

Legislative Committee on Taxation, Public Revenue and Tax Policy



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**LEGISLATIVE COMMITTEE ON TAXATION, PUBLIC REVENUE AND TAX
POLICY**

Nevada Revised Statutes 218.53741

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Assemblyman David R. Parks, Vice Chairman
Senator Bob Coffin
Senator William J. Raggio
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SUMMARY OF RECOMMENDATIONS

LEGISLATIVE COMMITTEE ON TAXATION, PUBLIC REVENUE AND TAX POLICY

(Nevada Revised Statutes 218.53741)

This summary presents the recommendations approved by the Legislative Committee on Taxation, Public Revenue and Tax Policy at its meeting on August 24, 2004 in Carson City. The Committee will submit these proposals to the 73rd Session of the Nevada Legislature.

BUSINESS LICENSE FEE

1. Draft legislation amending the statutes for the annual Business License Fee (NRS Chapter 360), authorizing the Department of Taxation to:
 - a. allow an individual with multiple businesses to establish a common anniversary date mutually agreed upon by the taxpayer and the Department of Taxation for the submission of the \$100 annual renewal fee for each business on that anniversary date;
 - b. allow for the pro-ration of the \$100 annual renewal fee for those businesses for which the \$100 Business License Fee has been paid for a partial year, based on the anniversary date established for all businesses;
 - c. allow for the pro-ration of the original \$100 Business License Fee required for any additional new businesses licensed by an individual who has established a common anniversary date with the Department of Taxation, with the pro-ration based on the established anniversary date. (BDR 683)
2. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360), specifying that a natural person is required to obtain only one business license for multiple business activities reported to the Internal Revenue Service on the schedules cited in NRS 360.785. (BDR 683)
3. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360) that:
 - a. eliminates NRS 360.770, which defines an employee;
 - b. eliminates the provision in paragraph (c) of subsection 2 of NRS 360.780 requiring a business to report an estimate of the number of employees to the Department of Taxation when paying the annual Business License Fee;

- c. eliminates the provision in subsection 4 of NRS 360.795 that requires the Director of the Department of Taxation to report the number of employees to the Division of Industrial Relations of the Department of Business and Industry. (BDR 683)
- 4. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360) to specify that the term “earns” in paragraph (c) of subsection 2 of NRS 360.765 means “net earnings.” (BDR 683)
- 5. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360) that specifies:
 - a. a person or governmental entity that operates a facility at which craft shows, exhibitions, trade shows, conventions or sporting events are held is responsible for the payment of the Business License Fee for those persons who do not have a business license;
 - b. the entity operating the facility where the craft show, exhibition, trade show, convention or sporting event can pay the Business License Fee in one of two ways:
 - (1) as an annual flat fee of \$5,000 on or before July 1 for all shows held at the facility during that fiscal year, or
 - (2) on a per-show or event basis equal to the product of the total number of businesses taking part in the show or event that do not have a business license, multiplied by the number of days the show or event is held, multiplied by \$1.25, payable to the Department of Taxation on a quarterly basis. (BDR 683)
- 6. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360), providing an exemption from the Business License Fee for a person who derives rental income from four or fewer dwelling units. (BDR 683)
- 7. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360), removing the exemption for businesses that create or produce motion pictures (as defined in NRS 231.020) from the Business License Fee. (BDR 683)

MODIFIED BUSINESS TAX

- 8. Draft legislation amending the statutes for the Modified Business Tax (NRS Chapter 363B) and the Modified Business Tax on Financial Institutions (NRS Chapter 363A), indicating the tax does not apply to things the state is prohibited from taxing under the Constitution or laws of the United States or the Nevada Constitution. (BDR 683)

9. Draft legislation amending the statutes for the Modified Business Tax (NRS Chapter 363B) and the Modified Business Tax on Financial Institutions (NRS Chapter 363A), eliminating the requirement for a taxpayer to submit a copy of his/her quarterly unemployment insurance tax form along with the Modified Business Tax form filed with the Department of Taxation each quarter. (BDR 683)
10. Draft legislation amending the statutes for the Modified Business Tax (NRS Chapter 363B) and the Modified Business Tax on Financial Institutions (NRS Chapter 363A), to include in statute the following definitions adopted in regulations for implementing the healthcare deduction allowed under the Modified Business Tax and the Modified Business Tax on Financial Institutions :
 - a. "Claims" to mean claims for those categories of healthcare expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses were borne directly by those employees.
 - b. "Direct administrative services costs" to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:
 - (1) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;
 - (2) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;
 - (3) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;
 - (4) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;
 - (5) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or direct administration of claims; and
 - (6) The depreciation of property other than medical or office supplies used for the provision of medical care or the direct administration of claims.
 - c. "Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by NRS 363A.130 and

their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.

- d. "Health benefit plan" to mean a health benefit plan that covers only those categories of healthcare expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses were borne directly by those employees.
 - e. "Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan" to mean any amounts which are:
 - (1) Paid by an employer to a Taft-Hartley trust which:
 - (a) Is formed pursuant to 29 U.S.C. § 186(c)(5);
 - (b) Qualifies as an employee welfare benefit plan as that term is defined in 29 U.S.C. § 1002; and
 - (2) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code. (BDR 683)
11. Draft legislation amending the statutes for the Modified Business Tax (NRS Chapter 363B), to exempt the wages paid by individuals to employees who provide in-home domestic healthcare services to their employer or family members of the employer. (BDR 683)
12. Draft legislation amending the statutes for the Modified Business Tax on Financial Institutions (NRS Chapter 363A), replacing current statutory language for defining financial institutions relying on the North American Industrial Classification System (NAICS) definitions with language defining a financial institution based upon the licensing, registration, or other state or federal requirements for doing business. (BDR 716)

LIVE ENTERTAINMENT TAX

13. Draft legislation amending the statutes for the Live Entertainment Tax (LET) (NRS Chapter 368A), to provide the Gaming Commission with the regulatory authority over the gaming portion of the Live Entertainment Tax. (BDR 683)
14. Draft legislation amending the statutes for the Live Entertainment Tax (NRS Chapter 368A) to specify that the tax is based on maximum occupancy of the facility, not maximum seating capacity. (BDR 683)

15. Draft legislation amending the statutes for the Live Entertainment Tax (NRS Chapter 368A), to provide an exemption for food and product demonstrations conducted at shopping malls, craft shows, membership stores, and similar facilities. (BDR 683)
16. Draft legislation amending the statutes for the Live Entertainment Tax (NRS Chapter 368A), exempting a nonprofit organization from the Live Entertainment Tax on the purchase price of a ticket to a live entertainment event when a for-profit entity sells tickets at a discount to the nonprofit organization for resale by the nonprofit, with the difference benefiting the nonprofit organization. (BDR 683)

NEVADA TAX COMMISSION

17. Draft legislation amending NRS 360.050 to make the salary of the chairperson of the Nevada Tax Commission \$55,000 per year and the salary of the other seven members of the Nevada Tax Commission \$40,000 per year. (BDR 683)

TAXPAYERS' BILL OF RIGHTS

18. Draft legislation amending the statutes for the Taxpayers' Bill of Rights (NRS Chapter 360) that would:
 - a. make the provisions of the Taxpayers' Bill of Rights (NRS 360.291) applicable to:
 - (1) the Insurance Premium Tax administered by the Nevada Tax Commission covered under Title 57, Chapter 680B of the NRS;
 - (2) the Short-Term Car Rental Tax administered by the Nevada Tax Commission covered under Title 43, Chapter 482 of the NRS;
 - (3) the fuel taxes administered by the Department of Motor Vehicles covered under Title 32, Chapters 365 and 366 of the NRS;
 - b. change the dissemination requirements for the Taxpayers' Bill of Rights in NRS 360.292 by:
 - (1) eliminating the provision requiring a pamphlet on the Taxpayers' Bill of Rights be distributed to each taxpayer on record; and
 - (2) requiring the Taxpayers' Bill of Rights be made available to taxpayers and the public on the websites and at the offices of the Department of Taxation, the Department of Motor Vehicles, and at public libraries. (BDR 683)

**REPORT TO THE 73RD SESSION OF THE NEVADA LEGISLATURE
OF THE LEGISLATIVE COMMITTEE ON TAXATION,
PUBLIC REVENUE AND TAX POLICY**

I. INTRODUCTION

The Legislative Committee on Taxation, Public Revenue, and Tax Policy is a statutorily created committee of the Nevada Legislature that consists of eight members whose duties and responsibilities are set forth in Chapter 218 of the *Nevada Revised Statutes*. The Speaker of the Assembly and the Senate Majority Leader must each appoint two individuals who were members of the respective standing committees on taxation during the 72nd Session of the Nevada Legislature. The other four members are the Speaker of the Assembly, the Minority Leader of the Assembly, the Majority Leader of the Senate, and the Minority Leader of the Senate, or a member designated by each position from their respective houses. Under current statute, the Committee is set to expire on June 30, 2005. A copy of the statutory provisions that create and set forth the power and duties of the Committee (NRS 218.5374 to 218.53749, inclusive) is provided in Appendix A.

A. COMPOSITION OF THE COMMITTEE

The Speaker of the Assembly, Minority Leader of the Assembly, Senate Majority Leader, and the Minority Leader of the Senate appointed the following eight legislators to the Committee for the 2003-05 biennium:

Senator Mike McGinness, Chairman
Assemblyman David R. Parks, Vice Chairman
Senator Bob Coffin
Senator William J. Raggio
Senator Randolph J. Townsend
Assemblyman David Goldwater
Assemblyman Lynn Hettrick
Assemblywoman Valerie Weber

Legislative Counsel Bureau (LCB) staff services for the Committee were provided by Russell Guindon, Deputy Fiscal Analyst, Fiscal Analysis Division; Ted Zuend, Deputy Fiscal Analyst, Fiscal Analysis Division; Brenda Erdoes, Legislative Counsel, Legal Division; Sherie Silva, Assistant Office Manager, Fiscal Analysis Division; and Linda Smith and Carol Thomsen, Interim Secretaries, Fiscal Analysis Division.

B. OVERVIEW OF THE COMMITTEE PROCEEDINGS

During the 2003-04 interim, the Committee conducted four meetings. Two of the meetings were held in Las Vegas with videoconferencing to Carson City, and the other

two meetings were held in Carson City with videoconferencing to Las Vegas. Following is a summary of the issues presented and considered by the Committee at its meetings:

- The duties and responsibilities of the Committee as directed in Senate Bill 8 (S.B. 8) of the 20th Special Session were reviewed and discussed.
- The Committee received a report of actual General Fund revenue collections for FY 2004 compared to the projected amounts, with emphasis on those revenue sources that were modified or newly established in Senate Bill 2, Senate Bill 8 or Assembly Bill 4 of the 20th Special Session.
- Barbara Smith Campbell, Chairwoman, Nevada Tax Commission, and Chuck Chinnock, Director, Department of Taxation, provided information on the status of implementing and developing regulations for the new taxes adopted in Senate Bill 8 of the 20th Special Session: Live Entertainment Tax, Real Property Transfer Tax, Business License Fee, Modified Business Tax, and Modified Business Tax on Financial Institutions . Mr. Chinnock also provided updates on year-to-date collections from the taxes increased and the new taxes approved during the 20th Special Session.
- Chuck Chinnock, Director, Department of Taxation, provided updates at each meeting on the status of the department's progress in developing the new computer Unified Tax System (UTS) to administer and collect the taxes the department has a statutory authority to collect, including the new taxes approved in Senate Bill 8.
- Dennis Neilander, Chairman, Gaming Control Board, provided an overview of the performance of the state's gaming markets and the tax collections generated from the increase in the Gross Gaming Percentage Fees Tax and the Quarterly Restricted Slot Tax approved in Senate Bill 8. Mr. Neilander also updated the Committee on the Gaming Control Board and Gaming Commission's efforts to implement and develop regulations for the Live Entertainment Tax imposed on licensed gaming facilities.
- Scott Anderson, Deputy Secretary of State, Commercial Recordings Division, Secretary of State, presented information on the status of implementing the fee changes and increases adopted in Senate Bill 2 and Assembly Bill 4 of the 20th Special Session. Mr. Anderson also offered the Committee information on the status of filing activity occurring in the Secretary of State's Office before and after the fee changes. In his testimony, Mr. Anderson stated it could take a year or more to realize the impacts of the fee changes and increases on filing activity in Nevada, especially since the fees were also increased during the 2001 Legislative Session.
- Guy Hobbs, Hobbs, Ong and Associates, addressed the Committee regarding the model developed by the Governor's Task Force on Tax Policy in Nevada to

perform the analysis included in the Task Force's report submitted to the Governor and 2003 Legislature. Mr. Hobbs stated that one of the Task Force's recommendations was to maintain and update the model. Given this desire, Mr. Hobbs offered to provide the model used by the Task Force to the staff of the Fiscal Analysis Division. Mr. Hobbs indicated the model could be maintained by Fiscal staff, and he offered his assistance in transferring and setting up the model.

- Jeremy Aguero, Applied Analysis, presented the Committee with information on the status of the database and model developed and used to conduct the analysis for the Governor's Task Force on Tax Policy in Nevada. Mr. Aguero reiterated Mr. Hobbs' offer to provide a copy of the database and model to staff of the Fiscal Analysis Division and also indicated his willingness to assist staff as necessary to transfer and establish a system to maintain and update the database and model.
- During the 2003-04 interim, the database and model were provided to the Fiscal Analysis Division by Jeremy Aguero, Applied Analysis. The Committee moved to request authorization for an allocation of \$10,000 of the \$100,000 appropriated in Senate Bill 8 to the Committee to establish a contract with Mr. Aguero, if necessary, to accommodate the upgrading, maintenance, and usability of the database and model developed by the Governor's Task Force on Tax Policy in Nevada.
- Carole Vilardo, President, Nevada Taxpayers' Association, testified on several issues before the Committee and requested the Committee's consideration of proposed changes regarding the Business License Fee, Modified Business Tax, Modified Business Tax on Financial Institutions, Live Entertainment Tax, Short-term Car Rental Tax, and other tax-related areas.
- Ray Bacon, Nevada Manufacturers Association, provided information for the Committee's consideration on the healthcare deduction allowed under the Modified Business Tax and Modified Business Tax on Financial Institutions.
- Mary Lau, Executive Director, Retail Association of Nevada; Jim Wadhams, Wadhams and Akridge; John Sande, Jones Vargas; and Mariel Gioleto, President and Chief Executive Officer, Credit Bureau Central, testified before the Committee regarding their concerns with the implementation and interpretation of the provisions of the Modified Business Tax on Financial Institutions.
- Mark Dagel, President and Chief Executive Officer, Nevada Region of Colonial Bank, and Barry Smith, President and Chief Executive Officer, Nevada Bank and Trust Company, acting as representatives of Nevada's banking industry, provided testimony regarding their industry's concerns about the potential impact of the two percent tax on financial institutions and the \$7,000 annual branch bank excise tax approved in Senate Bill 8 of the 20th Special Session.

- Luke Puschnig, Legal Counsel, Las Vegas Convention and Visitors Authority, and Jo Elle Hurns, Director, Laughlin Chamber of Commerce, expressed their concerns regarding the \$100 annual Business License Fee charged exhibitors and participants at craft shows and certain special events and the potential negative impact on these events in the state.
- Per the duties and responsibilities stated in Section 192 of S.B. 8, the Committee directed staff to review and study the impact the Live Entertainment Tax has had on the revenue received from special events conducted in the state and whether the imposition of the tax has caused promoters to move certain special events outside the state. The report prepared by staff at the request of the Committee is included in this bulletin as Item III.
- For the August 24, 2004 Committee meeting, staff prepared a working session document containing recommendations for the Committee's consideration regarding proposed technical and policy changes to the Business License Fee, Modified Business Tax, Modified Business Tax on Financial Institutions, Live Entertainment Tax, and other tax-related issues. The recommendations were developed based on testimony provided to the Committee and the members' discussions regarding each issue. The recommendations adopted by the Committee for inclusion in bill draft requests to be brought forward for consideration by the 2005 Legislature are presented in the next section.

For more detailed information on the Committee, please consult the minutes and exhibits from the meetings, which are available from the Legislative Counsel Bureau's Research Library. The minutes (excluding exhibits) and a copy of this report are available electronically on the Legislature's website at www.leg.state.nv.us.

II. RECOMMENDATIONS FOR THE 2005 LEGISLATIVE SESSION

At its August 24, 2004 meeting, the Legislative Committee on Taxation, Public Revenue and Tax Policy approved two bill draft requests to be considered by the 2005 Legislature. The majority of the Committee's recommendations proposed adjustments to three of the new taxes or fees approved in Senate Bill 8 during the 20th Special Session. The recommendations of the Committee address the following areas:

- Technical adjustments and policy changes:
 - Business License Fee
 - Modified Business Tax
 - Modified Business Tax on Financial Institutions
 - Live Entertainment Tax
- Increasing the salaries of the members of the Nevada Tax Commission
- Changing the provisions of the Taxpayers' Bill of Rights

All of the recommendations, except for Recommendation Number 12, are included in one bill draft request (BDR 683). The Committee requested that Recommendation Number 12 be included in a separate bill draft request (BDR 716). Recommendation Number 12 proposes to amend the method for defining financial institutions for the purposes of the Modified Business Tax on Financial Institutions.

During the working session on August 24, 2004, the Committee considered recommendations to change the provisions of the Real Property Transfer Tax (RPTT) to allow county recorders to request legal opinions on the interpretation of the RPTT from the Department of Taxation or directly from the Attorney General, and to change certain provisions of the Short-Term Car Rental Tax to provide more consistency in the assessment of the state and local option rates. The Committee did not take action to include recommendations on these two issues in the bill draft request.

A. RECOMMENDATIONS REGARDING CHANGES TO THE BUSINESS LICENSE FEE (NRS 360.760 to 360.795)

During the course of the Committee's work, testimony was provided by several groups, including the Nevada Taxpayers' Association, Las Vegas Convention and Visitors Authority, and the Laughlin Chamber of Commerce, regarding issues with the new Business License Fee approved in Senate Bill 8. The Committee recommended several technical and policy changes to the Business License Fee to address some of the issues discussed during testimony. For reference, the statutes for the Business License Fee (NRS 360.790 to 360.795, inclusive) are included in Appendix B.

1. Draft legislation amending the statutes for the annual Business License Fee (NRS Chapter 360), authorizing the Department of Taxation to:

- a. allow an individual with multiple businesses to establish a common anniversary date mutually agreed upon by the taxpayer and the

Department of Taxation for the submission of the \$100 annual renewal fee for each business on that anniversary date;

- b. allow for the pro-ration of the \$100 annual renewal fee for those businesses for which the \$100 Business License Fee has been paid for a partial year, based on the anniversary date established for all businesses;**
- c. allow for the pro-ration of the original \$100 Business License Fee required for any additional new businesses licensed by an individual who has established a common anniversary date with the Department of Taxation, with the pro-ration based on the established anniversary date. (BDR 683)**

Background for Recommendation

Under the current statute (subsection 5 of NRS 360.780), the renewal or anniversary date for the annual \$100 Business License Fee is the last day of the month in which the initial \$100 license fee was paid and the business license was issued. An individual having multiple businesses originally licensed on different dates would have multiple anniversary dates on which the \$100 annual renewal fee would be due for each business.

Carole Vilardo, Nevada Taxpayers' Association, testified that allowing an individual to select a common anniversary date for renewing multiple businesses each year could create a more efficient reporting and collection system, benefiting not only owners of multiple businesses, but also third-party entities, such as accountants, attorneys, and resident agents handling the various statutory taxes and fees. Ms. Vilardo stated the proposed change may minimize the potential of a business missing a renewal date and becoming delinquent and incurring the \$100 penalty.

This recommendation would authorize the Department of Taxation to allow individuals with multiple businesses to establish a common anniversary date for the submission of the \$100 annual Business License Fee for each business on the established date. The Department of Taxation could, through regulation, create a process for establishing an anniversary date mutually agreed upon by the taxpayer and the department, as well as a process to allow for the pro-ration of the fee for those businesses that have already paid the \$100 fee prior to the establishment of a common anniversary date. This recommendation also allows the Department of Taxation to establish, through regulation, a process to provide for the pro-ration of the initial Business License Fee for any additional new businesses licensed by an individual who has established a common anniversary date with the department for paying the annual Business License Fee for all businesses.

Staff noted that the change in the timing of the collections during the initial fiscal year a common anniversary date is established would result in a fiscal impact due to the pro-ration of the \$100 fee for those businesses that have already paid the Business License Fee. Given the lack of information available on the number of individuals and businesses that would use this option if approved, staff was not able to provide the

Committee with an actual estimate of the fiscal impact. However, staff indicated the potential impact in any particular fiscal year would probably be minimal.

