain larger gaming establishments to perform examinations to determine the licensee's compliance with the laws, regulations and internal controls governing the tax on live entertainment. Within 120 days after the end of each 6-month period of the licensee's business year, the internal auditor must submit to the Board two copies of a report summarizing all instances of noncompliance with those laws, regulations and internal controls. However, if the instances of noncompliance for the second half of the licensee's business year are to be disclosed in an annual report required to be submitted to the Board by an independent accountant for the licensee, the internal auditor is not required to submit the report for the second half of the licensee's business year. (NAC 368A.510) **Section 22** of this 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.

Section 1. Chapter 368A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *“Operator” has the meaning ascribed to it in paragraph (c) of subsection 5 of NRS 368A.200.*

Sec. 3. *“Ticket broker” means a person who is not affiliated with a taxpayer or an operator and who purchases an admission to a facility where live entertainment is provided from the taxpayer or operator for the purpose of resale to a patron.*

Sec. 4. *“Ticket service provider” means a person who, pursuant to an agreement with a taxpayer or an operator and on behalf of the taxpayer or operator, sells to a patron an admission to a facility where live entertainment is provided.*

Sec. 5. *The tax imposed by chapter 368A of NRS must be collected by:*

1. A taxpayer or an operator from a ticket broker or patron at the time of the sale of an admission to a facility where live entertainment is provided.

2. A ticket service provider from a patron at the time of the sale of an admission to a facility where live entertainment is provided.

Sec. 6. *1. Except as otherwise provided in subsection 2, for the purposes of subsection 4 of NRS 368A.020:*

(a) If a license or rental fee paid for a luxury suite, box or similar product at a facility with a maximum occupancy of at least 7,500 persons includes the admission of a certain number of patrons to live entertainment provided at the facility, the amount of the proceeds from the license or rental fee that is subject to the tax imposed by chapter 368A of NRS is equal to the lowest priced admission charge for the live entertainment event at the facility multiplied by the number of admissions to the live entertainment event included in the license or rental fee, regardless of the number of admissions utilized for the live entertainment event. Upon request, a taxpayer shall provide to the Board records to support the lowest priced admission charge

for the live entertainment event at the facility and the number of admissions to the live entertainment event included in the license or rental fee.

(b) 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 imposed by chapter 368A of NRS.

2. A taxpayer may submit a written request to the Chair for approval of an alternative method of calculating the amount of the proceeds from a license or rental fee paid for a luxury suite, box or similar product at a facility that is subject to the tax imposed by chapter 368A of NRS. The Chair or the designee of the Chair may, in his or her discretion, approve or deny the request.

3. For the purposes of this section and subsection 4 of NRS 368A.020, the Board shall interpret the term “lowest priced admission charge” to mean the lowest price available to the general public for an admission to the facility where the live entertainment is provided.

Sec. 7. *1. Any over-collection must, if possible, be refunded by the taxpayer to the patron from whom it was collected.*

2. The taxpayer shall:

(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 1 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 paid. The accounting must be accompanied by any supporting documents required by the Board.

3. If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the Board for deposit in the State Treasury for credit to the State General Fund.

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

(a) Credit the over-collection toward any deficiency that results from the audit, if the taxpayer furnishes the Board with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 1.

(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.

5. As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 4 of NRS 368A.200 or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1, 2 and 3 of NRS 368A.200.

Sec. 8. *1. A taxpayer may request an advisory opinion from the Board concerning any matter relating to the tax imposed by NRS 368A.200.*

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

(a) A statement that the taxpayer is requesting an advisory opinion.

(b) Where applicable, the name of the facility or facilities where the live entertainment that is the subject of the advisory opinion is, or will be, provided.

(c) A succinct statement of all the facts and circumstances necessary for the Board 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 authority which the taxpayer believes may be relevant to the disposition of the request.

(f) A statement of the taxpayer's opinion of the proper disposition of the request, with supporting arguments and authorities.

3. After considering a request submitted pursuant to this section, the Board may issue a written advisory opinion on the subject or subjects contained in the request.