- 2. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360), specifying that a natural person is required to obtain only one business license for multiple business activities reported to the Internal Revenue Service on the schedules cited in NRS 360.785.**

Background for Recommendation

Under current statute, NRS 360.785 deems the activities conducted by a natural person to be a business subject to the Business License Fee if the person is required to file a Schedule C, E, or F with the Internal Revenue Service (IRS). Schedule C is the IRS form for reporting a profit or loss from business; Schedule E is the form for reporting supplemental income or loss; and Schedule F is for reporting profit or loss from farming.

The Nevada Tax Commission adopted regulations, NAC 360.764, which were ratified by the Legislative Commission, providing that a natural person is not required to obtain more than one business license if the person conducts a combination of activities reported on multiple schedules to the IRS for any one tax year. The regulations adopted by the Nevada Tax Commission for implementing the Business License Fee are provided in Appendix C.

Carole Vilardo, Nevada Taxpayers' Association, requested that the regulatory language adopted by the Nevada Tax Commission be placed in statute to provide a clear understanding of when the Business License Fee is required to be paid by individuals who file the specified IRS forms. Ms. Vilardo stated this was important, as an individual could review the statutes to determine tax liabilities but may not be aware of the Department of Taxation's regulations in the Nevada Administrative Code.

By codifying the regulatory language adopted by the Nevada Tax Commission, this recommendation provides in statute that a natural person conducting multiple activities that are reported to the IRS on more than one schedule specified in NRS 360.785 is required to obtain only one business license for these multiple activities. During discussion regarding the adoption of this recommendation, the Committee made it clear that a natural person conducting activities that can be specifically identified as a business is required to obtain a separate business license.

Staff informed the Committee that there is no fiscal impact, as this recommendation is placing in statute the regulation used by the Department of Taxation to determine the liability for the Business License Fee of a natural person conducting activities requiring the filing of multiple schedules with the IRS.

- 3. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360) that:**
 - a. eliminates NRS 360.770, which defines an employee;**

- b. eliminates the provision in paragraph (c) of subsection 2 of NRS 360.780 requiring a business to report an estimate of the number of employees to the Department of Taxation when paying the annual Business License Fee;**
- c. eliminates the provision in subsection 4 of NRS 360.795 that requires the Director of the Department of Taxation to report the number of employees to the Division of Industrial Relations of the Department of Business and Industry.**

Background for Recommendation

Under current statutory language in Chapter 360 for the Business License Fee, a definition of an employee is provided, along with the requirement that a business report an estimate of the number of employees to the Department of Taxation when paying the annual Business License Fee. The Department of Taxation is also required to report the number of employees reported by the business to the Department of Business and Industry.

Based on testimony provided by Carole Vilardo, Nevada Taxpayers' Association, and information provided by staff and the Director of the Department of Taxation, the Committee concluded these statutory requirements concerning the definition of an employee and the employee reporting requirements have no formal function regarding the Business License Fee and can be eliminated from statute. The language was previously required for the Business License Tax that was repealed in Senate Bill 8, but is not needed for the Business License Fee.

- 4. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360) to specify that the term “earns” in paragraph (c) of subsection 2 of NRS 360.765 means “net earnings.”**

Background for Recommendation

The provisions for the Business License Fee include an “earnings test” to determine whether a person operating a home-based business has a liability to pay the annual Business License Fee. Per statute, paragraph (c) of subsection 2 of NRS 360.765 (cited below), the “earnings test” is based on 66-2/3 percent of the state’s average annual wage criterion:

c) A person who operates a business from his home and earns from that business not more than 66-2/3 percent of the average annual wage, as computed for the preceding calendar year pursuant to [Chapter 612 of NRS](#) and rounded to the nearest hundred dollars.

If a person conducting a home-based business “earns” less than 66-2/3 percent of his annual average wage (as determined under the provisions of the unemployment insurance tax in NRS Chapter 612), the individual is not required to pay the annual Business License Fee. The regulations approved by the Nevada Tax Commission and ratified by the Legislative Commission (NAC 360.766 and 360.768) regarding the

earnings test for a home-based business specify that the earnings be based on net earnings.

The Committee concluded the term “net earnings” adopted by the Nevada Tax Commission captures the legislative intent of the term “earns” used in statute. This recommendation would specify in statute that the term “earns” means “net earnings” with regard to the 66-2/3 percent of the state’s average annual wage criterion used to determine liability for a home-based business under the \$100 annual Business License Fee. The Committee’s goal is to provide conformity in statute with the “net earnings” language in NAC 360.766 and NAC 360.768, approved by the Nevada Tax Commission and ratified by the Legislative Commission.

5. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360) that specifies:

- a. a person or governmental entity that operates a facility at which craft shows, exhibitions, trade shows, conventions or sporting events are held is responsible for the payment of the Business License Fee for those persons who do not have a business license;**
- b. the entity operating the facility where the craft show, exhibition, trade show, convention or sporting event is held can pay the Business License Fee in one of two ways:**
 - (1) as an annual flat fee of \$5,000 on or before July 1 for all shows held at the facility during that fiscal year, or**
 - (2) on a per-show or event basis equal to the product of the total number of businesses taking part in the show or event that do not have a business license, multiplied by the number of days the show or event is held, multiplied by \$1.25, payable to the Department of Taxation on a quarterly basis.**

Background for Recommendation

As the statutes for the Business License Fee are currently written, each exhibitor is required to obtain a business license and pay the \$100 annual fee to participate in craft shows, exhibitions, or sporting events, which are generally of limited duration. An individual is required to pay the \$100 fee for a twelve-month period, whether the individual conducts business at only one show or multiple events in that twelve-month period.

Luke Pusching, Legal Counsel, Las Vegas Convention and Visitors Authority, expressed concern that public events such as the Harvest Festival, craft shows, exhibitions, and sporting events might be driven out of Nevada because of the imposition of the \$100 Business License Fee on each participant or exhibitor at the event. Two letters provided to the Committee by Mr. Puschnig are included under

Appendix D - one from a representative of the Harvest Festival and one regarding the Las Vegas BikeFest event - expressing concerns with the imposition of the \$100 Business License Fee on these events.

Jo Elle Hurns, representing the Laughlin Tourism Committee, provided a letter to the Committee (also included in Appendix D), expressing concerns that the imposition of the \$100 fee will cause individuals to choose not to participate in the different events held in the Laughlin area.

Mr. Puschnig cited the prior statutory provision that was repealed in S.B. 8, NRS 364A.152, which allowed the operator of the facility in which the show or exhibition is held to pay an annual fee of \$5,000, or an amount for each show based on the number of entities taking part in the show, times the number of days of the show, times \$1.25. Mr. Puschnig requested that the Committee consider a similar type of provision for the current Business License Fee, in which the operator of the facility would pay a flat fee or alternative fee in lieu of each individual exhibitor being subject to the Business License Fee.

After considering testimony, letters provided to the Committee, and information presented by staff, the Committee recommended that language similar to that for the repealed Business License Tax be included in the bill draft request for the Business License Fee. This recommendation provides an alternative for entities holding events with numerous participants to pay the Business License Fee in lieu of requiring each participant to obtain a business license to conduct business on a temporary basis at a craft show, exhibition, trade show, convention, sporting event or similar event. The provisions of the recommendation are as follows:

- An entity putting on craft shows, exhibitions, trade shows, conventions or sporting events would have the option to pay an annual flat fee of \$5,000, or a fee of \$1.25 per day for each day of the event, times the number of participating businesses that do not have a business license.
- The operator of the facility would be responsible for remitting the proper amount to the Department of Taxation, if paid on the \$1.25 per-day basis.
- The \$5,000 annual fee would be due on or before July 1 for all events held at the facility during that fiscal year.
- If paid on the \$1.25 per-day per-participant basis, the payment could be made on a quarterly basis to the Department of Taxation.

Staff indicated the implementation of this recommendation would produce a negative fiscal impact on the state's General Fund revenues, but staff did not have sufficient information available to provide an actual estimate of the fiscal impact.

6. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360), providing an exemption from the Business License Fee for a person who derives rental income from four or fewer dwelling units.

Background for Recommendation

Generally, individuals who derive income from the rental of dwelling units report this income on Schedule E of the Internal Revenue Service (IRS) tax forms. Under NRS 360.785, a natural person required to file a Schedule E form is deemed to be a business for the purposes of the Business License Fee and is required to pay the \$100 annual fee. Under the current statutory language, the liability for the Business License Fee for individuals who derive residential rental income is based on their filing a Schedule E with the IRS to report this income, regardless of how many dwelling units the individual may own.

Carole Vilardo, Nevada Taxpayers' Association, testified that individuals who own a few residential dwelling units, but would not be considered to be in the rental business, are required to obtain a business license because a Schedule E is filed with their IRS tax return. Ms. Vilardo recommended that the Committee consider providing an exemption from the Business License Fee for individuals generating rental income from a small number of units. She noted that four or fewer dwelling units is the standard used in statute to determine the existence of a tax liability under the business personal property tax on household furnishings in rental property.

Staff reported there would be a potential negative fiscal impact to the state's General Fund revenues from the exemption of individuals having four or fewer rental dwelling units who are currently required to pay the \$100 Business License Fee. Staff did not have sufficient information available to provide an actual estimate of the fiscal impact, but indicated that the potential impact should not be significant.

7. Draft legislation amending the statutes for the Business License Fee (NRS Chapter 360), removing the exemption for businesses that create or produce motion pictures (as defined in NRS 231.020) from the Business License Fee.

Background for Recommendation

Under prior statute, businesses that create or produce motion pictures were exempt from paying the repealed Business License Tax and \$25 one-time Business License Fee. Chapter 364A, repealed by Senate Bill 8, included the language for the initial one-time business license filing fee of \$25 and the quarterly Business License Tax based on the number of full-time equivalent employees.

Under the language approved in S.B. 8, businesses that create or produce motion pictures are exempt from the \$100 Business License Fee (NRS Chapter 360), but are required to pay the Modified Business Tax (NRS Chapter 363B). As the language from Chapter 364A was used to construct the language for the \$100 annual Business License Fee in Chapter 360, the provision excluding businesses that create or produce

motion pictures was carried forward, since there was no explicit decision made to remove it from the provisions of the new Business License Fee.

Whether a business is subject to the provisions of the Modified Business Tax is linked to if the entity is required to pay the unemployment insurance compensation tax in NRS Chapter 612. As there was no specific legislative request made during the 20th Special Session to exempt businesses that produce motion pictures, they are subject to the provisions of the Modified Business Tax if they are required to report and pay unemployment insurance taxes on wages paid to their employees.

Carole Vilardo, Nevada Taxpayers' Association, requested clarification regarding the exemption from the Business License Fee but inclusion under the Modified Business Tax. She did not advocate for the inclusion or exclusion of motion picture businesses, but she questioned why they were deemed to be a business for the purpose of the Modified Business Tax, but were not a business under the provisions of the Business License Fee.

Bob Shriver, Director of the Nevada Commission on Economic Development, provided the Committee with a letter (Appendix E) indicating concerns with the potential impact on the state's ability to attract businesses producing motion pictures, given the Legislature's decision to include them under the provisions of the Modified Business Tax and potential inclusion under the \$100 annual Business License Fee.

The Committee adopted a recommendation to remove the exemption from the \$100 annual Business License Fee for businesses that create or produce motion pictures. Staff indicated that this recommendation would produce a minor positive impact on the state's General Fund revenues due to inclusion of these types of businesses in the tax base. Due to the lack of information on the number of motion picture businesses operating in Nevada in any given year, staff was unable to provide the Committee with an actual estimate of the positive fiscal impact.

B. RECOMMENDATIONS REGARDING CHANGES TO THE MODIFIED BUSINESS TAX (NRS CHAPTER 363B) AND MODIFIED BUSINESS TAX ON FINANCIAL INSTITUTIONS (NRS CHAPTER 363A)

During the course of the Committee's work, testimony was provided by several groups, including the Nevada Taxpayers' Association, Nevada's banking sector, and Nevada's Collection Agencies Association regarding issues with the new Modified Business Tax (NRS Chapter 363B) and Modified Business Tax on Financial Institutions (NRS Chapter 363A) approved in Senate Bill 8. The Committee recommended technical and policy changes to both the Modified Business Tax and Modified Business Tax on Financial Institutions to address some of the issues offered through testimony provided to the Committee. For reference, the statutes for the Modified Business Tax (NRS Chapter 363B) and Modified Business Tax on Financial Institutions (NRS Chapter 363A) are included in Appendix F.

- 8. Draft legislation amending the statutes for the Modified Business Tax (NRS Chapter 363B) and the Modified Business Tax on Financial Institutions (NRS Chapter 363A), indicating the tax does not apply to things the state is prohibited from taxing under the Constitution or laws of the United States or the Nevada Constitution.**

Background for Recommendation

Carole Vilardo, Nevada Taxpayers' Association, testified that a review of Senate Bill 8 revealed that the preemptive language regarding Constitutional and statutory exemptions provided for other taxes was not included in the statutory sections for the Modified Business Tax and Modified Business Tax on Financial Institutions . Based on Ms. Vilardo's testimony, the Committee recommended making the requested technical adjustment to the statutes for these two taxes.

- 9. Draft legislation amending the statutes for the Modified Business Tax (NRS Chapter 363B) and the Modified Business Tax on Financial Institutions (NRS Chapter 363A), eliminating the requirement for a taxpayer to submit a copy of his/her quarterly unemployment insurance tax form along with the Modified Business Tax form filed with the Department of Taxation each quarter.**

Background for Recommendation

Under the statutory language approved in Senate Bill 8 for the Modified Business Tax and Modified Business Tax on Financial Institutions, a taxpayer is required to file with the Department of Taxation a copy of the report filed with the Employment Security Division (ESD) of the Department of Employment, Training, and Rehabilitation for reporting wages subject to the unemployment insurance tax (NRS Chapter 612). This provision was included, as the liability for the Modified Business Tax is based on the wages required to be reported to ESD for the unemployment insurance tax. The requirement provides a link between the reporting of wages to ESD and the wages required to be reported to the Department of Taxation for the purposes of the Modified Business Tax and Modified Business Tax on Financial Institutions.

In implementing the provisions of Senate Bill 8 with regard to the Modified Business Tax, the Department of Taxation determined it was not necessary to have each taxpayer file a copy of this report, as the information can be obtained from the Employment Security Division if needed. The Nevada Tax Commission adopted a regulation (shown below) regarding the use of an intergovernmental agreement with the Employment Security Division to obtain information on a taxpayer's unemployment insurance tax return instead of requiring taxpayers to provide a copy of their unemployment insurance tax return to the Department of Taxation each quarter.

Subsection 1 of NAC 363B.140 of the regulations adopted by the Nevada Tax Commission and ratified by the Legislative Commission for the Modified Business Tax (NRS 363B):

An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of NRS 363B.110 if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department will notify an employer if the Department is unable to obtain that information pursuant to such an agreement.

Carole Vilardo, Nevada Taxpayers' Association, asked the Committee to consider eliminating the taxpayer's reporting requirement in the statutes for the Modified Business Tax and Modified Business Tax on Financial Institutions . Ms. Vilardo stated that deleting this requirement would align the statutory provision with the actual practice implemented by the Department of Taxation and the regulations adopted by the Nevada Tax Commission.

Chuck Chinnock, Director of the Department of Taxation, reported that the department was not requiring the taxpayer to provide a copy of the unemployment insurance tax form each quarter, as it does not affect the administration and collection of the tax and the reporting requirements for the taxpayer and the department are reduced. Mr. Chinnock also noted that the information can be obtained via the intergovernmental agreement with the Employment Security Division, but the department still has the statutory authority to request information from a taxpayer if necessary.

The Committee approved the recommendation to eliminate the provisions in paragraph (a) of subsection 3 of NRS 363B.110 (Modified Business Tax) and in paragraph (a) of subsection 3 of NRS 363A.130 (Modified Business Tax on Financial Institutions) requiring a taxpayer to file each quarter with the Department of Taxation a copy of any report required by the Employment Security Division of the Department of Employment, Training, and Rehabilitation for determining the amount of contribution required for the unemployment insurance tax, pursuant to NRS 612.535, for any wages paid by the employer during that calendar quarter.

10. Draft legislation amending the statutes for the Modified Business Tax (NRS Chapter 363B) and the Modified Business Tax on Financial Institutions (NRS Chapter 363A), to include the following definitions adopted in regulations for implementing the healthcare deduction allowed under the Modified Business Tax and the Modified Business Tax on Financial Institutions:

- a. "Claims" to mean claims for those categories of healthcare expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses were borne directly by those employees.**

- b. **“Direct administrative services costs” to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:**
- (1) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;**
 - (2) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;**
 - (3) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;**
 - (4) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;**
 - (5) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or direct administration of claims; and**
 - (6) The depreciation of property, other than medical or office supplies, used for the provision of medical care or the direct administration of claims.**
- c. **“Employees” to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by NRS 363A.130 and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.**
- d. **“Health benefit plan” to mean a health benefit plan that covers only those categories of healthcare expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses were borne directly by those employees.**
- e. **“Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan” to mean any amounts which are:**
- (1) Paid by an employer to a Taft-Hartley trust which:**
 - (a) Is formed pursuant to 29 U.S.C. § 186(c)(5);**

(b) Qualifies as an employee welfare benefit plan as that term is defined in 29 U.S.C. § 1002; and

(2) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code. (BDR 683)

Background for Recommendation

The Modified Business Tax and Modified Business Tax on Financial Institutions approved in Senate Bill 8 allow a deduction for any amount paid for health insurance or a health benefit plan for employees during each quarter. Subsection 4 of NRS 363B.110 (Modified Business Tax) and subsection 4 of NRS 363A.130 (Modified Business Tax on Financial Institutions) contain the language covering the healthcare deductions allowed against wages for computation of the tax liability (see Appendix F).

To allow for the implementation and administration of the tax, the Department of Taxation adopted regulations to provide working definitions for the terms “claims,” “direct administrative service costs,” “employees,” “health benefit plan,” and “any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C., Section 186(c)(5), for participation in an employee welfare benefit plan.” The regulations were adopted by the Nevada Tax Commission and ratified by the Legislative Commission. These sections of the regulations in the Nevada Administrative Code are included in Appendix G for the Modified Business Tax (NAC 363B.120) and Appendix H for the Modified Business Tax on Financial Institutions (NAC 363A.370).

Jim Wadhams, Wadhams & Akridge, presented the views of a variety of taxpayers impacted by the Modified Business Tax. He asked the Committee to consider clarifying the statutory language regarding the healthcare deduction to ensure parity and equality for self-insured employers and employers that provide healthcare benefits in forms other than commercial insurance programs. Mr. Wadhams stated that the Tax Commission had accomplished parity through regulations adopted for the Modified Business Tax and Modified Business Tax on Financial Institutions that were subsequently ratified by the Legislative Commission.

The Committee adopted the recommendation to amend the statutes for the Modified Business Tax (NRS 363B) and the Modified Business Tax on Financial Institutions (NRS 363A) to include the definitions adopted by the Nevada Tax Commission and ratified by the Legislative Commission in NAC 363B.120 and NAC 363A.370 for terms relating to the healthcare deductions.

C. RECOMMENDATIONS REGARDING CHANGES TO THE MODIFIED BUSINESS TAX (NRS CHAPTER 363B)

- 11. Draft legislation amending the statutes for the Modified Business Tax (NRS Chapter 363B), to exempt wages paid by individuals to employees who provide in-home domestic healthcare services to their employer or family members of the employer.**

Background for Recommendation

Under the structure established for the Modified Business Tax in Senate Bill 8, a business, employer, or individual has a liability for the tax if wages are paid to an employee that trigger a liability to pay the state's unemployment insurance tax under the provisions of NRS Chapter 612. Under NRS 612.095 (cited below) of the unemployment insurance tax, domestic service employees are excluded from unemployment insurance tax requirements if the wages paid by the employer are less than \$1,000 in a calendar quarter.

NRS 612.095 "Employment": Domestic service in private home excluded; exception. "Employment" does not include domestic service in a private home unless the amount paid in cash wages by an employer or employing unit is \$1,000 or more for service performed in any calendar quarter of the current calendar year or the preceding calendar year. [Part 2:129:1937; renumbered in error 2.19:129:1937, 1945, 299; A 1949, 257; 1951, 253; 1951, 474; renumbered 2.9:129:1937 and A 1955, 698]—(NRS A 1977, 832)

This issue was brought forward at the request of Senator Raggio based on a private citizen's letter (Appendix I) to the Governor and members of the Legislature concerning the individual's liability under the Modified Business Tax on wages paid to employees hired to provide home-based healthcare services to a family member. Since the wages paid to the domestic service employees are above the threshold established in NRS 612.095, the individual is required to pay the unemployment insurance tax on these wages. Under the provisions established in S.B. 8, the individual is deemed to be an employer required to pay the Modified Business Tax on the wages paid to the domestic service employees, less a deduction for healthcare expenses for the employee.

The Committee considered whether the Modified Business Tax should be imposed on the wages paid to employees for in-home or domestic healthcare services provided to the employer or members of his/her family, as the individual is not formally operating as a business to provide the services, but is the consumer of the services provided by the personal domestic employees.

Secondly, the Committee discussed whether the wages paid to domestic employees providing in-home healthcare services should be considered exempt from the Modified Business Tax due to the type of service provided and potential benefit to the state. The Committee felt an argument could be made that the state potentially benefits from reduced costs for social welfare programs from in-home healthcare services, and the wages paid to domestic service employees for in-home healthcare or similar services should not be subject to the Modified Business Tax.

The Committee approved the recommendation to provide an exemption from the Modified Business Tax for wages paid by an individual to employees who provide in-home domestic healthcare services to their employer or family members of the

employer. The intent of this recommendation is to provide the exemption only to privately employed personal domestic service employees, and not to employees hired from a business providing in-home healthcare services.

Staff indicated the recommendation would have a potential negative impact on the state's General Fund revenues, as it provides an exemption from paying the 0.65 percent tax on gross wages, less a deduction for allowable healthcare expenses, for individuals who hire employees to provide in-home domestic healthcare services to the employer or family members of the employer. Based on the lack of information on individuals using personal employees to provide domestic healthcare services, staff was not able to provide the Committee with an actual estimate of the negative fiscal impact, but indicated the impact will most likely be minimal on the overall collections of the Modified Business Tax.

D. RECOMMENDATIONS REGARDING CHANGES TO THE MODIFIED BUSINESS TAX ON FINANCIAL INSTITUTIONS (NRS CHAPTER 363A)

- 12. Draft legislation amending the statutes for the Modified Business Tax on Financial Institutions (NRS Chapter 363A), replacing current statutory language for defining financial institutions relying on the North American Industrial Classification System (NAICS) definitions with language defining a financial institution based upon the licensing, registration, or other state or federal requirements for doing business.**

Background for Recommendation

The language adopted in Senate Bill 8 of the 20th Special Session used a structure based on the NAICS to classify or define financial institutions for purposes of the Modified Business Tax on Financial Institutions.

In implementing the provisions of the Modified Business Tax on Financial Institutions, the Department of Taxation developed regulations attempting to clarify the definition of financial institutions using the NAICS language. For reference, the regulations developed by the Department of Taxation, adopted by the Nevada Tax Commission, and ratified by the Legislative Commission are included in Appendix H. In an effort to address several taxpayers' concerns with being deemed a financial institution, businesses can apply to the Department of Taxation for reclassification as a non-financial institution by the Nevada Tax Commission.

Carole Vilardo, Nevada Taxpayers' Association, testified regarding perceived problems with interpreting certain sections of the statutory language adopted for the Modified Business Tax on Financial Institutions. Ms. Vilardo asked the Committee to consider clarifying the definition of financial institutions with regard to holding companies, management of trusts, owning or leasing franchises, patents, copyrights, and investing in oil and gas royalties or leases. The Committee was also requested to consider clarifying the meaning of "any other person" with regard to the language associated with entities conducting loan and credit card processing activities. Ms. Vilardo also asked

the Committee to consider clarifying the phrase “other business entity engaged in the business of lending money, providing credit, securitizing receivables or fleet leasing, or any related business entity, doing business in the state.”

Jim Wadhams, Wadhams and Akridge, testified on the Modified Business Tax on Financial Institutions and asked the Committee to consider clarifying the definition of “financial institution” to ensure that entities such as casinos are not deemed to be financial institutions under a broad or general interpretation of the statutory language adopted in Senate Bill 8. Mr. Wadhams was concerned that without language specifically exempting these types of businesses from the Modified Business Tax on Financial Institutions, there is a risk of a potential misstatement of financial condition under the Sarbanes-Oxley Act if the potential liability for the tax is not properly revealed and accounted for in financial statements. Mr. Wadhams noted that although the regulations adopted by the Tax Commission do not affirmatively include casinos as financial institutions, a potential liability could still exist if a subsequent court case rules casinos are subject to the tax, given the current language in NRS 363A.050.

Mary Lau, Retail Association of Nevada, requested that the Committee consider excluding self-insured workers’ compensation groups from the Modified Business Tax on Financial Institutions. Ms. Lau expressed concern that the tax would be applied to trade associations that sponsored self-insured groups for workers’ compensation coverage and their administrators, which were not-for-profit associations that did not control the finances of the association in any form.

Mariel Gioieto, representing the Nevada Collection Agencies Association, asked the Committee to consider amended language to exempt collection agencies from being defined as financial institutions.

As a result of the testimony provided and Committee discussion, the Legal Division drafted language based on an alternative approach to defining financial institutions. Instead of relying on the NAICS classifications as a basis for determining whether a business is a financial institution, the alternative method is based on licensing, registration, or other state or federal requirements for doing business. The draft language was intended to come as close to the existing definition in NRS 363A.050 as possible, while including the changes requested by the various individuals testifying before the Committee. The draft language can be adjusted by the Committee to ensure only those types of businesses the Legislature determines to be financial institutions are required to pay the higher tax established under the Modified Business Tax on Financial Institutions.

The Committee adopted a recommendation to be included in a separate bill draft request to replace the current language in NRS Chapter 363A (Modified Business Tax on Financial Institutions), which relies on the NAICS to classify or define financial institutions, with a method based on licensing, registration, or other state or federal requirements for doing business to provide a basis for determining whether a business is a financial institution. Specifically, the recommendation replaces paragraphs (b)

through (d) of subsection 1 of NRS 363A.050 (the definition of “financial institution,” which controls who is required to pay the higher Modified Business Tax) with additional provisions similar to paragraph (a) of that section, thereby alleviating the need to refer to the ancillary indicators, such as the NAICS codes. The definitional approach would rely solely upon the licensing, registration or other state and federal requirements for doing business to define the class of “financial institutions” that would be required to pay the Modified Business Tax on Financial Institutions.

Staff advised the Committee that this recommendation may produce a negative fiscal impact on the state’s General Fund revenues. The impact results from entities currently defined as financial institutions under the NAICS-based approach no longer being deemed to be financial institutions under the approach proposed in the recommendation. Staff will work with the Department of Taxation to determine the fiscal impact to be included in the bill draft request.

E. RECOMMENDATIONS REGARDING CHANGES TO THE LIVE ENTERTAINMENT TAX (NRS CHAPTER 368A)

Senate Bill 8 repealed the Casino Entertainment Tax, which was applicable to only licensed non-restricted gaming establishments, and created the Live Entertainment Tax (LET), which is applicable to all licensed gaming establishments and all non-gaming businesses providing live entertainment, as defined in Senate Bill 8. For reference, the statutes for the Live Entertainment Tax are included in Appendix J.

Testimony was provided by the Nevada Taxpayers’ Association and the Laughlin Chamber of Commerce regarding issues with the new Live Entertainment Tax (NRS Chapter 368A). The Committee recommended technical and policy changes to the LET to address some of the issues presented to the Committee.

13. Draft legislation amending the statutes for the Live Entertainment Tax (LET) (NRS Chapter 368A) to provide the Gaming Commission with the regulatory authority over the gaming portion of the Live Entertainment Tax.

Background for Recommendation

Senate Bill 8 provided the Gaming Control Board, not the Gaming Commission, regulatory authority over the Live Entertainment Tax applicable to licensed gaming establishments. The Gaming Commission has regulatory authority over all other taxes and fees administered by the Gaming Control Board.

Carole Vilardo, Nevada Taxpayers’ Association, requested that the Committee consider a technical change providing the Gaming Commission with regulatory authority over the Live Entertainment Tax instead of the Gaming Control Board. Ms. Vilardo testified that the requested change would provide statutory consistency, as the Gaming Commission is vested with the regulatory authority over the other gaming taxes and fees administered and collected by the Gaming Control Board.

14. Draft legislation amending the statutes for the Live Entertainment Tax (NRS Chapter 368A) to specify that the tax is based on maximum occupancy of the facility, not maximum seating capacity.

Background for Recommendation

The language adopted in Senate Bill 8 provides an exemption from the Live Entertainment Tax for non-gaming establishments with a maximum seating capacity of less than 300 and for gaming establishments with a maximum seating capacity of less than 300 and less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits. S.B. 8 also lowers the tax rate from 10 percent to 5 percent of the admission price and exempts the tax on food, beverage, and merchandise sales for both non-gaming and gaming establishments with a maximum seating capacity greater than 7,500.

Specifically, subsection 1 of NRS 368A.200 uses the term “maximum seating capacity” to establish whether live entertainment provided at a facility is subject to the Live Entertainment Tax. Subsection 6 of NRS 368A.200 then defines “maximum seating capacity” based on a three-stage process for determining capacity of a facility, as follows:

- a. The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;
- b. If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or
- c. If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

The first two criteria reference the maximum occupancy of the facility, while the third or final criterion is based on the actual seating capacity of the facility, if maximum occupancy cannot be established using the first two criteria.

Carole Vilardo, Nevada Taxpayers’ Association, and Jo Elle Hurns, Laughlin Chamber of Commerce, provided separate testimony to the Committee indicating there is the potential for confusion as to whether the capacity of a facility for determining the appropriate tax liability is based on maximum occupancy or maximum seating, which may not represent the same capacity number. Ms. Vilardo noted that this issue was the subject of extensive testimony and discussion at meetings of the Nevada Tax Commission and Gaming Commission regarding the implementation and administration of the Live Entertainment Tax. She stated that the general consensus at these meetings was the terms “maximum seating capacity” and “maximum occupancy” are not necessarily comparable measures.

The Committee adopted the recommendation to replace the term “maximum seating capacity” in subsection 1 of NRS 368A.200 with the term “maximum occupancy,” in an effort to clarify that the Live Entertainment Tax is to be based on the occupancy of a facility and not the seating capacity.

- 15. Draft legislation amending the statutes for the Live Entertainment Tax to provide an exemption for food and product demonstrations conducted at shopping malls, craft shows, membership stores, and similar facilities.**

Background for Recommendation

Senate Bill 8 makes no specific reference to food and product demonstrations at shopping malls, craft shows, membership stores, and similar facilities as being live entertainment subject to the Live Entertainment Tax. The Department of Taxation and the Gaming Control Board informed Committee staff that these types of activities are not currently interpreted under S.B. 8 as entertainment subject to the tax.

Carole Vilardo, Nevada Taxpayers’ Association, asked the Committee to consider a specific exemption in statute for food and product demonstrations at shopping malls, trade and craft shows, and membership stores. Although Ms. Vilardo was aware that the Department of Taxation and the Gaming Commission are not currently imposing the Live Entertainment Tax on these specific activities, she expressed concern that the current statutory language could be interpreted in the future to be applicable to these activities.

The Committee approved the recommendation to provide an exemption from the Live Entertainment Tax for food and product demonstrations conducted at shopping malls, craft shows, membership stores and similar facilities.

Staff indicated this recommendation has no fiscal impact, as the Department of Taxation and Gaming Control Board have indicated the Live Entertainment Tax is interpreted to not be applicable to the activities being exempted.

- 16. Draft legislation amending the statutes for the Live Entertainment Tax to exempt a nonprofit organization from the tax on the purchase price of a ticket to a live entertainment event when a for-profit entity sells tickets at a discount to the nonprofit organization for resale by the nonprofit, with the difference benefiting the nonprofit organization.**

Background for Recommendation

The language approved in Senate Bill 8 provides an exemption for live entertainment provided by or entirely for the benefit of a nonprofit organization. The Department of Taxation developed regulations defining the scope of the exemption for nonprofit organizations, which were adopted by the Nevada Tax Commission and ratified by the Legislative Commission (NAC 368A.150, included in Appendix K).

Carole Vilardo, Nevada Taxpayers' Association, requested that the Committee expand the exemption for nonprofit organizations to include tickets to a live entertainment event that are sold to a nonprofit group by a for-profit business at a discounted price, e.g., a for-profit business sells a block of tickets at half price to a nonprofit group, which then sells the tickets at full price, and the difference is kept for the benefit of the nonprofit organization. Ms. Vilardo expressed concern that the nonprofit group may be liable for the Live Entertainment Tax on the full ticket price, although the statutes do not specifically address this type of situation. Ms. Vilardo wanted to have it clearly stated in statute that nonprofit organizations do not have a liability for the tax under these circumstances; she did not want payment of the tax dependent upon the determination of the authorities responsible for regulating and collecting the tax.

Staff discussed this issue with the Department of Taxation and the Gaming Control Board, and both agencies indicated that based on their interpretation of the current statutes, the nonprofit organization would not be required to pay the Live Entertainment Tax upon the resale of the ticket(s).

Staff informed the Committee that the recommendation will have no fiscal impact, as the proposal places in statute an exemption for nonprofit organizations for certain transactions that the Department of Taxation and Gaming Control Board are not currently interpreting to be taxable activity.

F. RECOMMENDATION REGARDING THE NEVADA TAX COMMISSION

- 17. Draft legislation amending NRS 360.050 to make the salary of the chairperson of the Nevada Tax Commission \$55,000 per year and the salary of the other seven members of the Nevada Tax Commission \$40,000 per year.**

Background for Recommendation

The Nevada Tax Commission is composed of eight members appointed by the Governor, with the Governor also designating the chairperson. The members serve four-year terms. Current statute provides a salary of \$80 a day while the members are actually employed in the work of the Commission. The members are also allowed to receive the state per-diem allowance and travel expenses when attending meetings.

Carole Vilardo, Nevada Taxpayers' Association, testified that the current salary of \$80 a day effectively costs Commission members money and time to serve. Ms. Vilardo feels the increasing workload of the commissioners is making it difficult to retain members, who must attend meetings and workshops one or more days a month and are frequently required to spend an equal or greater amount of time reading backup material in preparation for the meetings and workshops. Ms. Vilardo requested that the Committee consider increasing the salaries of the members of the Nevada Tax Commission. She noted that the chairperson of the Nevada Gaming Commission receives a salary of \$55,000 per year and the other two Gaming Commission members are paid \$40,000 per year.

The Committee adopted the recommendation to establish salaries for the Nevada Tax Commission members equivalent to the salaries received by the Gaming Commission members. This recommendation would provide a salary of \$55,000 to the chairperson of the Nevada Tax Commission and \$40,000 to the other seven members of the commission.

Staff advised the Committee that increasing the salaries for the chairperson and other seven members of the Nevada Tax Commission would have a fiscal impact of \$335,000 per year.

G. RECOMMENDATION REGARDING THE TAXPAYERS' BILL OF RIGHTS

18. Draft legislation amending the statutes for the Taxpayers' Bill of Rights that would:

a. make the provisions of the Taxpayers' Bill of Rights (NRS 360.291) applicable to:

- (1) the Insurance Premium Tax administered by the Nevada Tax Commission covered under Title 57, Chapter 680B of the NRS;**
- (2) the Short-Term Car Rental Tax administered by the Nevada Tax Commission covered under Title 43, Chapter 482 of the NRS;**
- (3) the fuel taxes administered by the Department of Motor Vehicles covered under Title 32, Chapters 365 and 366 of the NRS;**

b. change the dissemination requirements for the Taxpayers' Bill of Rights in NRS 360.292 by:

- (1) eliminating the provision requiring a pamphlet on the Taxpayers' Bill of Rights be distributed to each taxpayer on record; and**
- (2) requiring the Taxpayers' Bill of Rights be made available to taxpayers and the public on the websites and at the offices of the Department of Taxation, the Department of Motor Vehicles, and at public libraries. (BDR 683)**

Background for Recommendation

The Taxpayers' Bill of Rights currently covers taxes collected by the Department of Taxation under Title 32 of the NRS. The taxes included in Title 32 for which the Department of Taxation is responsible are: Sales and Use Tax, Property Tax, Net Proceeds of Minerals Tax, Modified Business Tax, Modified Business Tax on Financial Institutions, liquor taxes, cigarette and other tobacco taxes, Real Property Transfer Tax, and Live Entertainment Tax on non-gaming establishments. The statutes for the Taxpayers' Bill of Rights (NRS 360.2905 to 360.291) are included in Appendix L.

Carole Vilardo, Nevada Taxpayers' Association, requested that the rights provided in the Taxpayers' Bill of Rights be available to any person or business responsible for the payment of the Live Entertainment Tax on gaming establishments administered by the Gaming Control Board, as well as all other gaming taxes; fuel taxes administered by the Department of Motor Vehicles; the Short-Term Car Rental Tax; and the Insurance Premium Tax administered by the Department of Taxation. Ms. Vilardo questioned why the Taxpayers' Bill of Rights should apply to non-gaming establishments, but not to gaming establishments, for the purpose of the Live Entertainment Tax. She also thought the provisions should be extended to taxpayers required to pay the fuel taxes, Short-Term Car Rental Tax, and Insurance Premium Tax, as these taxes are not different from the other taxes currently covered by the Taxpayers' Bill of Rights.

The Committee was provided information explaining why the current statutory language for the Taxpayers' Bill of Rights did not apply to the Live Entertainment Tax on gaming establishments, fuel taxes, Short-Term Car Rental Tax, and the Insurance Premium Tax:

- a. The Live Entertainment Tax on gaming establishments and the fuel taxes are included in Title 32, but they are not covered by the Taxpayers' Bill of Rights because they are not administered by the Department of Taxation.
- b. Although the Short-Term Car Rental Tax and Insurance Premium Tax are administered by the Department of Taxation, they are not covered by the Taxpayers' Bill of Rights since they are not included under Title 32. The Short-Term Car Rental Tax is under Chapter 482 in Title 43, and the Insurance Premium Tax is under Chapter 680B in Title 57.

Staff advised the Committee that making the Taxpayers' Bill of Rights applicable to the other taxes would produce a positive fiscal impact on the additional agencies (Gaming Control Board and Department of Motor Vehicles) brought under the provisions of the Taxpayers' Bill of Rights and expand the costs for the Department of Taxation due to adding additional taxes under the Bill of Rights. Although other provisions of the Taxpayers' Bill of Rights may produce a fiscal impact on these agencies, the requirements in NRS 360.292 requiring the affected agencies to produce a pamphlet to be provided to each taxpayer on record will most likely require additional funding to comply with these provisions of the Taxpayers' Bill of Rights.

In an effort to minimize the potential negative fiscal impact of expanding the Taxpayers' Bill of Rights to additional taxes, Ms. Vilardo offered for the Committee's consideration a proposal to eliminate the provision requiring a pamphlet on the Taxpayers' Bill of Rights be distributed to each taxpayer on record. Information on the Taxpayers' Bill of Rights could be made available to taxpayers and the public on the websites and at the offices of the Department of Taxation, Gaming Control Board, Department of Motor Vehicles, and at public libraries.

The Committee recommended drafting legislation to expand the Taxpayers' Bill of Rights to the Insurance Premium Tax and Short-Term Car Rental Tax administered by the Nevada Tax Commission and the fuel taxes administered by the Department of Motor Vehicles. The Committee did not recommend extending the provisions of the Taxpayers' Bill of Rights to the Live Entertainment Tax and other taxes administered by the Gaming Commission. The Committee also recommended eliminating the provision requiring a pamphlet on the Taxpayers' Bill of Rights be distributed to each taxpayer on record, but recommended information on the Taxpayers' Bill of Rights be made available to taxpayers and the public on the websites and at the offices of the Department of Taxation, the Department of Motor Vehicles, and at public libraries.

Staff indicated that a fiscal note will need to be prepared by the Department of Taxation and the Department of Motor Vehicles to determine the potential fiscal impact of the changes proposed in this recommendation.

III. REPORT ON THE POTENTIAL IMPACT OF THE LIVE ENTERTAINMENT TAX ON EVENTS CONDUCTED IN NEVADA (Pursuant to Section 192 of Senate Bill 8 of the 20th Special Session)

A. INTRODUCTION

The Legislature, in Senate Bill 8 of the 20th Special Session (S.B. 8), adopted language for the creation of a new Live Entertainment Tax (LET). The general structure for the LET was based on the repealed Casino Entertainment Tax (CET) previously imposed on specified entertainment and facilities at licensed gaming establishments. The Live Entertainment Tax expanded the tax base to include live entertainment at licensed gaming establishments previously not subject to the CET and non-gaming establishments. Also, the types of entertainment subject to the LET were modified compared to the CET.

The Legislature established the Legislative Committee on Taxation, Public Revenue, and Tax Policy (Committee) in S.B. 8. The Committee was given fairly broad and general authority to review and study the taxes collected in Nevada, especially the tax changes and new taxes approved during the 20th Special Session. The Committee was specifically required to examine the Live Entertainment Tax to determine the impact of the state's ability to attract and retain special events and any impacts on the revenue collections from the imposition of the tax, and submit a report of the Committee's review to the 73rd Session of the Nevada Legislature.

The Committee instructed Fiscal Analysis Division staff to attempt to determine the potential impact of the imposition of the LET on special events in the state and prepare a report of the results for the Committee. This report has been prepared by the Fiscal Analysis Division for the Committee to fulfill the requirements specified in Senate Bill 8.