4. An advisory opinion issued pursuant to this section applies only to the taxpayer to whom it is issued and to the factual situation presented in the request, unless the advisory opinion explicitly states otherwise.

5. The Board, in its sole discretion, may publish an advisory opinion issued pursuant to this section. If the Board publishes an advisory opinion, the Board must publish only a version of the advisory opinion in which all references to the name of the taxpayer and the facility or facilities that are the subject of the advisory opinion have been removed.

6. The provisions of this section do not preclude a taxpayer from pursuing other remedies available to the taxpayer, including, without limitation, petitioning the Commission for a ruling pursuant to Regulation 2A of the Nevada Gaming Commission and the Nevada Gaming Control Board.

Sec. 9. NAC 368A.300 is hereby amended to read as follows:

368A.300 As used in NAC 368A.300 to 368A.540, inclusive, *and sections 2 to 8, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 368A.310 to 368A.390, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 10. NAC 368A.340 is hereby amended to read as follows:

368A.340 “Nonprofit organization” means any organization described in *paragraph (a) of subsection 2 of NRS 368A.200 or* paragraph ~~[(b)]~~ *(d)* of subsection ~~[(5)]~~ *4* of NRS 368A.200.

Sec. 11. NAC 368A.360 is hereby amended to read as follows:

368A.360 “Package” means any aggregation of rights to rooms, food, ~~refreshments,~~ *beverages*, merchandise, entertainment, services or other items which is advertised to the public as a single unit and sold for a single price.

Sec. 12. NAC 368A.400 is hereby amended to read as follows:

368A.400 For the purposes of chapter 368A of NRS ~~[(1)]~~ *and NAC 368A.300 to 368A.540, inclusive, and sections 2 to 8, inclusive, of this regulation*, the Board ~~[(will)]~~ *shall* interpret the term:

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

~~—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.~~

~~—5. “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 music” to include, without limitation, music on a cassette tape, compact disc, phonograph album, or video tape or disc, or on live television.~~

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

~~—7. “Trade show” to mean an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services or discussing matters of interest to members of that trade or industry.]~~ *“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 operator from any person who is not affiliated with the taxpayer or operator.*

4. *“Marketing or promotional activity” to mean an activity described in subparagraphs (1) to (8), inclusive, of paragraph (a) of subsection 2 of NRS 368A.090 that is provided for the primary purpose of drawing attention to a particular product, service or brand.*

5. *“Membership fee” to mean an amount paid for a membership that provides admission to a facility where live entertainment is provided.*

6. *“Performance” to mean the presentation of an activity described in subparagraphs (1) to (8), inclusive, of paragraph (a) of subsection 2 of NRS 368A.090 that is the primary reason for which a patron or patrons paid an admission charge to enter, or have access to, the facility. In determining whether an activity constitutes a performance pursuant to this subsection, the Board may consider, without limitation, the following factors:*

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

(b) Whether the activity garners the predominant attention of a patron or patrons of the facility.

7. *“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. For the purposes of this subsection and subparagraph (9) of paragraph (a) of subsection 2 of NRS 368A.090, the Board shall interpret the term “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.*

8. *“Service charge or any other fee or charge” to mean an amount imposed and received by, or on behalf of, a taxpayer or operator without the payment of which a patron could not obtain admission to a facility where live entertainment is provided. The term does not include an amount imposed and retained by a ticket broker or ticket service provider.*

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

Sec. 13. NAC 368A.410 is hereby amended to read as follows:

368A.410 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}~~ *Except as otherwise provided in subsection 2*, 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}~~ *is subject to the tax imposed by chapter 368A of NRS* when *the admission charge is paid in exchange for admission to* a facility ~~{for which an admission charge was required is completely vacated by admitted patrons or is opened to the general public free of any admission charge.~~

~~—2. For the purposes of this section, there is no distinction between any period of dining and any period of entertainment at a restaurant of a licensed gaming establishment which is not open on a continual time schedule and}~~ where *taxable* live entertainment is provided . ~~{and advertised as a dinner show.}~~

2. *A taxpayer may submit a written request to the Chair for approval of an alternative method of determining whether an admission charge is subject to the tax imposed by chapter 368A of NRS pursuant to this section. The Chair or the designee of the Chair may, in his or her discretion, approve or deny the request.*

Sec. 14. NAC 368A.420 is hereby amended to read as follows:

368A.420 ~~{1.}~~ 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, or have access to, a facility where live entertainment is provided*, unless the taxpayer establishes that the patron has received a full refund of the amount paid for the ~~ticket~~.