B. LIVE ENTERTAINMENT TAX (LET)

In Senate Bill 8 of the 20th Special Session, the Legislature adopted a new Live Entertainment Tax (LET) based on modification and expansion of the Casino Entertainment Tax. The Live Entertainment Tax became effective January 1, 2004 when the prior Casino Entertainment Tax was repealed. The LET is applied to the admission charge to any facility where live entertainment is provided at the following rates:

1. If the maximum seating capacity of the facility is less than 7,500, 10 percent of the admission charge and 10 percent of any amounts paid for food, refreshments, and merchandise purchased at the facility.
2. If the maximum seating capacity of the facility is more than 7,500, 5 percent of the admission charge to the facility, and no tax is imposed on amounts paid for food, refreshments, and merchandise.

Live entertainment at a non-gaming establishment is exempt from the tax if the facility in which the entertainment event takes place has a maximum seating capacity of less than 300. Live entertainment provided at a gaming establishment licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits is also exempt if the facility in which the event is conducted has a maximum seating capacity of less than 300. Live entertainment provided by nonprofit organizations and boxing contests or exhibitions are also exempt from the LET.

Although the entity operating the facility providing the live entertainment is liable for the tax imposed, the statutes permit the tax to be passed on to the patron paying the admission charge to the event or purchasing any food, refreshments, or merchandise subject to the tax.

The Nevada Tax Commission, via the Department of Taxation, is responsible for the administration and collection of the tax on live entertainment provided in facilities at non-gaming establishments. The Nevada Gaming Commission, via the Gaming Control Board, is responsible for the administration and collection of the tax on live entertainment provided in facilities at licensed gaming establishments. Prior to the January 1, 2004 effective date of the tax, the Nevada Tax Commission and Nevada Gaming Commission conducted several meetings to develop regulations for implementing the provisions of the Live Entertainment Tax. The regulations adopted by the Tax Commission and Gaming Commission and ratified by the Legislative Commission established clarification of the type of live entertainment subject to and excluded from the tax.

C. RESPONSIBILITIES OF THE LEGISLATIVE COMMITTEE ON TAXATION, PUBLIC REVENUE, AND TAX POLICY REGARDING A STUDY OF THE IMPACT OF THE LIVE ENTERTAINMENT TAX

Section 192 of Senate Bill 8 of the 20th Special Session (Attachment 1) specifically requires the Legislative Committee on Taxation, Public Revenue, and Tax Policy (Committee) to review and study:

1. The impact, if any, that the imposition of the tax on live entertainment imposed in S.B. 8 has had on revenue received by the state and local governments from special events conducted in this state;
2. Whether promoters of special events are contracting with entities in other states to hold the special events in those states as a result of the imposition of the Live Entertainment Tax;
3. The loss of revenue, if any, from special events resulting from the imposition of the Live Entertainment Tax;

4. The feasibility and need for exempting such special events from the Live Entertainment Tax; and
5. Standards and procedures that may be adopted for determining whether special events should be exempt from the tax and the qualifications for such an exemption.

The Committee shall submit a report of the results of its review and any recommendations for legislation to the 73rd Session of the Nevada Legislature.

Per the direction of the Committee, staff from the Fiscal Analysis Division provided updates at its meetings regarding the reported impact of the LET on events in Nevada. At its initial meeting, the Committee also directed Fiscal Analysis Division staff to conduct the review and study required in Section 192 of S.B. 8 and prepare a report of the results for the Committee.

D. INFORMATION OBTAINED ON THE IMPACT OF THE LIVE ENTERTAINMENT TAX ON SPECIAL EVENTS IN THE STATE

The task of determining the impact of the Live Entertainment Tax on events in Nevada is relatively complex and difficult, given the new tax only became effective January 1, 2004. Staff from the Fiscal Analysis Division determined it would be beneficial to solicit information from entities in the state hosting, conducting, or promoting entertainment events concerning current or anticipated future impacts of the LET. A letter was sent to 22 entities, representing venues or establishments in the state's rural and urban areas, that host or offer entertainment events. A list of the individuals contacted and a copy of the letter requesting information is provided in Attachment 2. Fiscal Analysis Division staff also conducted follow-up phone conversations to discuss information provided in the responses. Discussions were also held with personnel from the Department of Taxation and Gaming Control Board regarding any information available on the impact of the LET on events in the state.

Of the 22 entities contacted by letter, only seven responded to staff's request; those responses are included in Attachment 3:

Carole Vilardo	Nevada Taxpayers' Association
Daren Libonate	Thomas & Mack Center/Sam Boyd Stadium/Cox Pavilion
Greg Vorreyer	Reno Hilton
Lyn Thompson	Reno Sparks Convention & Visitors Authority
David Peterson	Nevada Commission on Tourism
James Lordon	Silver Legacy Resort Casino
Gail Schroeder	Carson City Community Center

Based on conversations with these individuals, it does not appear the Live Entertainment Tax is having an observable or quantifiable impact on their ability to attract or retain entertainment events in the state. Some entities responded the LET is

a burden for the promoters using their facilities, and shows have been lost as a result. However, the respondents provided no specific information on current or future events lost due to the tax and the potential loss in revenue. In fact, staff was provided no information regarding the cancellation of a specific event or the desire to not continue an event in the state due to the imposition of the LET.

This conclusion is balanced against the view that it is potentially too early to determine the impact, if any, of the LET on future events scheduled to be conducted in the state. As the tax became effective January 1, 2004, some events may have contractual obligations for events scheduled in advance of the LET approval and effective date. Also, certain promoters or establishments may be examining the impact of the tax, if any, on the attendance or revenue received before making a decision whether to continue to conduct certain entertainment events in the state.

E. SUMMARY OF CONCLUSIONS AND POINTS FOR FUTURE CONSIDERATION

Based on the information obtained by or provided to the Fiscal Analysis Division at the time this report was prepared, it does not appear the imposition of the Live Entertainment Tax is having any reported or quantifiable effect on the establishments' or promoters' ability to attract or retain live entertainment events in the state. Given this result, it does not appear necessary for the Committee to consider the feasibility of or need for exempting special events from the tax, or to provide recommendations to the 73rd Session of the Nevada Legislature for adopting standards and procedures allowing exemptions from the tax for certain entertainment events.

Given the lack of evidence regarding loss of events, there is no quantifiable impact on revenue to state or local governments from the imposition of the Live Entertainment Tax. Based on the statutory language and the associated regulations adopted, the Gaming Control Board provided information that some casino nightclubs previously subject to the Casino Entertainment Tax are not subject to the LET, which may result in the loss of approximately \$3 million in General Fund revenues per year. It is important to note this loss is due to entities deemed to not have a liability for the tax versus the actual loss of entertainment events from the imposition of a tax liability under the LET.

The Committee did recommend that certain minor technical and policy adjustments to the statutes for the Live Entertainment Tax be drafted for consideration by the 73rd Session of the Nevada Legislature. These recommended changes, including a discussion of each issue, are included in Section II of the *Legislative Counsel Bureau Bulletin No. 05-18, Legislative Committee on Taxation, Public Revenue and Tax Policy*. The changes recommended by the Committee are not anticipated to have a substantive impact on the structure of the Live Entertainment Tax or any additional effects on the ability of establishments or promoters to attract and retain entertainment events.

As previously stated, it is perhaps too early to determine the full impact, if any, of the imposition of the Live Entertainment Tax on events in the state. The Committee feels this issue needs to be monitored over the next few years, and the 73rd Legislature may

want to consider legislation directing the Fiscal Analysis Division to continue to monitor the impact of the tax on entertainment events and provide information to the Interim Finance Committee and/or the Legislative Commission periodically during the 2005-07 Interim. Even without specific direction from the Legislature, the Fiscal Analysis Division staff will continue to monitor the tax during their preparation of revenue collection forecasts generated from the LET, which are presented to the Economic Forum each biennium.

ATTACHMENTS

1. SENATE BILL 8 OF THE 20TH SPECIAL SESSION – SECTION 192.
2. LIST OF INDIVIDUALS CONTACTED TO PROVIDE INFORMATION ON THE IMPACT OF THE LIVE ENTERTAINMENT TAX.
3. LETTER REQUESTING INFORMATION FROM CONTACTS ON THE IMPACT OF THE LIVE ENTERTAINMENT TAX.
4. RESPONSES RECEIVED FROM INDIVIDUALS CONTACTED FOR INFORMATION ON THE IMPACT OF THE LIVE ENTERTAINMENT TAX.

ATTACHMENT NO. 1

Senate Bill 8 of the 20th Special Session – Section 192

SECTION 192 OF SENATE BILL 8 OF THE 20TH SPECIAL SESSION

Sec. 192. The Legislative Committee on Taxation, Public Revenue and Tax Policy established by the provisions of section 156 of this act shall:

1. Review and study:

(a) The impact, if any, that the imposition of the tax on live entertainment imposed pursuant to section 78 of this act has had on revenue received by the state and local governments from special events conducted in this state.

(b) Whether promoters of special events are contracting with entities in other states to hold the special events in those other states as a result of the imposition of the tax.

(c) The loss of revenue, if any, from special events resulting from the imposition of the tax.

(d) The feasibility and need for exempting such special events from the tax.

(e) Standards and procedures that may be adopted for determining whether special events should be exempt from the tax and the qualifications for such an exemption.

2. Submit a report of the results of its review and any recommendations for legislation to the 73rd Session of the Nevada Legislature.

ATTACHMENT NO. 2

List of Individuals Contacted to Provide Information on
the Impact of the Live Entertainment Tax

**LIST OF INDIVIDUALS CONTACTED TO PROVIDE INFORMATION
ON THE IMPACT OF THE LIVE ENTERTAINMENT TAX**

Gaming Properties

Helen O'Brien
Executive Director of Finance
John Ascuaga Nuggett
1100 Nugget Ave.
Sparks, Nevada 89431

Beth Cooney
Executive Director of Marketing
John Ascuaga Nuggett
1100 Nugget Ave.
Sparks, Nevada 89431

John Packer
Harrah's Director of Entertainment
and Public Relations
P.O. Box 8
Lake Tahoe, Nevada 89449

Chris Christensen
Events Coordinator
Reno Hilton
2500 E. Second Ave.
Reno, Nevada 89515

Jim Lordon
Director of Entertainment
Silver Legacy
407 N. Virginia Sreet
Reno, Nevada 89501

Rob Stone
Director of Entertainment
El Dorado Casino and Resort
P.O. Box 3399
Reno, Nevada 89505

State-Regional Promotional

David Peterson
Nevada Commission On Tourism
401 North Carson Street
Carson City, Nevada 89701

Luke Pusching
Legal Council
Las Vegas Convention and Visitor Authority
3150 Paradise Rd
Las Vegas, Nevada 89109-9096

Carole Vilardo
President
Nevada Taxpayer's Association
2303 East Sahara Drive
Suite 203
Las Vegas, Nevada 89104

Meg McDaniel
Sales Executive
Laughlin Visitors Authority
1555 Casino Drive
Laughlin, Nevada 89029

Deanna Ashby
Executive Director for Marketing
Reno-Sparks Convention Visitors Authority
4590 S. Virginia Street
Reno, Nevada 89502

Venue Specific

Marsha Fleishman
Marketing Director
Pioneer Center for Performing Arts
100 South Virginia Street
Reno, NV. 89501

Joseph Kerr
Events Coordinator
Lawlor Events Center
Mail Stop 230
University of Nevada at Reno
Reno, Nevada 89557

Monica Miller
Events Coordinator
Winnemucca Events Complex
and Convention Center
50 West Winnemucca Blvd.
Winnemucca, Nevada 89445

Brenda Wilke
Marketing and Special
Events Manager
Elko Convention and Visitors
Authority
700 Moren Way
Elko, Nevada 89801

Candy Rutledge
Special Events Coordinator
Clark County Amphitheather
2601E. Sunset Road
Las Vegas, Nevada 89120

Mitch Ames
Supervisor of Operations
Carson City Community Center
851 E. William Street
Carson City, Nevada 89701

Todd Clawson
Event Service Director
Thomas and Mack Center
4505 Markland Parkway
Las Vegas, Nevada 89154-0003

Mike Clements
Events Coordinator
Nevada State Fair
1350 - A Wells Avenue
Reno, Nevada 89512

Andy Greenwood
President
Elko Summit Raceway
127 Greenwood
Spring Creek, Nevada 89815

Freda Hartung
Sales Executive
Cashman Center
850 North Las Vegas
Las Vegas Nevada 89101

Mike Newcomb
Event Service Director
Thomas and Mack Center
4505 Markland Parkway
Las Vegas, Nevada 89154-0003

ATTACHMENT NO. 3

Letter to Contacts Requesting Information on
the Impact of the Live Entertainment Tax

**STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU**

LEGISLATIVE COMMISSION (775) 684-6800
RANDOLPH J. TOWNSEND, *Senator, Chairman*
Lorne J. Malkiewicz, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
MORSE ARBERRY, JR., *Assemblyman, Chairman*
Mark W. Stevens, *Fiscal Analyst*
Gary L. Ghiggeri, *Fiscal Analyst*

CARSON CITY OFFICE:
Legislative Building, 401 S. Carson Street
Carson City, Nevada 89701-4747
Fax No.: (775) 684-6600
LORNE J. MALKIEWICH, *Director* (775) 684-6800
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825
BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830



LAS VEGAS OFFICE:
555 E. Washington Avenue, Room 4400
Las Vegas, Nevada 89101-1049
Fax No.: (702) 486-2810
BRIAN L. DAVIE, *Legislative Services Officer* (702) 486-2800

July 23, 2004

David Peterson
Nevada Commission on Tourism
401 North Carson Street
Carson City NV 89701-4221

Dear Mr. Peterson;

The purpose of this letter is to request information concerning the Live Entertainment Tax (LET) that was approved in Senate Bill 8 (20th Special Session) during the 2003 Legislative Session which became effective on January 1, 2004. Senate Bill 8 created a Legislative Committee on Taxation, Public Revenue and Tax Policy and directed this Committee to establish a review process to collect information concerning the potential impacts the LET might have on live entertainment events within Nevada.

Under the language in Senate Bill 8, this Committee is required to review and study the following elements:

- The potential impact that the imposition of the tax on live entertainment has had or may have on revenue received by the state and local governments from special events conducted in this state.
- Whether promoters of special events are contracting with entities in other states as a result of the imposition of the tax.
- Any current or future loss of revenue, resulting from the cancellation of entertainment events.

At this time, we are asking for your assistance towards collecting any available information you can provide for the Committee's consideration regarding the issues discussed above. Specifically, we are requesting information on a statewide basis from event promoters and/or coordinators concerning the impact of the LET and the potential for cancellation of entertainment events.

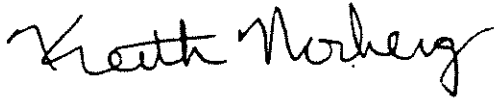
We would be interested in receiving written documentation from agents, managers or entertainers regarding the impact of the LET. Also, if the imposition of the LET has caused the cancellation of any events, please provide information on these events regarding the location, date, and potential attendance anticipated for the event. If

possible, provide information on whether the event was rescheduled to a venue in a neighboring state as a result from the imposition of the tax. Additionally, we would appreciate any available information that documents the loss of revenue as a result from the LET.

In order to establish a working understanding on the impact of the tax, we would appreciate your assistance on this matter. Over the next few weeks, I will contact you directly to follow up on this request. Please respond on or before August 31, 2004. You can contact me directly at the mailing address listed on the Legislative Counsel Bureau letterhead. In the interim, if you have questions or concerns, I can be reached at (775) 684-6873 or you can contact me directly via email at knorberg@lcb.state.nv.us.

Thank you ahead of time for your cooperation.

Sincerely,



Keith Norberg
Deputy Fiscal Analyst

cc. Russell Guindon, Deputy Fiscal Analyst

ATTACHMENT 4

Responses Received from Individuals Contacted to
Provide Information on the Impact of the
Live Entertainment Tax



Sam Boyd
STADIUM



COX Pavilion



An
Entertainment
Tradition

UNLVtickets
Sports, Concerts, Entertainment & More

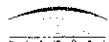
Thomas & Mack Center
Sam Boyd Stadium
Cox Pavilion

University of Nevada, Las Vegas
4505 Maryland Parkway
Box 450003
Las Vegas, Nevada 89154-0003

Telephone
702 895 3761

Fax
702 895 1099

Web Sites
thomasandmack.com
unlvtickets.com



October 6, 2004

Keith Norberg
State of Nevada
Legislative Counsel Bureau
Legislative Building
401 S. Carson Street
Carson City, NV 89701-4747

Dear Keith:

We received your letter dated July 23, 2004, regarding the new Live Entertainment Tax (LET) that went into effect on January 1st of this year. I can tell you that the tax has become a huge burden to all promoters that use our venues, including, but not limited to:

Anschutz Entertainment Group
Clear Channel Entertainment
Clear Channel Motor Sports
Concerts West Touring

Goldenvoice Touring
Los Angeles Lakers
Professional Bull Riders
Vee Corporation

The 10% tax that applies to venues of 7,500 or less has caused us to lose several shows. The revenue generated in a small room like the Cox Pavilion (3,000 seats) is nominal. And then when you add a 10% tax, it makes that room and our city unappealing as a host site.

As a state entity like yourself, we are held accountable to our annual budgets and don't need additional constraints that limit our ability to generate revenue through events. The LET tax has not helped our business, and has in fact driven some business away. It is impossible to quantify the amount of shows that we now lose because of the LET, but we can quantify the revenue that promoters have lost due to the implementation of the tax. It is significant to our promoters and I think will have a negative long-term affect on our business.

A state entity like UNLV should not have to pay this tax. It is only driving away potential business and revenue for the state.

Please find enclosed a response from one of the promoters we work with, Chip Hooper with Monterey Peninsula Artists, regarding his outlook of the 10% tax and the considerations he gives in booking a tour.

Thank you for the opportunity to share this feedback.

Best regards,

Daren Libonati
Director

Thomas & Mack Center/Sam Boyd Stadium/Cox Pavilion

DL/kl

Enclosure

RECEIVED
04 OCT 12 PM 2:49
FISCAL ANALYSIS DIVISION



Chip Hooper
<chip@mpartists.com>
>

To: <santiago@ccmail.nevada.edu>
cc:
Subject: Re: Tax Letter

09/23/2004 09:33 AM

Joe,

Like you said in the letter, the 10% tax in a small room like Cox is devastating. The other key point is you'll never be able to quantify your loss in business, because after a while people will just "right off" the building as a viable option and not even bother to call to hold dates. No market other than New York, Chicago, and L.A. Are "must play markets".

When I'm booking tours I always consider the taxes in different markets when choosing where to play and it greatly affects where I route a tour, especially a 10% tax. That would eliminate your building on many of our tours.

Lets chat more about this soon.

Best,

Chip

on 8/26/04 4:37 PM, santiago@ccmail.nevada.edu at santiago@ccmail.nevada.edu wrote:

> Chip, as we discussed, please provide some feedback from this letter that we
> can forward on to the State Department of Taxation.

>
>
>

> (See attached file: taxlet.doc)

>

> Joe Santiago
> Associate Director
> E-Mail: santiago@ccmail.nevada.edu
> phone: (702) 895-1796

>

> UNLVtickets
> Log on: <http://www.unlvtickets.com>
> Call: 739-FANS
> Visit: The Galleria @Sunset, Meadows Mall,
> Boulevard Mall, all Station Casinos and Fiestas

>

>

> For All UNLV Athletic
> Season Tickets and Ticket Info
> Call 739-FANS

>

>

>

>



Serving the citizens of Nevada since 1922

October 18, 2004

Mr. Keith Norberg
Legislative Counsel Bureau
Fiscal Division
401 So. Carson Street
Carson City, Nevada 89701

Delivered via Email

Dear Keith:

My apologies for the delayed response to your letter asking for information about events that might have been impacted by the imposition of the Live Entertainment Tax (LET).

To date, I am not personally aware of any events (subject to the LET) being cancelled or where the sponsors/promoters decided not to come to Las Vegas or anywhere else in Nevada because of the tax. I am not aware of any empirical data, only antidotal.

Antidotally, I have participated in two workshops for the purpose of explaining the ramifications of the taxes contained in SB 8 of the 20th Special Session. At one workshop, the finance directors for two large event venues in Las Vegas were in attendance. The questions they asked involved the correct way in which to collect and account for the tax. Their only comments at that time involved how confusing the tax was. I also had three calls from promoters of events to clarify issues about the imposition of the tax, but again, no comments made about the tax impacting their events.

I hope this is of some help to you.

Sincerely,

s/ Carole Vilardo
President



Greg Vorreyer
Director of Finance

August 31, 2004

Keith Norberg
Deputy Fiscal Analyst
State of Nevada
Legislative Counsel Bureau
401 S. Carson St.
Carson City, NV 89701-4747

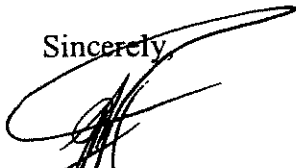
Dear Mr. Norberg:

In response to your recent inquiry with respect to the impact of Live Entertainment Tax (LET), which became effective January 1, 2004, please note the following:

1. As of August 31, 2004, the imposition of the LET has created an additional \$34,823.11 tax liability for the Reno Hilton.
2. The impact of the LET in the promoter's decision-making to cancel or move the event to another state is unknown.
3. Although we have passed along the additional LET to our guests, we are not aware of how much the LET has affected our ticket sales.

I hope this information is helpful in your analysis.

Sincerely,



Greg Vorreyer

GV/icf

cc: Tim Maland
Jeff Eaton

RECEIVED
04 SEP - 1 PM 2:26
L.C.D.
FISCAL ANALYSIS DIVISION



RECEIVED
04 SEP - 2 PM 2:10
L. C. B.
FISCAL ANALYSIS DIVISION

September 1, 2004

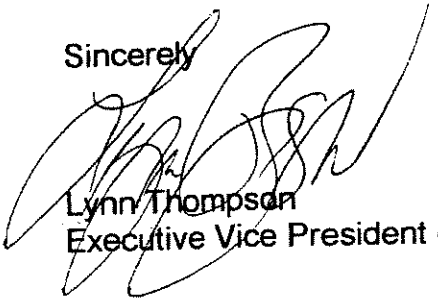
Mr. Keith Norberg
Deputy Fiscal Analyst
State of Nevada
Legislative Counsel Bureau
401 S. Carson St.
Carson City, NV 89701

Dear Keith

As we discussed, this letter is to advise you that the RSCVA has thus far had minimal impact from the passage of the Live Entertainment Tax. To our knowledge, we have not had any cancellation of events that fall under the tax implication nor have we lost any revenue.

It should be noted that the current RSCVA facilities are affected minimally by this legislation. We may have additional information for you on this matter after we have some history with the Reno Events Center which is under construction and due to open in December 2004.

Sincerely



Lynn Thompson
Executive Vice President of Facilities



**NEVADA
COMMISSION
ON TOURISM**

August 31, 2004

Keith Norberg, Deputy Fiscal Analyst
Legislative Counsel Bureau
401 South Carson Street
Carson City, NV 89701-4747

Dear Mr. Norberg:

In response to your letter from July 23, 2004 regarding the Live Entertainment Tax (LET), we offer the following:

- Potential impact, past and potential:
We believe it is too early to tell the impact. The majority of events that would feature entertainment subject to the LET will be booked at least one year in advance. The legislation has only been in effect since January 2005.
- Whether promoters are contracting with entities in other states:
We are not aware of any at this time; however, we believe it may have an effect in the future. Events with entertainment are highly competitive and there is a chance states without an LET could out-bid Nevada.
- Current or future loss of revenue or cancellation:
We are not aware of any at this time.

As we said earlier, we believe it is too early to determine the impact the LET has had or may have in the future. We will continue to monitor the effects and will be happy to stay in communication with you as the results come in.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

David Peterson
Analysis and Research Manager
dpeterson@travelnevada.com
775 687-4322

cc: Russell Guindon, Deputy Fiscal Analyst

RECEIVED
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 L.C.B.
 FISCAL ANALYSIS DIVISION

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Kenny C. Guinn

Lt. Governor - Chair

Lorraine T. Hunt

Vice Chair

Ferenc Szony

Executive Director

Bruce C. Bommarito

Commissioners

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Manuel J. Cortez

Van V. Heffner

Irwin Kishner

John F. Marz

Punam Mathur

Ray Pearson

Chuck Scharer

Norberg, Keith

From: Jim Lordon [jlordon@Silverlegacy.com]
Sent: Saturday, July 31, 2004 4:14 PM
To: Norberg, Keith
Subject: LET letter from July 23,2004

Dear Keith,

Thank you for sending me a copy of you letter. I have checked with AR/AP, as far as I can tell we have not had any canceled shows due to LET. I will tell you that some promoters have relocated their shows. Having proof is another story. The biggest challenge is calculating the sting placed on "Joe Public". I would have to guess that we do limit our ticket sales by adding 10%. Given the other added charges, some folks are renting the DVD instead.

Remember that the above e-mail is only my opinion.

Thanks

Jim

James D. Lordon
Entertainment Director
Silver Legacy Resort Casino
www.silverlegacyreno.com
(775) 329-4777

Norberg, Keith

From: Gail Schroeder [GSchroeder@ci.carson-city.nv.us]
Sent: Tuesday, July 27, 2004 11:32 AM
To: Norberg, Keith
Subject: LET

Hi,

I am responding to your letter addressed to Mitch Ames at the Carson City Community Center. I am responsible for booking all reservations. I don't feel I can be of much help to you. The majority of my reservations are all non profit groups. I can't even remember the last time I had a commercial event that would be covered by LET. I don't foresee any loss of revenue but of course there can always be exceptions.

If you have any further questions, please feel free to contact me.

Thanks,

Gail Schroeder
Reservation Coordinator
887-2290 x102

IV. CONCLUSION

The Legislative Committee on Taxation, Public Revenue and Tax Policy completed its work on August 24, 2004, and the Committee is set to expire by limitation on June 30, 2005. The recommendations address several issues and concerns brought before the Committee during the 2003-04 interim regarding the tax changes and new taxes approved in Senate Bill 8 of the 20th Special Session. The Committee recognizes alternative proposals or issues may arise from consideration of the recommendations during the 73rd Session of the Nevada Legislature. However, the Committee's bill draft requests provide a framework for discussion during the 2005 Legislative Session of the tax changes and new taxes approved in S.B. 8.

Finally, the Committee understands the potential during the 2005 Legislative Session for additional issues to arise for consideration, since the Committee's last meeting was on August 24, 2004 and the new taxes have been implemented and administered for only a short period of time.

APPENDICES

Appendix

- A Statutes Creating the Legislative Committee on Taxation,
Public Revenue and Tax Policy**
- B Statutes for the Business License Fee
(NRS 360.790 – 360.795)**
- C Nevada Administrative Code for the Business License Fee
(NAC Chapter 360)**
- D Letters of Concern Regarding Business License Fee**
- E Letter from Nevada Commission on Economic
Development Regarding Exemption from Business License
Fee for Film Production Industry**
- F Statutes for the Modified Business Tax and Modified
Business Tax on Financial Institutions
(NRS Chapters 363A and 363B)**
- G Nevada Administrative Code for the Modified Business Tax
(NAC Chapter 363B)**
- H Nevada Administrative Code for the Modified Business
Tax on Financial Institutions (NAC 363A)**
- I Letter of Concern Regarding Modified Business Tax on
Home Healthcare Services**
- J Statutes for the Live Entertainment Tax
(NRS Chapter 368A)**
- K Nevada Administrative Code for the Live Entertainment Tax
(NAC Chapter 368A)**
- L Statutes for the Taxpayers' Bill of Rights
(NRS 360.2905 – 360.291)**

APPENDIX A

Statutes Creating the Legislative Committee on Taxation, Public Revenue and Tax Policy

APPENDIX A

STATUTES CREATING THE LEGISLATIVE COMMITTEE ON TAXATION, PUBLIC REVENUE AND TAX POLICY

NRS 218.5374 “Committee” defined. [Effective through June 30, 2005.] As used in NRS 218.5374 to 218.53749, inclusive, “Committee” means the Legislative Committee on Taxation, Public Revenue and Tax Policy.

(Added to NRS by 2003, 20th Special Session, 188)

NRS 218.53741 Establishment; membership; Chairman; Vice Chairman; vacancies. [Effective through June 30, 2005.]

1. There is hereby established a Legislative Committee on Taxation, Public Revenue and Tax Policy consisting of:

(a) The Speaker of the Assembly, or a member of the Assembly designated by the Speaker of the Assembly;

(b) The Minority Leader of the Assembly, or a member of the Assembly designated by the Minority Leader of the Assembly;

(c) The Majority Leader of the Senate, or a member of the Senate designated by the Majority Leader of the Senate;

(d) The Minority Leader of the Senate, or a member of the Senate designated by the Minority Leader of the Senate;

(e) Two members appointed by the Speaker of the Assembly who were members of the Assembly Committee on Taxation during the immediately preceding legislative session; and

(f) Two members appointed by the Majority Leader of the Senate who were members of the Senate Committee on Taxation during the immediately preceding legislative session.

2. The members of the Committee shall elect a Chairman and Vice Chairman from among their members. The Chairman must be elected from one house of the Legislature and the Vice Chairman from the other house. After the initial election of a Chairman and Vice Chairman, each of those officers holds office for a term of 2 years commencing on July 1 of each odd-numbered year. If a vacancy occurs in the chairmanship or vice chairmanship, the members of the Committee shall elect a replacement for the remainder of the unexpired term.

3. Any member of the Committee who is not a candidate for reelection or who is defeated for reelection continues to serve until the convening of the next session of the Legislature.

4. Vacancies on the Committee must be filled in the same manner as the original appointments.

(Added to NRS by 2003, 20th Special Session, 188)

NRS 218.53743 Meetings; regulations; quorum; compensation of members. [Effective through June 30, 2005.]

1. The members of the Committee shall meet throughout each year at the times and places specified by a call of the Chairman or a majority of the Committee.

2. The Director of the Legislative Counsel Bureau or his designee shall act as the nonvoting recording Secretary.

3. The Committee shall prescribe regulations for its own management and government.

4. Except as otherwise provided in subsection 5, five voting members of the Committee constitute a quorum.

5. Any recommended legislation proposed by the Committee must be approved by a majority of the members of the Senate and by a majority of the members of the Assembly serving on the Committee.

6. Except during a regular or special session of the Legislature, the members of the Committee are entitled to receive the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding regular session, the per diem allowance provided for state officers and

employees generally and the travel expenses provided pursuant to NRS 218.2207 for each day or portion of a day of attendance at a meeting of the Committee and while engaged in the business of the Committee. The salaries and expenses paid pursuant to this subsection and the expenses of the Committee must be paid from the Legislative Fund.

(Added to NRS by 2003, 20th Special Session, 189)

NRS 218.53745 Powers of Committee. [Effective through June 30, 2005.] The Committee may:

1. Review and study:

(a) The specific taxes collected in this state;

(b) The implementation of any taxes, fees and other methods for generating public revenue in this state;

(c) The impact of any changes to taxes, fees and other methods for generating public revenue that result from legislation enacted by the Legislature on the residents of this state and on the businesses located in this state, doing business in this state or considering locating in this state;

(d) The fiscal effects of any taxes, fees and other methods for generating public revenue;

(e) The impact, if any, on the prices charged to the residents of this state from the compounding of various new or increased taxes such as the real property transfer tax;

(f) The beneficial and detrimental effects, if any, of the reduction of the tax based on wages for the cost of employee health benefits;

(g) Broad issues of tax policy and fiscal policy relevant to the future of the State of Nevada; and

(h) Any other issues related to taxation, the generation of public revenue, tax policy or fiscal policy which affect this state.

2. Conduct investigations and hold hearings in connection with its powers pursuant to this section.

3. Contract with one or more consultants to obtain technical advice concerning its review and study.

4. Apply for any available grants and accept any gifts, grants or donations and use any such gifts, grants or donations to aid the Committee in exercising its powers pursuant to this section.

5. Request that the Legislative Counsel Bureau assist in the research, investigations, hearings, studies and reviews of the Committee.

6. Recommend to the Legislature, as a result of its review and study, any appropriate legislation.

(Added to NRS by 2003, 20th Special Session, 189)

NRS 218.53747 Administration of oaths; deposition of witnesses. [Effective through June 30, 2005.] If the Committee conducts investigations or holds hearings pursuant to subsection 2 of NRS 218.53745:

1. The Secretary of the Committee or, in his absence, a member designated by the Committee may administer oaths; and

2. The Secretary or Chairman of the Committee may cause the deposition of witnesses, residing either within or outside of this state, to be taken in the manner prescribed by rule of court for taking depositions in civil actions in the district courts.

(Added to NRS by 2003, 20th Special Session, 190)

NRS 218.53749 Fees and mileage for witnesses. [Effective through June 30, 2005.] Each witness who appears before the Committee by its order, except a state officer or employee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of record of this state. The fees and mileage must be audited and paid upon the presentation of proper claims sworn to by the witness and approved by the Secretary and Chairman of the Committee.

(Added to NRS by 2003, 20th Special Session, 190)

APPENDIX B

**Statutes for the Business License Fee
(NRS 360.790 – 360.795)**

APPENDIX B

STATUTES FOR THE BUSINESS LICENSE FEE (NRS 360.790 – 360.795)

NRS 360.760 Definitions. As used in NRS 360.760 to 360.795, inclusive, unless the context otherwise requires, the words and terms defined in NRS 360.765, 360.770 and 360.775 have the meanings ascribed to them in those sections.

(Added to NRS by 2003, 20th Special Session, 155)

NRS 360.765 “Business” defined.

1. “Business” includes:

(a) A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this state or another jurisdiction and any other person that conducts an activity for profit; and

(b) The activities of a natural person which are deemed to be a business pursuant to NRS 360.785.

2. The term does not include:

(a) A governmental entity.

(b) A nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) A person who operates a business from his home and earns from that business not more than 66 2/3 percent of the average annual wage, as computed for the preceding calendar year pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars.

(d) A business whose primary purpose is to create or produce motion pictures. As used in this paragraph, “motion pictures” has the meaning ascribed to it in NRS 231.020.

(Added to NRS by 2003, 20th Special Session, 156)

NRS 360.770 “Employee” defined.

1. “Employee” includes:

(a) A natural person who receives wages or other remuneration from a business for personal services, including commissions and bonuses and remuneration payable in a medium other than cash; and

(b) A natural person engaged in the operation of a business.

2. The term includes:

(a) A partner or other co-owner of a business; and

(b) Except as otherwise provided in subsection 3, a natural person reported as an employee to the:

(1) Employment Security Division of the Department of Employment, Training and Rehabilitation;

(2) Administrator of the Division of Industrial Relations of the Department of Business and Industry; or

(3) Internal Revenue Service on an Employer’s Quarterly Federal Tax Return (Form 941), Employer’s Monthly Federal Tax Return (Form 941-M), Employer’s Annual Tax Return for Agricultural Employees (Form 943) or any equivalent or successor form.

3. The term does not include:

(a) A business or an independent contractor that performs services on behalf of another business.

(b) A natural person who is retired or otherwise receiving remuneration solely because of past service to the business.

(c) A newspaper carrier or the immediate supervisor of a newspaper carrier who is an independent contractor of the newspaper.

(d) A natural person who performs all of his duties for the business outside of this state.

4. An independent contractor is not an employee of a business with which he contracts.

(Added to NRS by 2003, 20th Special Session, 156)

NRS 360.775 “Wages” defined. “Wages” means any remuneration paid for personal services, including commissions, and bonuses and remuneration payable in any medium other than cash.
(Added to NRS by 2003, 20th Special Session, 156)

NRS 360.780 Business license required; application and annual fee for license; activities constituting conduct of business. [Effective through June 30, 2004.]

1. Except as otherwise provided in subsection 8, a person shall not conduct a business in this state unless he has a business license issued by the Department.

2. An application for a business license must:

(a) Be made upon a form prescribed by the Department;

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business;

(c) Declare the estimated number of employees for the previous calendar quarter;

(d) Be accompanied by a fee of \$100; and

(e) Include any other information that the Department deems necessary.

3. The application must be signed by:

(a) The owner, if the business is owned by a natural person;

(b) A member or partner, if the business is owned by an association or partnership; or

(c) An officer or some other person specifically authorized to sign the application, if the business is owned by a corporation.

4. If the application is signed pursuant to paragraph (c) of subsection 3, written evidence of the signer’s authority must be attached to the application.

5. A person who has been issued a business license by the Department shall submit a fee of \$100 to the Department on or before the last day of the month in which the anniversary date of issuance of the business license occurs in each year, unless the person submits a written statement to the Department, at least 10 days before the anniversary date, indicating that the person will not be conducting business in this state after the anniversary date.

6. The business license required to be obtained pursuant to this section is in addition to any license to conduct business that must be obtained from the local jurisdiction in which the business is being conducted.

7. For the purposes of NRS 360.760 to 360.795, inclusive, a person shall be deemed to conduct a business in this state if a business for which the person is responsible:

(a) Is organized pursuant to title 7 of NRS, other than a business organized pursuant to chapter 82 or 84 of NRS;

(b) Has an office or other base of operations in this state; or

(c) Pays wages or other remuneration to a natural person who performs in this state any of the duties for which he is paid.

8. A person who takes part in a trade show or convention held in this state for a purpose related to the conduct of a business is not required to obtain a business license specifically for that event.

(Added to NRS by 2003, 20th Special Session, 157)

NRS 360.780 Business license required; application and annual fee for license; penalty for late payment of fee; activities constituting conduct of business. [Effective July 1, 2004.]

1. Except as otherwise provided in subsection 8, a person shall not conduct a business in this state unless he has a business license issued by the Department.

2. An application for a business license must:

(a) Be made upon a form prescribed by the Department;

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business;

(c) Declare the estimated number of employees for the previous calendar quarter;

- (d) Be accompanied by a fee of \$100; and
 - (e) Include any other information that the Department deems necessary.
 - 3. The application must be signed by:
 - (a) The owner, if the business is owned by a natural person;
 - (b) A member or partner, if the business is owned by an association or partnership; or
 - (c) An officer or some other person specifically authorized to sign the application, if the business is owned by a corporation.
 - 4. If the application is signed pursuant to paragraph (c) of subsection 3, written evidence of the signer's authority must be attached to the application.
 - 5. A person who has been issued a business license by the Department shall submit a fee of \$100 to the Department on or before the last day of the month in which the anniversary date of issuance of the business license occurs in each year, unless the person submits a written statement to the Department, at least 10 days before the anniversary date, indicating that the person will not be conducting business in this state after the anniversary date. A person who fails to submit the annual fee required pursuant to this subsection in a timely manner shall pay a penalty in the amount of \$100 in addition to the annual fee.
 - 6. The business license required to be obtained pursuant to this section is in addition to any license to conduct business that must be obtained from the local jurisdiction in which the business is being conducted.
 - 7. For the purposes of NRS 360.760 to 360.795, inclusive, a person shall be deemed to conduct a business in this state if a business for which the person is responsible:
 - (a) Is organized pursuant to title 7 of NRS, other than a business organized pursuant to chapter 82 or 84 of NRS;
 - (b) Has an office or other base of operations in this state; or
 - (c) Pays wages or other remuneration to a natural person who performs in this state any of the duties for which he is paid.
 - 8. A person who takes part in a trade show or convention held in this state for a purpose related to the conduct of a business is not required to obtain a business license specifically for that event.
- (Added to NRS by 2003, 20th Special Session, 157; A 2003, 20th Special Session, 231, effective July 1, 2004)

NRS 360.785 Activities of natural person constituting business. The activity or activities conducted by a natural person shall be deemed to be a business that is subject to the provisions of NRS 360.760 to 360.795, inclusive, if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, or its equivalent or successor form, for the business.

(Added to NRS by 2003, 20th Special Session, 157)

NRS 360.790 Deposit of proceeds in State General Fund. The Department shall deposit all money it receives pursuant to NRS 360.760 to 360.795, inclusive, in the State Treasury for credit to the State General Fund.

(Added to NRS by 2003, 20th Special Session, 157)

NRS 360.795 Confidentiality of records and files of Department.

1. Except as otherwise provided in this section and NRS 360.250, the records and files of the Department concerning the administration of NRS 360.760 to 360.795, inclusive, are confidential and privileged. The Department, and any employee of the Department engaged in the administration of NRS 360.760 to 360.795, inclusive, or charged with the custody of any such records or files, shall not disclose any information obtained from those records or files. Neither the Department nor any employee of the

Department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Department concerning the administration of NRS 360.760 to 360.795, inclusive, are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a person in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a person or his authorized representative of a copy of any document filed by the person pursuant to NRS 360.760 to 360.795, inclusive.

(c) Publication of statistics so classified as to prevent the identification of a particular business or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to workers' compensation, unemployment compensation, public assistance, taxation, labor or gaming.

(f) Exchanges of information pursuant to subsection 3.

(g) Disclosure of information concerning whether or not a person conducting a business in this state has a business license issued by the Department pursuant to NRS 360.780.

3. The Nevada Tax Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

4. The Executive Director shall periodically, as he deems appropriate, but not less often than annually, transmit to the Administrator of the Division of Industrial Relations of the Department of Business and Industry a list of the businesses of which he has a record. The list must include the mailing address of the business and the approximate number of employees of the business as reported to the Department.