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

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

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

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

~~—(g) Applies, if an admission charge:~~

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

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

~~—2. As used in this section, “facility” means a facility where live entertainment is provided which has a maximum seating capacity of less than 7,500.] admission.~~

3. Does not apply to an admission charge paid after the conclusion of the last performance of the taxable live entertainment.

4. 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.

Sec. 15. NAC 368A.440 is hereby amended to read as follows:

368A.440 *1. For the purposes of subsection 4 of NRS 368A.020, the Board shall determine the maximum occupancy of a facility where live entertainment is provided pursuant to paragraph (b) of subsection 5 of NRS 368A.200.*

2. For the purposes of *subsection 1 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}~~ *must presume* that the actual seating capacity of the facility is at least ~~{300}~~ *200 persons* and less than 7,500 ~~{}~~ *persons*. 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 persons* or 7,500 *persons* or more. In determining whether the taxpayer has successfully rebutted the presumption, the Board ~~{will}~~ *shall* 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. 16. NAC 368A.450 is hereby amended to read as follows:

368A.450 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}~~ *beverages* or merchandise must be accounted for solely ~~to~~:

~~—(a) As~~ *as* part of the total amount paid for *the* taxable admission ~~{charges; or~~

~~—(b) As part of the total amount paid for taxable sales of food, refreshments and merchandise.}~~
charge.

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 the taxpayer or the operator, in exchange for the sale of an admission to a facility, including, without limitation, the proceeds of any service charge or other fee or charge, other than a fee excluded from the tax pursuant to paragraph (c) of subsection 2 of NRS 368A.200 that is imposed and received by, or on behalf of, the taxpayer or the operator.*

5. ~~Subject to the provisions of subsection 4 of NRS 368A.200, the~~ *The* tax on any taxable ~~ticket for~~ *admission to a facility where* live entertainment ~~for ticket redeemable for taxable food or refreshments~~ *is provided which is* 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.~~

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

6. The amount of any charge or fee excluded from the tax pursuant to subsection 3 or 4 of NRS 368A.020 must be determined from the actual amount imposed, collected and retained by the taxpayer or operator, and not from an estimate of that amount.

Sec. 17. NAC 368A.460 is hereby amended to read as follows:

368A.460 *1. The statement of the admission charge required ~~by~~ to be shown or displayed pursuant to 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, or have access to, the facility where the live entertainment is provided, excluding the amount of the tax imposed by NRS 368A.200.*

2. The taxpayer shall pay the tax imposed by NRS 368A.200 based on the admission charge shown or displayed pursuant to subsection 3 of NRS 368A.200.

3. For the purposes of this section and subsection 3 of NRS 368A.200, a receipt documenting the purchase of an admission to a facility where live entertainment is provided constitutes a ticket.

Sec. 18. NAC 368A.470 is hereby amended to read as follows:

368A.470 *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. Unless~~ *Except as otherwise provided in chapter 368A of NRS and NAC 368A.300 to 368A.540, inclusive, and sections 2 to 8, inclusive, of this regulation, 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,~~ *and the number of tickets to that live entertainment that are offered for sale or other distribution to patrons is less than 7,500,* the Board will assess and compute the excise tax in accordance with NAC 368A.450.

3. For the purpose of determining the number of tickets to live entertainment which are offered for sale or distribution to patrons pursuant to paragraph (a) of subsection 2 of NRS 368A.200 and paragraph (d) of subsection 4 of that section:

(a) A single ticket providing admission to more than one live entertainment event constitutes a ticket for each such event.

(b) A live entertainment event that is part of an offering of multiple live entertainment events and that requires a separate ticket for admission constitutes a separate live entertainment event.