(Added to NRS by 2003, 1315)

APPENDIX C

**Nevada Administrative Code for the
Business License Fee
(NAC Chapter 360)**

APPENDIX C
NEVADA ADMINISTRATIVE CODE FOR THE BUSINESS LICENSE FEE
(NAC CHAPTER 360)

NOTE: This version of the NAC does not include the changes to the regulations for the Business License Fee ratified by the Legislative Commission on December 15, 2004.

BUSINESS LICENSES

REVISER'S NOTE.

The regulation of the Tax Commission filed with the Secretary of State on February 18, 2004 (LCB File No. R174-03), the source of NAC 360.750 to 360.770, inclusive (sections 2 to 12, inclusive, of the regulation), contains the following provision not included in NAC:

"The provisions of this regulation do not affect the liability of any person for any failure to obtain a business license pursuant to chapter 364A of NRS before October 1, 2003."

NAC 360.750 Definitions. (NRS 360.090) As used in NAC 360.750 to 360.770, inclusive, unless the context otherwise requires, the words and terms defined in NAC 360.752 to 360.758, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.752 "Average annual wage" defined. (NRS 360.090) "Average annual wage" means the average annual wage for a calendar year as computed pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.754 "Business" defined. (NRS 360.090) "Business" has the meaning ascribed to it in NRS 360.765.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.756 "Federal tax year" defined. (NRS 360.090) "Federal tax year" means any period of 12 months for which a person is required to report income, tax deductions and tax credits pursuant to the provisions of the Internal Revenue Code and any regulations adopted pursuant thereto.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.758 "State business license" defined. (NRS 360.090) "State business license" means the business license required by NRS 360.780.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.760 Interpretation of certain statutory terms. (NRS 360.090, 360.765, 360.770, 360.780, 360.785) For the purposes of NRS 360.760 to 360.795, inclusive, and NAC 360.750 to 360.770, inclusive, the Commission interprets the term:

1. "Business trust" to exclude any trust or portion thereof for which any income, tax deductions or tax credits are attributable to a grantor or another person as a substantial owner of the trust or portion pursuant to the provisions of 26 U.S.C. §§ 671 to 679, inclusive.
2. "Convention" to mean an event of limited duration primarily attended by members of a particular trade or industry to discuss matters of interest to members of that trade or industry.
3. "Limited-liability company" to exclude any limited-liability company which consists of a single member if the limited-liability company is disregarded, for the purposes of federal income taxation, as an entity separate from its owner.
4. "Natural person" to include, without limitation:

(a) A natural person who is the single member of a limited-liability company which is disregarded, for the purposes of federal income taxation, as an entity separate from its owner;

(b) A natural person who is regarded as a substantial owner of any trust or portion thereof pursuant to the provisions of 26 U.S.C. §§ 671 to 679, inclusive;

(c) A married couple who jointly report, on one or more of the forms described in NRS 360.785, any income, tax deductions or tax credits attributable to a business which is jointly operated by that couple; and

(d) A married person who reports, either individually or jointly with his spouse, on one or more of the forms described in NRS 360.785, any income, tax deductions or tax credits attributable to a business which is individually operated by that person.

5. "Person who operates a business from his home" to mean a natural person who operates a business from his personal residence and who:

(a) Does not hold any part of his personal residence open to the general public for use in furtherance of that business; and

(b) Does not own, lease, rent or license any real property for use in furtherance of that business, other than his personal residence and any real property he owns, leases, rents or licenses for the sole purpose of:

(I) Maintaining a post office box;

(II) Posting a business license in accordance with the requirements of a municipal or county ordinance; or

(III) Periodically exhibiting or selling goods or services at a temporary fair, market, show or exhibition.

6. "Trade show" to mean an event of limited duration primarily attended by members of a particular trade or industry to exhibit their merchandise or services to other members of that trade or industry.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.762 Entities deemed to be businesses. (NRS 360.090, 360.765, 360.780)

1. Except as otherwise provided in this section and subsection 2 of NRS 360.765, a corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership or business trust, or its equivalent organized under the laws of this State or another jurisdiction, shall be deemed to constitute a business for the purposes of NRS 360.760 to 360.795, inclusive, and NAC 360.750 to 360.770, inclusive, regardless of:

(a) Any purpose for which that entity is organized or operated; and

(b) Whether that entity conducts an activity for profit.

2. The provisions of subsection 1 do not apply to a natural person.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.764 Natural persons: Limitation on number of business licenses required. (NRS 360.090, 360.780, 360.785) A natural person is not required to obtain more than one state business license for any combination of activities conducted by that person which are reported to the Internal Revenue Service for any federal tax year on two or more of the forms described in NRS 360.785.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.766 Home-based businesses: Applicability of exemption from licensing; requirement to obtain license. (NRS 360.090, 360.765, 360.780)

1. The exemption for a home-based business does not apply to a person who operates a business from his home during a federal tax year in which:

(a) He at any time failed to qualify as a person who operates a business from his home, as that term is interpreted pursuant to NAC 360.760; or

(b) His net earnings from that business were greater than 66 2/3 percent of the average annual wage for the most recent calendar year ending before the last day of that federal tax year.

2. Except as otherwise provided in NAC 360.764, a person described in subsection 1 shall obtain a state business license for that business not later than 180 days after the last day of a federal tax year in which the exemption for a home-based business does not apply to him.

3. As used in this section:

(a) "Exemption for a home-based business" means the provisions of paragraph (c) of subsection 2 of NRS 360.765.

(b) "Federal tax year" means a federal tax year ending on or after December 31, 2003.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.768 Home-based businesses: Liability for annual fee. (NRS 360.090, 360.765, 360.780)

1. If a person who operates a business from his home is required to obtain a state business license as a result of his net earnings from that business, his liability for each annual fee required by subsection 5 of NRS 360.780, depends upon the net earnings of the person from that business for the most recent federal tax year ending before the date on which that fee would otherwise become due. The person is not liable for that fee if he establishes to the reasonable satisfaction of the Department that those net earnings were less than 66 2/3 percent of the average annual wage for the most recent calendar year ending before the date on which that fee would otherwise become due.

2. For the purposes of this section, the Department will accept a copy of a federal income tax return filed with the Internal Revenue Service for a business which a person operates from his home as satisfactory evidence of the net earnings of the person from the business for the period covered by the return.

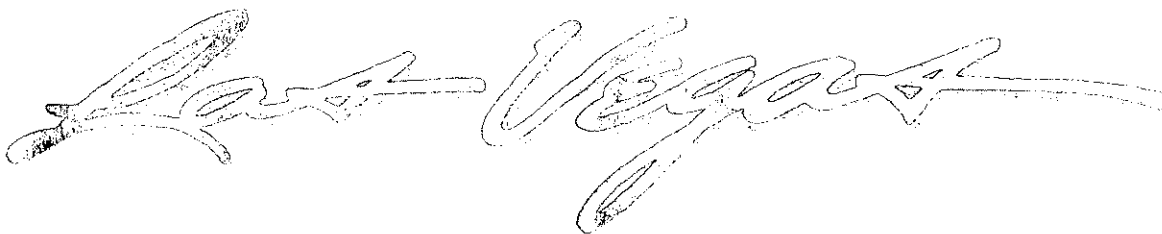
(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

NAC 360.770 Refunding of licensing fees. (NRS 360.090, 360.780) The fees required by NRS 360.780 are nonrefundable.

(Added to NAC by Tax Comm'n by R174-03, eff. 2-18-2004)

APPENDIX D

Letters of Concern Regarding Business License Fee



LUKE PUSCHNIG
Fiscal Analyst

July 26, 2004

Mr. Russell Guindon
Deputy Fiscal Analyst
Legislative Counsel Bureau
State of Nevada
401 S. Carson St.
Carson City, NV 89701-4747

Re: Proposals for Statutory Change – Legislative Committee on Taxation, Public Revenue and Tax Policy

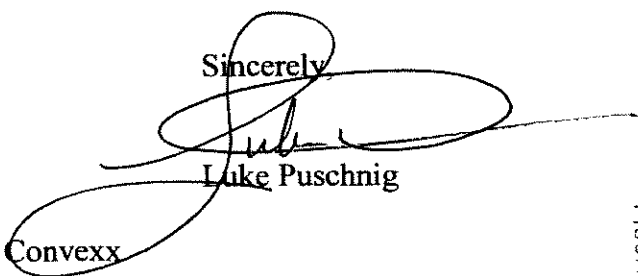
Dear Mr. Guindon:

The purpose of this letter is to provide to you a copy of an additional letter from one of Nevada's customers relating to the imposition of the State of Nevada Business License Fee upon exhibitors at public events.

This letter is from a Nevada based business, ConvExx, that annually brings into Nevada approximately \$200,000,000.00 of economic activity. Please note with particular interest the statements made in the third and fourth paragraph of the letter.

If you require any additional information or would like to discuss this matter, please do not hesitate to contact me.

Sincerely,



Luke Puschnig

Enclosure: July 15, 2004 letter from Convexx

C: Brett J. Scolari, Esq.
Chuck Schwartz

FISCAL ANALYSIS DIVISION

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**September 16-19, 2004
Las Vegas, Nevada**

July 15, 2004

Mr. Luke Pushnig, Esq.
Las Vegas Convention & Visitors Authority
3150 Paradise Road
Las Vegas, NV 89109

Dear Luke,

I just returned from the State of Nevada Taxation department and much to my amazement was informed that each of our out-of-state vendors for the Las Vegas BikeFest must now pay a Nevada State license fee of \$100. Our event has over 200 of these vendors. We have been selling vendor space since last December and have told our vendors there would be no further expenses.

I really don't know where to turn. While at the taxation office, I received no cooperation from their staff and couldn't even get a fair explanation of why this tax was being levied.

This is completely unreasonable and unheard of in other states in the U.S. We have produced events in 14 other states and have never had a vendor license fee over \$10. For the life of me I don't understand the logic of charging a vendor at a consumer/public show a license fee. Any company based in Nevada pays \$100 to operate for a year in Nevada. Now for a three-day event they must pay the same. It is ludicrous.

Clearly, this will have a major impact on our event. It could even cause us to cancel or seriously reduce the quality of event in order for us to account for a license fee payment of over \$20,000.

I urge you to meet with the powers to be and plead our case. I am sure other event organizers are having the same heartburn we are. I just don't get it.

I appreciate anything you can do to help us with this issue.

Kindest personal regards,

Chuck Schwartz, CEM
Chairman, ConvExx
Las Vegas BikeFest Partnership



2260 CORPORATE CIRCLE, SUITE 400
HENDERSON, NV 89074-7701
TEL 702-450-7662 • FAX 702-450-7732

866-BIKEFEST (245-3337)
WWW.LASVEGASBIKEFEST.COM
INFO@LASVEGASBIKEFEST.COM

FULL THROTTLE EVENTS
343 FOURTH AVENUE, SUITE 203
SAN DIEGO, CA 92101-7035
TEL 619-234-3344 • FAX 619-234-3370



America's Craft Marketplace

800 Lindberg Lane, Suite 190
Petaluma, CA 94952

800-321-1213
Fax 707.763-5346
www.harvestfestival.com

April 28, 2004

Patrick Coyne
Cashman Center
850 Las Vegas Blvd. North
Las Vegas, NV 89101

Dear Patrick,

I have just been informed that the new law that requires exhibitors to pay an annual \$100 state business registration fee has been passed. We are very disappointed and know that this additional expense for our artists will definitely affect our show. Harvest Festival has been producing shows in Las Vegas for 16 years and although we produce one of the largest crafts shows in your area, we find it very difficult to sell out the show. Because most of our exhibitors are from California, they hesitate to spend the added expense of traveling to Nevada. Adding more to their expense budget will certainly make them hesitate to sign up or perhaps cancel this year. We have examined our database to see how many exhibitors do more than one show in Nevada. It appears that there are very few. This means that this \$100 fee would not be divided among many shows but would be added to their expense for exhibiting in one show. What a huge increase for them!

We certainly hope this decision can be overturned so that we can continue to bring our craft show to Las Vegas.

Sincerely,

Carol Cevolani
Show Manager
Harvest Festival
707-559-7124
carolcevolani@us.dmgworldmedia.com

LAUGHLIN TOURISM COMMITTEE

August 12, 2004

Legislative Committee on Taxation
Department of Taxation
1550 E. College Parkway, Suite 115
Carson City, NV 89706-7937

Re: Support for Proposals for Statutory Change—Legislative Committee on Taxation,
Public Revenue and Tax Policy

To the Members of the Legislative Committee:

At the August 3, 2004 meeting of the Laughlin Tourism Committee (the LTC), a resort association comprised of eight Laughlin hotel/casino properties, the members agreed unanimously to voice our concerns regarding the interpretation and collection of the Live Entertainment Tax as well as the Business License Fee imposed by NRS 360.760 through 360.795.

There is considerable confusion on how sponsor tickets are handled for the live Entertainment Tax. The member properties of the Laughlin Tourism Committee financially subsidize the events in our community. Additionally, corporate sponsors like Coors or Wrangler come forward with product subsidies and/or a financial commitment to support the event. Oftentimes, the sponsorship includes visibility at the event with banner space, advertising in the program, and “comp” tickets to the event. Who, if anyone, is responsible for paying the LET for sponsored tickets that may or may not even be used?

There is also significant concern by the members of the Laughlin Tourism Committee regarding the interpretation and imposition of the Business License Fee proposing to collect a \$100 annual license fee from vendors and contestants from our events. Tasking the promoter with determining if each of their competitors has a Nevada business license is an ominous responsibility. We believe the burden of proof being placed on the promoter and the additional fees being asked of the contestants will actually have the opposite effect that the taxes intended. There is a distinct possibility that Laughlin will lose significant revenue generating events because of these new taxes. Revenue to Laughlin area businesses and tax revenue will be lost because vendors, contestants and, most importantly, promoters will choose to take their business elsewhere.

We are respectfully requesting that the statute exempt contestants or that they be given the same consideration similar to the discussion about vendors or exhibitors at either \$1.25 each or an annual one-time fee paid by the event facility.

Page 2

I am certain we are not alone in our concerns regarding the new tax laws. Obviously, there are many issues with the new taxes which the 2005 Legislature will have to address.

If this letter in any way will be useful in your endeavors to streamline the process, then we have been successful.

Regards,

A handwritten signature in cursive script, appearing to read "Curtis Jacks".

Curtis Jacks
President, Laughlin Tourism Committee

Cc: LTC Members
JoElle Hurns, Laughlin Chamber of Commerce
Teri Laursen, LTC Administrator
Russell Guindon, Deputy Fiscal Analyst

APPENDIX E

**Letter from Nevada Commission on Economic Development
Regarding Exemption from Business License Fee
for Film Production Industry**



August 3, 2004

Kenny C. Guinn
Governor

Lorraine T. Hunt
Lieutenant Governor
Chair

Bob Shriver
Executive Director

www.expand2Nevada.com
bizinfo@bizopp.state.nv.us

800.336.1600

- Business Development
- Global Trade & Investment
- Made in Nevada
- Marketing/Special Events
- Nevada Film Office
- Procurement Outreach
- Rural Development

108 E. Proctor Street
Carson City, Nevada
89701-4240
775.687.4325
775.687.4450-Fax

555 E. Washington Avenue
Suite 5400
Las Vegas, Nevada
89101-1083
702.486.2700
702.486.2701-Fax



The Hon. Mike McGinness, Chairman
Committee on Taxation, Public Resources and Tax Policy
Nevada State Legislature
401 S. Carson Street
Carson City, NV 89701-4747

Re: Reinstate Exemption for Motion Picture Production

Dear Senator McGinness:

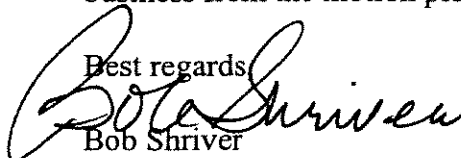
The Commission on Economic Development and our Nevada Film Office want to ensure the reinstatement of the payroll tax exemption for companies producing motion pictures. During the 20th special session, SB-8 included language to allow for the exemption of the annual fee but did not reinstate the exemption to the payroll tax.

As you are aware motion picture productions had been exempted (70th Session) from the previous business activity tax. This exemption was important in Nevada's efforts to increase economic diversification because production companies use locations, local services and talent. Nevada is facing increasing competition from other states that offer incentives ranging from investment funds to sales tax exemptions. The original exemption to the business activity tax was added to the law because of numerous complaints from major studio productions. That exemption made it perfectly clear to the numerous payroll companies handling projects the tax would not apply.

Our concern is that without the specific and clear exemption, such production companies will assume the tax applies and will not consult state officials to clarify potential exemptions such as those not covered by Nevada's unemployment insurance.

We recommend that language from repealed Chapter 364A.020 subsection 3, paragraph (c) be reinstated to apply to the payroll tax. This would send a clear message that Nevada is actively seeking business from the motion picture industry.

Best regards


Bob Shriver
Executive Director

cc: Russell Guindon, LCB

RECEIVED
04 AUG -4 AM 10:55
FISCAL ANALYSIS DIVISION

APPENDIX F

Statutes for the Modified Business Tax and Modified Business Tax on Financial Institutions (NRS Chapters 363B and 363A)

APPENDIX F

STATUTES FOR THE MODIFIED BUSINESS TAX (NRS CHAPTER 363B) AND MODIFIED BUSINESS TAX ON FINANCIAL INSTITUTIONS (NRS CHAPTER 363A)

CHAPTER 363B BUSINESS TAX GENERAL PROVISIONS

<u>NRS 363B.010</u>	Definitions.
<u>NRS 363B.020</u>	"Commission" defined.
<u>NRS 363B.030</u>	"Employer" defined.
<u>NRS 363B.040</u>	"Employment" defined.
<u>NRS 363B.050</u>	"Taxpayer" defined.

ADMINISTRATION

<u>NRS 363B.060</u>	Duties of Department.
<u>NRS 363B.070</u>	Maintenance and availability of records of taxpayer; penalty.
<u>NRS 363B.080</u>	Examination of records by Department; payment of expenses of Department for examination of records outside State.
<u>NRS 363B.090</u>	Authority of Executive Director to request information to carry out chapter.
<u>NRS 363B.100</u>	Confidentiality of records and files of Department.

IMPOSITION AND COLLECTION

<u>NRS 363B.110</u>	Imposition, amount and payment of tax; filing of return and report; deductions. [Effective through June 30, 2004.]
<u>NRS 363B.110</u>	Imposition, amount and payment of tax; filing of return and report; deductions. [Effective July 1, 2004.]
<u>NRS 363B.120</u>	Partial abatement of tax during initial period of operation of employer. [Effective July 1, 2005.]
<u>NRS 363B.130</u>	Extension of time for payment; payment of interest during period of extension.

OVERPAYMENTS AND REFUNDS

<u>NRS 363B.140</u>	Certification of excess amount collected; credit and refund.
<u>NRS 363B.150</u>	Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim.
<u>NRS 363B.160</u>	Interest on overpayments; disallowance of interest.
<u>NRS 363B.170</u>	Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund.
<u>NRS 363B.180</u>	Action for refund: Period for commencement; venue; waiver.
<u>NRS 363B.190</u>	Rights of claimant upon failure of Department to mail notice of action on claim; allocation of judgment for claimant.
<u>NRS 363B.200</u>	Allowance of interest in judgment for amount illegally collected.
<u>NRS 363B.210</u>	Standing to recover.
<u>NRS 363B.220</u>	Action for recovery of erroneous refund: Jurisdiction; venue; prosecution.
<u>NRS 363B.230</u>	Cancellation of illegal determination.

MISCELLANEOUS PROVISIONS

<u>NRS 363B.240</u>	Prohibited acts; penalty.
<u>NRS 363B.250</u>	Remedies of State are cumulative.

NRS 363B.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 363B.020 to 363B.050, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2003, 20th Special Session, 141)

NRS 363B.020 “Commission” defined. “Commission” means the Nevada Tax Commission.

(Added to NRS by 2003, 20th Special Session, 141)

NRS 363B.030 “Employer” defined. “Employer” means any employer who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter, except a financial institution, an Indian tribe, a nonprofit organization or a political subdivision. For the purposes of this section:

1. “Financial institution” has the meaning ascribed to it in NRS 363A.050.
2. “Indian tribe” includes any entity described in subsection 10 of NRS 612.055.
3. “Nonprofit organization” means a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).
4. “Political subdivision” means any entity described in subsection 9 of NRS 612.055.

(Added to NRS by 2003, 20th Special Session, 141)

NRS 363B.040 “Employment” defined. “Employment” has the meaning ascribed to it in NRS 612.065 to 612.145, inclusive.

(Added to NRS by 2003, 20th Special Session, 141)

NRS 363B.050 “Taxpayer” defined. “Taxpayer” means any person liable for the tax imposed by this chapter.

(Added to NRS by 2003, 20th Special Session, 141)

ADMINISTRATION

NRS 363B.060 Duties of Department. The Department shall:

1. Administer and enforce the provisions of this chapter, and may adopt such regulations as it deems appropriate for those purposes.
2. Deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

(Added to NRS by 2003, 20th Special Session, 141)

NRS 363B.070 Maintenance and availability of records of taxpayer; penalty.

1. Each person responsible for maintaining the records of a taxpayer shall:
 - (a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of this chapter;
 - (b) Preserve those records for 4 years or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; and
 - (c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.
2. The Department may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer pursuant to the provisions of this chapter.
3. Any person who violates the provisions of subsection 1 is guilty of a misdemeanor.

(Added to NRS by 2003, 20th Special Session, 141)

NRS 363B.080 Examination of records by Department; payment of expenses of Department for examination of records outside State.

1. To verify the accuracy of any return filed or, if no return is filed by a taxpayer, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may

examine the books, papers and records of any person who may be liable for the tax imposed by this chapter.

2. Any person who may be liable for the tax imposed by this chapter and who keeps outside of this state any books, papers and records relating thereto shall pay to the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

(Added to NRS by 2003, 20th Special Session, 141)

NRS 363B.090 Authority of Executive Director to request information to carry out chapter. The Executive Director may request from any other governmental agency or officer such information as he deems necessary to carry out the provisions of this chapter. If the Executive Director obtains any confidential information pursuant to such a request, he shall maintain the confidentiality of that information in the same manner and to the same extent as provided by law for the agency or officer from whom the information was obtained.

(Added to NRS by 2003, 20th Special Session, 142)

NRS 363B.100 Confidentiality of records and files of Department.

1. Except as otherwise provided in this section and NRS 360.250, the records and files of the Department concerning the administration of this chapter are confidential and privileged. The Department, and any employee engaged in the administration of this chapter or charged with the custody of any such records or files, shall not disclose any information obtained from the Department's records or files or from any examination, investigation or hearing authorized by the provisions of this chapter. Neither the Department nor any employee of the Department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any return or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

(f) Exchanges of information pursuant to subsection 3.

3. The Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

(Added to NRS by 2003, 20th Special Session, 142)

IMPOSITION AND COLLECTION

NRS 363B.110 Imposition, amount and payment of tax; filing of return and report; deductions. [Effective through June 30, 2004.]

1. There is hereby imposed an excise tax on each employer at the rate of 0.7 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment.

2. The tax imposed by this section must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department:

(1) A return on a form prescribed by the Department; and

(2) A copy of any report required by the Employment Security Division of the Department of Employment, Training and Rehabilitation for determining the amount of the contribution required pursuant to NRS 612.535 for any wages paid by the employer during that calendar quarter; and

(b) Remit to the Department any tax due pursuant to this chapter for that calendar quarter.

4. Except as otherwise provided in subsection 5, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant to this section any amount authorized pursuant to this section that is paid by the employer for health insurance or a health benefit plan for its employees in the calendar quarter for which the tax is paid. The amounts for which the deduction is allowed include:

(a) For an employer providing a program of self-insurance for its employees, all amounts paid during the calendar quarter for claims, direct administrative services costs, including such services provided by the employer, and any premiums paid for individual or aggregate stop-loss insurance coverage. An employer is not authorized to deduct the costs of a program of self-insurance unless the program is a qualified employee welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

(b) The premiums for a policy of health insurance or reinsurance for a health benefit plan for its employees.

(c) Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan.

(d) Such other similar payments for health care or insurance for health care for employees as are authorized by the Department.

5. An employer may not deduct from the wages upon which the excise tax is imposed pursuant to this section:

(a) Amounts paid for health care or premiums paid for insurance for an industrial injury or occupational disease for which coverage is required pursuant to chapters 616A to 616D, inclusive, or 617 of NRS; or

(b) Any payments made by employees for health care or health insurance or amounts deducted from the wages of employees for such care or insurance.

6. An employer claiming the deduction allowed pursuant to subsection 4 shall submit with the return filed pursuant to subsection 3 proof of the amount paid in the calendar quarter that qualifies for the deduction. If the amount of the deduction exceeds the amount of reported wages, the excess amount may be carried forward to the following calendar quarter until the deduction is exhausted.

7. As used in this section, "employee welfare benefit plan" has the meaning ascribed to it in 29 U.S.C. § 1002.

(Added to NRS by 2003, 20th Special Session, 142)

NRS 363B.110 Imposition, amount and payment of tax; filing of return and report; deductions.
[Effective July 1, 2004.]

1. There is hereby imposed an excise tax on each employer at the rate of 0.65 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment.
2. The tax imposed by this section must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.
3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:
 - (a) File with the Department:
 - (1) A return on a form prescribed by the Department; and
 - (2) A copy of any report required by the Employment Security Division of the Department of Employment, Training and Rehabilitation for determining the amount of the contribution required pursuant to NRS 612.535 for any wages paid by the employer during that calendar quarter; and
 - (b) Remit to the Department any tax due pursuant to this chapter for that calendar quarter.
4. Except as otherwise provided in subsection 5, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant to this section any amount authorized pursuant to this section that is paid by the employer for health insurance or a health benefit plan for its employees in the calendar quarter for which the tax is paid. The amounts for which the deduction is allowed include:
 - (a) For an employer providing a program of self-insurance for its employees, all amounts paid during the calendar quarter for claims, direct administrative services costs, including such services provided by the employer, and any premiums paid for individual or aggregate stop-loss insurance coverage. An employer is not authorized to deduct the costs of a program of self-insurance unless the program is a qualified employee welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.
 - (b) The premiums for a policy of health insurance or reinsurance for a health benefit plan for its employees.
 - (c) Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan.
 - (d) Such other similar payments for health care or insurance for health care for employees as are authorized by the Department.
5. An employer may not deduct from the wages upon which the excise tax is imposed pursuant to this section:
 - (a) Amounts paid for health care or premiums paid for insurance for an industrial injury or occupational disease for which coverage is required pursuant to chapters 616A to 616D, inclusive, or 617 of NRS; or
 - (b) Any payments made by employees for health care or health insurance or amounts deducted from the wages of employees for such care or insurance.
6. An employer claiming the deduction allowed pursuant to subsection 4 shall submit with the return filed pursuant to subsection 3 proof of the amount paid in the calendar quarter that qualifies for the deduction. If the amount of the deduction exceeds the amount of reported wages, the excess amount may be carried forward to the following calendar quarter until the deduction is exhausted.
7. As used in this section, "employee welfare benefit plan" has the meaning ascribed to it in 29 U.S.C. § 1002.

(Added to NRS by 2003, 20th Special Session, 142; A 2003, 20th Special Session, 230, effective July 1, 2004)

NRS 363B.120 Partial abatement of tax during initial period of operation of employer.
[Effective July 1, 2005.]

1. An employer that qualifies pursuant to the provisions of NRS 360.750 is entitled to an exemption of 50 percent of the amount of tax otherwise due pursuant to NRS 363B.110 during the first 4 years of its operation.

2. If a partial abatement from the taxes otherwise due pursuant to NRS 363B.110 is approved by the Commission on Economic Development pursuant to NRS 360.750, the partial abatement must be administered and carried out in the manner set forth in NRS 360.750.

(Added to NRS by 2003, 20th Special Session, 144, effective July 1, 2005)

NRS 363B.130 Extension of time for payment; payment of interest during period of extension. Upon written application made before the date on which payment must be made, the Department may for good cause extend by 30 days the time within which a taxpayer is required to pay the tax imposed by this chapter. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

(Added to NRS by 2003, 20th Special Session, 144)

OVERPAYMENTS AND REFUNDS

NRS 363B.140 Certification of excess amount collected; credit and refund. If the Department determines that any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person or his successors in interest.

(Added to NRS by 2003, 20th Special Session, 144)

NRS 363B.150 Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim.

1. Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund may be allowed unless a claim for it is filed with the Department within 3 years after the last day of the month following the calendar quarter for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in this chapter constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(Added to NRS by 2003, 20th Special Session, 144)

NRS 363B.160 Interest on overpayments; disallowance of interest.

1. Except as otherwise provided in this section and NRS 360.320, interest must be paid upon any overpayment of any amount of the taxes imposed by this chapter at the rate of 0.5 percent per month, or fraction thereof, from the last day of the calendar month following the calendar quarter for which the overpayment was made. No refund or credit may be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

2. The interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a

claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or the amount against which the credit is applied.

3. If the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Department shall not allow any interest on the overpayment.

(Added to NRS by 2003, 20th Special Session, 144)

NRS 363B.170 Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund.

1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this state or against any officer of the State to prevent or enjoin the collection under this chapter of the tax imposed by this chapter or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

(Added to NRS by 2003, 20th Special Session, 145)

NRS 363B.180 Action for refund: Period for commencement; venue; waiver.

1. Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Commission, the claimant may bring an action against the Department on the grounds set forth in the claim in a court of competent jurisdiction in Carson City, the county of this state where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

2. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

(Added to NRS by 2003, 20th Special Session, 145)

NRS 363B.190 Rights of claimant upon failure of Department to mail notice of action on claim; allocation of judgment for claimant.

1. If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Commission within 30 days after the last day of the 6-month period. If the claimant is aggrieved by the decision of the Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

2. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

3. The balance of the judgment must be refunded to the plaintiff.

(Added to NRS by 2003, 20th Special Session, 145)

NRS 363B.200 Allowance of interest in judgment for amount illegally collected. In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.

(Added to NRS by 2003, 20th Special Session, 145)

NRS 363B.210 Standing to recover. A judgment may not be rendered in favor of the plaintiff in any action brought against the Department to recover any amount paid when the action is brought by or in the

name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

(Added to NRS by 2003, 20th Special Session, 145)

NRS 363B.220 Action for recovery of erroneous refund: Jurisdiction; venue; prosecution.

1. The Department may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.

2. The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.

3. The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

(Added to NRS by 2003, 20th Special Session, 146)

NRS 363B.230 Cancellation of illegal determination.

1. If any amount in excess of \$25 has been illegally determined, either by the Department or by the person filing the return, the Department shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Department.

2. If an amount not exceeding \$25 has been illegally determined, either by the Department or by the person filing the return, the Department, without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Department.

(Added to NRS by 2003, 20th Special Session, 146)

MISCELLANEOUS PROVISIONS

NRS 363B.240 Prohibited acts; penalty.

1. A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any return or declaration with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by this chapter.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

(Added to NRS by 2003, 20th Special Session, 146)

NRS 363B.250 Remedies of State are cumulative. The remedies of the State provided for in this chapter are cumulative, and no action taken by the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

(Added to NRS by 2003, 20th Special Session, 144)

APPENDIX F

CHAPTER 363A TAXES ON FINANCIAL INSTITUTIONS GENERAL PROVISIONS

<u>NRS 363A.010</u>	Definitions.
<u>NRS 363A.020</u>	“Commission” defined.
<u>NRS 363A.030</u>	“Employer” defined.
<u>NRS 363A.040</u>	“Employment” defined.
<u>NRS 363A.050</u>	“Financial institution” defined.
<u>NRS 363A.060</u>	“Taxpayer” defined.

ADMINISTRATION

<u>NRS 363A.070</u>	Duties of Department.
<u>NRS 363A.080</u>	Maintenance and availability of records of taxpayer; penalty.
<u>NRS 363A.090</u>	Examination of records by Department; payment of expenses of Department for examination of records outside State.
<u>NRS 363A.100</u>	Authority of Executive Director to request information to carry out chapter.
<u>NRS 363A.110</u>	Confidentiality of records and files of Department.

IMPOSITION AND COLLECTION

<u>NRS 363A.120</u>	Excise tax on banks: Imposition, amount and payment; filing of return.
<u>NRS 363A.130</u>	Payroll tax: Imposition, amount and payment; filing of return and report; deductions.
<u>NRS 363A.140</u>	Extension of time for payment; payment of interest during period of extension.

OVERPAYMENTS AND REFUNDS

<u>NRS 363A.150</u>	Certification of excess amount collected; credit and refund.
<u>NRS 363A.160</u>	Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim.
<u>NRS 363A.170</u>	Interest on overpayments; disallowance of interest.
<u>NRS 363A.180</u>	Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund.
<u>NRS 363A.190</u>	Action for refund: Period for commencement; venue; waiver.
<u>NRS 363A.200</u>	Rights of claimant upon failure of Department to mail notice of action on claim; allocation of judgment for claimant.
<u>NRS 363A.210</u>	Allowance of interest in judgment for amount illegally collected.
<u>NRS 363A.220</u>	Standing to recover.
<u>NRS 363A.230</u>	Action for recovery of erroneous refund: Jurisdiction; venue; prosecution.
<u>NRS 363A.240</u>	Cancellation of illegal determination.

MISCELLANEOUS PROVISIONS

<u>NRS 363A.250</u>	Prohibited acts; penalty.
<u>NRS 363A.260</u>	Remedies of State are cumulative.

NRS 363A.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 363A.020 to 363A.060, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2003, 20th Special Session, 133)

NRS 363A.020 “Commission” defined. “Commission” means the Nevada Tax Commission.
(Added to NRS by 2003, 20th Special Session, 133)

NRS 363A.030 “Employer” defined. “Employer” means any financial institution who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter, except an Indian tribe, a nonprofit organization or a political subdivision. For the purposes of this section:

1. “Indian tribe” includes any entity described in subsection 10 of NRS 612.055.

2. "Nonprofit organization" means a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

3. "Political subdivision" means any entity described in subsection 9 of NRS 612.055.

(Added to NRS by 2003, 20th Special Session, 133)

NRS 363A.040 "Employment" defined. "Employment" has the meaning ascribed to it in NRS 612.065 to 612.145, inclusive.

(Added to NRS by 2003, 20th Special Session, 134)

NRS 363A.050 "Financial institution" defined.

1. Except as otherwise provided in subsection 2, "financial institution" means:

(a) An institution licensed, registered or otherwise authorized to do business in this state pursuant to the provisions of chapter 604, 645B, 645E or 649 of NRS or title 55 or 56 of NRS, or a similar institution chartered or licensed pursuant to federal law and doing business in this state;

(b) Any person primarily engaged in:

(1) The purchase, sale and brokerage of securities;

(2) Originating, underwriting and distributing issues of securities;

(3) Buying and selling commodity contracts on either a spot or future basis for the person's own account or for the account of others, if the person is a member or is associated with a member of a recognized commodity exchange;

(4) Furnishing space and other facilities to members for the purpose of buying, selling or otherwise trading in stocks, stock options, bonds or commodity contracts;

(5) Furnishing investment information and advice to others concerning securities on a contract or fee basis;

(6) Furnishing services to holders of or brokers or dealers in securities or commodities;

(7) Holding or owning the securities of banks for the sole purpose of exercising some degree of control over the activities of the banks whose securities the person holds;

(8) Holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities the person holds;

(9) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the holder of the security;

(10) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request by the holder of the security;

(11) Issuing unit investment trusts or face-amount certificates;

(12) The management of the money of trusts and foundations organized for religious, educational, charitable or nonprofit research purposes;

(13) The management of the money of trusts and foundations organized for purposes other than religious, educational, charitable or nonprofit research;

(14) Investing in oil and gas royalties or leases, or fractional interests therein;

(15) Owning or leasing franchises, patents and copyrights which the person in turn licenses others to use;

(16) Closed-end investments in real estate or related mortgage assets operating in such a manner as to meet the requirements of the Real Estate Investment Trust Act of 1960, as amended;

(17) Investing; or

(18) Any combination of the activities described in this paragraph, who is doing business in this state;

(c) Any other person conducting loan or credit card processing activities in this state; and

(d) Any other bank, bank holding company, national bank, savings association, federal savings bank, trust company, credit union, building and loan association, investment company, registered broker or dealer in securities or commodities, finance company, dealer in commercial paper or other business entity

engaged in the business of lending money, providing credit, securitizing receivables or fleet leasing, or any related business entity, doing business in this state.

2. The term does not include a credit union organized under the provisions of chapter 678 of NRS or the Federal Credit Union Act.

(Added to NRS by 2003, 20th Special Session, 134)

NRS 363A.060 "Taxpayer" defined. "Taxpayer" means any person liable for a tax imposed by this chapter.

(Added to NRS by 2003, 20th Special Session, 135)

ADMINISTRATION

NRS 363A.070 Duties of Department. The Department shall:

1. Administer and enforce the provisions of this chapter, and may adopt such regulations as it deems appropriate for those purposes.

2. Deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

(Added to NRS by 2003, 20th Special Session, 135)

NRS 363A.080 Maintenance and availability of records of taxpayer; penalty.

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of this chapter;

(b) Preserve those records for 4 years or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

2. The Department may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer pursuant to the provisions of this chapter.

3. Any person who violates the provisions of subsection 1 is guilty of a misdemeanor.

(Added to NRS by 2003, 20th Special Session, 135)

NRS 363A.090 Examination of records by Department; payment of expenses of Department for examination of records outside State.

1. To verify the accuracy of any return filed or, if no return is filed by a taxpayer, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for a tax imposed by this chapter.

2. Any person who may be liable for a tax imposed by this chapter and who keeps outside of this state any books, papers and records relating thereto shall pay to the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

(Added to NRS by 2003, 20th Special Session, 135)

NRS 363A.100 Authority of Executive Director to request information to carry out chapter. The Executive Director may request from any other governmental agency or officer such information as he deems necessary to carry out the provisions of this chapter. If the Executive Director obtains any confidential information pursuant to such a request, he shall maintain the confidentiality of that information in the same manner and to the same extent as provided by law for the agency or officer from whom the information was obtained.

(Added to NRS by 2003, 20th Special Session, 135)

NRS 363A.110 Confidentiality of records and files of Department.

1. Except as otherwise provided in this section and NRS 360.250, the records and files of the Department concerning the administration of this chapter are confidential and privileged. The Department, and any employee engaged in the administration of this chapter or charged with the custody of any such records or files, shall not disclose any information obtained from the Department's records or files or from any examination, investigation or hearing authorized by the provisions of this chapter. Neither the Department nor any employee of the Department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any return or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

(f) Exchanges of information pursuant to subsection 3.

3. The Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

(Added to NRS by 2003, 20th Special Session, 136)

IMPOSITION AND COLLECTION

NRS 363A.120 Excise tax on banks: Imposition, amount and payment; filing of return.

1. There is hereby imposed an excise tax on each bank at the rate of \$1,750 for each branch office in excess of one maintained by the bank in this state on the first day of each calendar quarter.

2. Each bank that maintains more than one branch office in this state on the first day of a calendar quarter shall, on or before the last day of the first month of that calendar quarter:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for the branch offices maintained by the bank in this state on the first day of that calendar quarter.

3. For the purposes of this section:

(a) "Bank" means:

(1) A corporation or limited-liability company that is chartered by this state, another state or the United States which conducts banking or banking and trust business; or

(2) A foreign bank licensed pursuant to chapter 666A of NRS.

□ The term does not include a financial institution engaging in business pursuant to chapter 677 of NRS or a credit union organized under the provisions of chapter 678 of NRS or the Federal Credit Union Act.

(b) "Branch office" means any location or facility of a bank where deposit accounts are opened, deposits are accepted, checks are paid and loans are granted, including, but not limited to, a brick and mortar location, a detached or attached drive-in facility, a seasonal office, an office on a military base or government installation, a station or unit for paying and receiving, and a location where a customer can open accounts, make deposits and borrow money by telephone or through use of the Internet, and

excluding any automated teller machines, consumer credit offices, contractual offices, customer bank communication terminals, electronic fund transfer units and loan production offices.

(Added to NRS by 2003, 20th Special Session, 136)

NRS 363A.130 Payroll tax: Imposition, amount and payment; filing of return and report; deductions.

1. There is hereby imposed an excise tax on each employer at the rate of 2 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment.

2. The tax imposed by this section must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department:

(1) A return on a form prescribed by the Department; and

(2) A copy of any report required by the Employment Security Division of the Department of Employment, Training and Rehabilitation for determining the amount of the contribution required pursuant to NRS 612.535 for any wages paid by the employer during that calendar quarter; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

4. Except as otherwise provided in subsection 5, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant to this section any amount authorized pursuant to this section that is paid by the employer for health insurance or a health benefit plan for its employees in the calendar quarter for which the tax is paid. The amounts for which the deduction is allowed include:

(a) For an employer providing a program of self-insurance for its employees, all amounts paid during the calendar quarter for claims, direct administrative services costs, including such services provided by the employer, and any premiums paid for individual or aggregate stop-loss insurance coverage. An employer is not authorized to deduct the costs of a program of self-insurance unless the program is a qualified employee welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

(b) The premiums for a policy of health insurance or reinsurance for a health benefit plan for its employees.

(c) Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan.

(d) Such other similar payments for health care or insurance for health care for employees as are authorized by the Department.

5. An employer may not deduct from the wages upon which the excise tax is imposed pursuant to this section:

(a) Amounts paid for health care or premiums paid for insurance for an industrial injury or occupational disease for which coverage is required pursuant to chapters 616A to 616D, inclusive, or 617 of NRS; or

(b) Any payments made by employees for health care or health insurance or amounts deducted from the wages of employees for such care or insurance.