Sec. 19. NAC 368A.480 is hereby amended to read as follows:

368A.480 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) . ~~for~~

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.

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

Sec. 20. NAC 368A.490 is hereby amended to read as follows:

368A.490 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}~~ *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}~~ *the Nevada* Gaming Control Board; ~~{and}~~

(b) Obtain and keep, or require the ~~{person that operates that facility}~~ *operator* to obtain and keep, any other pertinent records required by NAC 368A.300 to 368A.540, inclusive ~~{ }~~, *and sections 2 to 8, inclusive, of this regulation; and*

(c) Obtain and keep, or require the operator to obtain and keep, any executed contracts relating to the sale or distribution of admissions to the facility that have been entered into by the operator and a ticket service provider.

3. If live entertainment that is taxable under chapter 368A of NRS is provided at a facility within a shopping mall on the premises of a licensed gaming establishment and the shopping mall is owned by the person licensed to conduct gaming at that establishment, or by an affiliate of that person, the person licensed to conduct gaming at that establishment is responsible for the

payment of the tax and shall include all taxable amounts in the reports required by NRS 368A.220.

4. *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 preparation of accurate tax reports and compliance with the provisions of chapter 368A of NRS and NAC 368A.300 to 368A.540, inclusive, and sections 2 to 8, inclusive, of this regulation. The lack of a finding by the Board that a reporting policy or procedures of that person does not constitute approval or acceptance of the reporting policy or procedure.*

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

368A.500 1. A taxpayer , *operator or ticket service provider* shall:

~~1-1~~ (a) 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 , *operator or ticket service provider* uses an alternative accounting procedure approved by the Chair.

~~1-2~~

The taxpayer is responsible for:

(1) Ensuring that an operator or a ticket service provider selling admission to a facility where live entertainment is provided which is located on the premises of the taxpayer's licensed gaming establishment properly records all sales that are taxable pursuant to chapter 368A of NRS and creates and retains all required documentation.

(2) Obtaining and keeping detailed transaction reports of an operator or a ticket service provider selling or distributing taxable admissions to a facility where live entertainment is provided which is located on the premises of the taxpayer's licensed gaming establishment.

(b) 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.~~

~~—3.1~~ (c) Make its records available for audit by the Board at any reasonable time.

2. A taxpayer shall obtain and keep each contract entered into with an operator or a ticket service provider selling or distributing taxable admissions to a facility where live entertainment is provided which is located on the premises of the taxpayer's licensed gaming establishment.

Sec. 22. NAC 368A.510 is hereby amended to read as follows:

368A.510 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]~~ *the Nevada* Gaming Control Board, a description of the procedures adopted by the licensee to comply with NAC 368A.300 to 368A.540, inclusive ~~[1]~~, *and sections 2 to 8, inclusive, of this regulation;* and

(2) Comply with that system of internal control and any minimum standards for internal control for entertainment adopted by the Chair pursuant to Regulation 6.090 of the Nevada Gaming Commission and ~~{State}~~ *the 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 Chair pursuant to Regulation 6.100 of the Nevada Gaming Commission and ~~{State}~~ *the Nevada* Gaming Control Board.

↪ Except as otherwise approved in writing by the Chair, 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 Chair.

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 Chair, to determine compliance with the requirements for entertainment. The independent accountant shall report his or her findings as part of the report required by subsection 9 of Regulation 6.090 of the Nevada Gaming Commission and ~~{State}~~ *the 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 Chair, 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}~~ *Submit* to the Board within ~~{120}~~ *150* days after the ~~{last day of the final 6 months}~~ *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}~~ *the Nevada* Gaming Control Board.

(b) “Requirements for entertainment” means the provisions of *chapter 368A of NRS*, NAC 368A.300 to 368A.540, inclusive, ~~{chapter 368A of NRS}~~ *and sections 2 to 8, inclusive, of this regulation*, and any minimum standards for internal control for entertainment adopted by the Chair.

Sec. 23. NAC 368A.330 and 368A.430 are hereby repealed.

TEXT OF REPEALED SECTIONS

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.

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.