6. An employer claiming the deduction allowed pursuant to subsection 4 shall submit with the return filed pursuant to subsection 3 proof of the amount paid in the calendar quarter that qualifies for the deduction. If the amount of the deduction exceeds the amount of reported wages, the excess amount may be carried forward to the following calendar quarter until the deduction is exhausted.

7. As used in this section, "employee welfare benefit plan" has the meaning ascribed to it in 29 U.S.C. § 1002.

(Added to NRS by 2003, 20th Special Session, 137)

NRS 363A.140 Extension of time for payment; payment of interest during period of extension. Upon written application made before the date on which payment must be made, the

Department may for good cause extend by 30 days the time within which a taxpayer is required to pay a tax imposed by this chapter. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

(Added to NRS by 2003, 20th Special Session, 138)

OVERPAYMENTS AND REFUNDS

NRS 363A.150 Certification of excess amount collected; credit and refund. If the Department determines that any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person or his successors in interest.

(Added to NRS by 2003, 20th Special Session, 138)

NRS 363A.160 Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim.

1. Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund may be allowed unless a claim for it is filed with the Department within 3 years after the last day of the month following the calendar quarter for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in this chapter constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(Added to NRS by 2003, 20th Special Session, 138)

NRS 363A.170 Interest on overpayments; disallowance of interest.

1. Except as otherwise provided in this section and NRS 360.320, interest must be paid upon any overpayment of any amount of the taxes imposed by this chapter at the rate of 0.5 percent per month, or fraction thereof, from the last day of the calendar month following the calendar quarter for which the overpayment was made. No refund or credit may be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

2. The interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or the amount against which the credit is applied.

3. If the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Department shall not allow any interest on the overpayment.

(Added to NRS by 2003, 20th Special Session, 139)

NRS 363A.180 Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund.

1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this state or against any officer of the State to prevent or enjoin the collection under this chapter of a tax imposed by this chapter or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

(Added to NRS by 2003, 20th Special Session, 139)

NRS 363A.190 Action for refund: Period for commencement; venue; waiver.

1. Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Commission, the claimant may bring an action against the Department on the grounds set forth in the claim in a court of competent jurisdiction in Carson City, the county of this state where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

2. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

(Added to NRS by 2003, 20th Special Session, 139)

NRS 363A.200 Rights of claimant upon failure of Department to mail notice of action on claim; allocation of judgment for claimant.

1. If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Commission within 30 days after the last day of the 6-month period. If the claimant is aggrieved by the decision of the Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

2. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

3. The balance of the judgment must be refunded to the plaintiff.

(Added to NRS by 2003, 20th Special Session, 139)

NRS 363A.210 Allowance of interest in judgment for amount illegally collected. In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.

(Added to NRS by 2003, 20th Special Session, 140)

NRS 363A.220 Standing to recover. A judgment may not be rendered in favor of the plaintiff in any action brought against the Department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

(Added to NRS by 2003, 20th Special Session, 140)

NRS 363A.230 Action for recovery of erroneous refund: Jurisdiction; venue; prosecution.

1. The Department may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.

2. The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.

3. The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

(Added to NRS by 2003, 20th Special Session, 140)

NRS 363A.240 Cancellation of illegal determination.

1. If any amount in excess of \$25 has been illegally determined, either by the Department or by the person filing the return, the Department shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Department.

2. If an amount not exceeding \$25 has been illegally determined, either by the Department or by the person filing the return, the Department, without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Department.

(Added to NRS by 2003, 20th Special Session, 140)

MISCELLANEOUS PROVISIONS

NRS 363A.250 Prohibited acts; penalty.

1. A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any return or declaration with intent to defraud the State or to evade payment of a tax or any part of a tax imposed by this chapter.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of a tax or any part of a tax imposed by this chapter.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of a tax or any part of a tax imposed by this chapter.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

(Added to NRS by 2003, 20th Special Session, 140)

NRS 363A.260 Remedies of State are cumulative. The remedies of the State provided for in this chapter are cumulative, and no action taken by the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

(Added to NRS by 2003, 20th Special Session, 138)

APPENDIX G

Nevada Administrative Code for the Modified Business Tax (NAC Chapter 363B)

APPENDIX G

NEVADA ADMINISTRATIVE CODE FOR THE MODIFIED BUSINESS TAX (NAC CHAPTER 363B)

CHAPTER 363B - BUSINESS TAX GENERAL PROVISIONS

<u>363B.010</u>	Definitions.
<u>363B.020</u>	"Commission" defined.
<u>363B.030</u>	"Department" defined.
<u>363B.040</u>	"Division" defined.
<u>363B.050</u>	"Employer" defined.
<u>363B.060</u>	"Health care deduction" defined.
<u>363B.070</u>	"Indian tribe" defined.
<u>363B.080</u>	"Nonprofit organization" defined.
<u>363B.090</u>	"Political subdivision" defined.
<u>363B.100</u>	"Self-insured employer" defined.

ADMINISTRATION

<u>363B.110</u>	Maintenance and availability of records of employer.
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IMPOSITION AND COLLECTION

<u>363B.120</u>	Interpretation of certain statutory terms.
<u>363B.130</u>	Registration of employer with Department; filing of returns and reports.
<u>363B.140</u>	Exemption from certain requirements for submission of information.
<u>363B.150</u>	Exemption of Indian tribes, nonprofit organizations and political subdivisions.
<u>363B.160</u>	Health care deduction: Limitations.
<u>363B.170</u>	Health care deduction: Depreciation of property by self-insured employer.
<u>363B.180</u>	Correction of errors in filed returns.

GENERAL PROVISIONS

NAC 363B.010 Definitions. (NRS 360.090, 363B.060) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 363B.020 to 363B.100, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.020 "Commission" defined. (NRS 360.090, 363B.060) "Commission" means the Nevada Tax Commission.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.030 "Department" defined. (NRS 360.090, 363B.060) "Department" means the Department of Taxation.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.040 "Division" defined. (NRS 360.090, 363B.060) "Division" means the Employment Security Division of the Department of Employment, Training and Rehabilitation.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.050 “Employer” defined. (NRS 360.090, 363B.060) “Employer” has the meaning ascribed to it in NRS 363B.030.

(Added to NAC by Tax Comm’n by R204-03, eff. 12-4-2003)

NAC 363B.060 “Health care deduction” defined. (NRS 360.090, 363B.060) “Health care deduction” means the deduction allowed by subsection 4 of NRS 363B.110.

(Added to NAC by Tax Comm’n by R204-03, eff. 12-4-2003)

NAC 363B.070 “Indian tribe” defined. (NRS 360.090, 363B.060) “Indian tribe” has the meaning ascribed to it in NRS 363B.030.

(Added to NAC by Tax Comm’n by R204-03, eff. 12-4-2003)

NAC 363B.080 “Nonprofit organization” defined. (NRS 360.090, 363B.060) “Nonprofit organization” has the meaning ascribed to it in NRS 363B.030.

(Added to NAC by Tax Comm’n by R204-03, eff. 12-4-2003)

NAC 363B.090 “Political subdivision” defined. (NRS 360.090, 363B.060) “Political subdivision” has the meaning ascribed to it in NRS 363B.030.

(Added to NAC by Tax Comm’n by R204-03, eff. 12-4-2003)

NAC 363B.100 “Self-insured employer” defined. (NRS 360.090, 363B.060) “Self-insured employer” means an employer that provides a program of self-insurance for its employees.

(Added to NAC by Tax Comm’n by R204-03, eff. 12-4-2003)

ADMINISTRATION

NAC 363B.110 Maintenance and availability of records of employer. (NRS 360.090, 363B.060, 363B.070) Each employer shall maintain and, upon the request of the Department, provide to the Department:

1. Copies of any reports filed with or submitted to the Division by the employer.
2. Copies of any records required to be maintained by the employer pursuant to NAC 612.020.
3. If the employer claims the health care deduction:
 - (a) Records describing the nature and amount of any contributions for health insurance or an employee benefit plan made by any employees of the employer.
 - (b) Proof of any payments for health insurance or a health benefit plan made by the employer.
 - (c) A copy of any policy, agreement or other document describing:
 - (1) Any health benefit for which the health care deduction is claimed, including, without limitation, the cost of the benefit; and
 - (2) The number of employees covered under the applicable health insurance or health benefit plan.
 - (d) Such records as are required to explain and verify any apportionment of payments between the employer and any of its employees for any pertinent health insurance or health benefit plan.
4. Any other records reasonably requested by the Department if:
 - (a) The records are available to the employer; and

(b) The disclosure of the records is not prohibited pursuant to NRS 49.225, 449.720, 683A.0873 or 689B.280, or any other state or federal law regarding the confidentiality of the records.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

IMPOSITION AND COLLECTION

NAC 363B.120 Interpretation of certain statutory terms. (NRS 360.090, 363B.060, 363B.110) For the purposes of NRS 363B.110, the Commission interprets the term:

1. "Claims" to mean claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

2. "Direct administrative services costs" to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:

(a) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;

(b) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;

(c) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;

(d) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;

(e) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and

(f) The depreciation of property other than medical or office supplies, as computed pursuant to NAC 363B.170, used for the provision of medical care or the direct administration of claims.

3. "Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by NRS 363B.110, and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.

4. "Health benefit plan" to mean a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

5. "Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan" to mean any amounts which are:

(a) Paid by an employer to a Taft-Hartley trust which:

(1) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(2) Qualifies as an employee welfare benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(b) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.130 Registration of employer with Department; filing of returns and reports. (NRS 360.090, 363B.060, 363B.110)

1. An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by NRS 363B.110.

2. Each employer shall:

(a) File with the Department each quarterly return required by paragraph (a) of subsection 3 of NRS 363B.110, regardless of whether any tax is due from the employer for that quarter; and

(b) Provide to the Department, on such forms as the Department prescribes, any reports required by the Department for the administration or enforcement of this chapter or chapter 363B of NRS.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.140 Exemption from certain requirements for submission of information. (NRS 360.090, 363B.060, 363B.110)

1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of NRS 363B.110 if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department will notify an employer if the Department is unable to obtain that information pursuant to such an agreement.

2. An employer who is in compliance with NAC 363B.110 shall be deemed to have submitted any proof required by subsection 6 of NRS 363B.110.

3. The provisions of this section do not affect any other provision of law requiring an employer to retain or provide any records requested by the Department.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.150 Exemption of Indian tribes, nonprofit organizations and political subdivisions. (NRS 360.090, 363B.060)

1. An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of NRS 363B.110, regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.

2. Any person who claims to be a nonprofit organization exempt from the provisions of NRS 363B.110 shall, upon the request of the Department:

(a) If the person does not claim to be an exempt religious organization, provide to the Department a letter from the Internal Revenue Service indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or

(b) If the person claims to be an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.160 Health care deduction: Limitations. (NRS 360.090, 363B.060, 363B.110)
The health care deduction does not:

1. Except as otherwise provided in subsection 6 of NRS 363B.110, allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.

2. Allow an employer to deduct any sum paid by the employer before October 1, 2003.

(Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.170 Health care deduction: Depreciation of property by self-insured employer. (NRS 360.090, 363B.060, 363B.110) If a self-insured employer claims the depreciation of property as a direct administrative services cost for purposes of the health care deduction, the employer must compute that depreciation for each calendar quarter, beginning with the calendar quarter in which the property is first placed into service, according to a straight-line method which is based upon:

1. For tangible personal property other than a mobile home:
 - (a) Ninety-five percent of the cost of acquisition of the property; and
 - (b) A useful life determined in accordance with the *Personal Property Manual* adopted by the Commission for the period in which the property is first placed into service;
 2. For a mobile home which has not been converted to real property:
 - (a) Eighty percent of the cost of acquisition of the mobile home; and
 - (b) A useful life of 15 years; and
 3. For an improvement to real property:
 - (a) Seventy-five percent of the cost of acquisition of the improvement; and
 - (b) A useful life of 50 years.
- (Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

NAC 363B.180 Correction of errors in filed returns. (NRS 360.090, 363B.060, 363B.110) If an employer files a return pursuant to paragraph (a) of subsection 3 of NRS 363B.110 which contains any errors, the employer shall:

1. File with the Department an amended or adjusted return which corrects those errors. Any corrections to:
 - (a) The wages reported by the employer must be accompanied by an explanation of those corrections; and
 - (b) Any health care deduction claimed by the employer must be supported by appropriate documentation and explained to the satisfaction of the Department.
 2. Remit to the Department any applicable amount due.
- (Added to NAC by Tax Comm'n by R204-03, eff. 12-4-2003)

APPENDIX H

Nevada Administrative Code for the Modified Business Tax on Financial Institutions (NAC Chapter 363A)

APPENDIX H

NEVADA ADMINISTRATIVE CODE FOR THE MODIFIED BUSINESS TAX ON FINANCIAL INSTITUTIONS (NAC CHAPTER 363A)

CHAPTER 363A – TAXES ON FINANCIAL INSTITUTIONS GENERAL PROVISIONS

<u>363A.010</u>	Definitions.
<u>363A.020</u>	“Commission” defined.
<u>363A.030</u>	“Department” defined.
<u>363A.040</u>	“Division” defined.
<u>363A.050</u>	“Employer” defined.
<u>363A.060</u>	“Health care deduction” defined.
<u>363A.070</u>	“Indian tribe” defined.
<u>363A.080</u>	“NAICS” defined.
<u>363A.090</u>	“Nonprofit organization” defined.
<u>363A.100</u>	“Political subdivision” defined.
<u>363A.110</u>	“Self-insured employer” defined.
<u>363A.120</u>	“SIC” defined.
<u>363A.130</u>	“Financial institution” interpreted.

QUALIFICATION OF BUSINESS AS FINANCIAL INSTITUTION

<u>363A.150</u>	Adoption by reference of <i>Standard Industrial Classification Manual and North American Industry Classification System</i> .
<u>363A.160</u>	Use of four-digit industry codes in SIC or corresponding provisions of NAICS.
<u>363A.170</u>	Classification of business by Division: Effect; dispute.
<u>363A.180</u>	Security brokers, dealers and flotation companies.
<u>363A.190</u>	Commodity contracts brokers and dealers.
<u>363A.200</u>	Security and commodity exchanges.
<u>363A.210</u>	Investment advice.
<u>363A.220</u>	Services allied with exchange of securities or commodities which are not elsewhere classified.
<u>363A.230</u>	Offices of bank holding companies.
<u>363A.240</u>	Offices of holding companies which are not elsewhere classified.
<u>363A.250</u>	Open-end management investment offices.
<u>363A.260</u>	Unit investment trusts, face-amount certificate offices and closed-end management investment offices.
<u>363A.270</u>	Educational, religious and charitable trusts.
<u>363A.280</u>	Trusts other than educational, religious and charitable trusts.
<u>363A.290</u>	Oil royalty traders.
<u>363A.300</u>	Patent owners and lessors.
<u>363A.310</u>	Real estate investment trusts.
<u>363A.320</u>	Investors which are not elsewhere classified.

ADMINISTRATION

<u>363A.330</u>	Maintenance and availability of records of employer.
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IMPOSITION AND COLLECTION

Excise Tax on Banks

<u>363A.350</u>	“Bank” interpreted.
<u>363A.360</u>	Amount of tax due for calendar quarter.

Payroll Tax

<u>363A.370</u>	Interpretation of certain statutory terms.
<u>363A.380</u>	Registration of employer with Department; filing of returns and reports.
<u>363A.390</u>	Exemptions from certain requirements for submission of information.
<u>363A.400</u>	Exemption of Indian tribes, nonprofit organizations and political subdivisions.
<u>363A.410</u>	Health care deduction: Limitations.
<u>363A.420</u>	Health care deduction: Depreciation of property by self-insured employer.
<u>363A.430</u>	Correction of errors in filed returns.

GENERAL PROVISIONS

NAC 363A.010 Definitions. (NRS 360.090, 363A.070) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 363A.020 to 363A.120, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.020 "Commission" defined. (NRS 360.090, 363A.070) "Commission" means the Nevada Tax Commission.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.030 "Department" defined. (NRS 360.090, 363A.070) "Department" means the Department of Taxation.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.040 "Division" defined. (NRS 360.090, 363A.070) "Division" means the Employment Security Division of the Department of Employment, Training and Rehabilitation.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.050 "Employer" defined. (NRS 360.090, 363A.070) "Employer" has the meaning ascribed to it in NRS 363A.030.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.060 "Health care deduction" defined. (NRS 360.090, 363A.070) "Health care deduction" means the deduction allowed by subsection 4 of NRS 363A.130.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.070 "Indian tribe" defined. (NRS 360.090, 363A.070) "Indian tribe" has the meaning ascribed to it in NRS 363A.030.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.080 "NAICS" defined. (NRS 360.090, 363A.070) "NAICS" means the *North American Industry Classification System*, as adopted by reference in NAC 363A.150.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.090 "Nonprofit organization" defined. (NRS 360.090, 363A.070) "Nonprofit organization" has the meaning ascribed to it in NRS 363A.030.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.100 “Political subdivision” defined. (NRS 360.090, 363A.070) “Political subdivision” has the meaning ascribed to it in NRS 363A.030.

(Added to NAC by Tax Comm’n by R205-03, eff. 12-4-2003)

NAC 363A.110 “Self-insured employer” defined. (NRS 360.090, 363A.070) “Self-insured employer” means an employer that provides a program of self-insurance for its employees.

(Added to NAC by Tax Comm’n by R205-03, eff. 12-4-2003)

NAC 363A.120 “SIC” defined. (NRS 360.090, 363A.070) “SIC” means the *Standard Industrial Classification Manual*, as adopted by reference in NAC 363A.150.

(Added to NAC by Tax Comm’n by R205-03, eff. 12-4-2003)

NAC 363A.130 “Financial institution” interpreted. (NRS 360.090, 363A.050, 363A.070)

1. For the purposes of NRS 363A.050:

(a) The Commission interprets the term “financial institution” to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.

(b) A seller of goods or a provider of services who provides or extends credit, or retains a security interest in the goods he sells, only in connection with the financing of the goods he sells or the services he provides shall not be deemed to be a business entity engaged in the business of lending money, providing credit or securitizing receivables.

2. As used in this section, “security interest” has the meaning ascribed to it in NRS 104.1201.

(Added to NAC by Tax Comm’n by R205-03, eff. 12-4-2003)

QUALIFICATION OF BUSINESS AS FINANCIAL INSTITUTION

NAC 363A.150 Adoption by reference of *Standard Industrial Classification Manual* and *North American Industry Classification System*. (NRS 360.090, 363A.050, 363A.070)

1. The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$40.

2. The *North American Industry Classification System*, 2002 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$33.

(Added to NAC by Tax Comm’n by R205-03, eff. 12-4-2003)

NAC 363A.160 Use of four-digit industry codes in SIC or corresponding provisions of NAICS. (NRS 360.090, 363A.050, 363A.070) In determining whether a person who is doing business in this State qualifies as a financial institution pursuant to paragraph (b) of subsection 1 of NRS 363A.050, the Department shall use the four-digit industry codes set forth in the SIC, or the corresponding provisions of the NAICS, as described in NAC 363A.180 to 363A.320, inclusive.

(Added to NAC by Tax Comm’n by R205-03, eff. 12-4-2003)

NAC 363A.170 Classification of business by Division: Effect; dispute. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, if the Division has appropriately classified a person who is doing business in this State under one or more of the provisions of the SIC or NAICS described in NAC 363A.180 to 363A.320, inclusive, that person shall be deemed to be a financial institution pursuant to paragraph (b) of subsection 1 of NRS 363A.050. A person may dispute such a classification by the Division, solely for the purpose of determining whether the person qualifies as a financial institution pursuant to that paragraph, by filing a petition with the Department setting forth the reasons why the person believes that he has been misclassified by the Division. The petition must include:

- (a) A description of the business of the person;
- (b) A statement of each ground upon which the person disputes the classification by the Division; and
- (c) Any financial records, documents and other evidence necessary to substantiate the person's claim that he has been misclassified by the Division, including, without limitation, any:
 - (1) Pertinent filings with the Securities and Exchange Commission;
 - (2) Pertinent filings with the Office of the Secretary of State;
 - (3) Pertinent evidence of his classification for the purpose of a local business license; and
 - (4) Other pertinent filings with federal, state or local agencies that classify or characterize the person.

2. Within 6 months after it receives a petition filed pursuant to this section, the Department shall issue a written decision granting or denying the petition. The decision must be served and may be appealed as provided in NRS 360.245.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.180 Security brokers, dealers and flotation companies. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (1) or (2) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6211 (Security Brokers, Dealers, and Flotation Companies), or the corresponding provisions of NAICS Code 52311, 52312, 52391 or 523999.

2. SIC Code 6211:

(a) Refers to establishments primarily engaged in the purchase, sale and brokerage of securities, and those, generally known as investment bankers, primarily engaged in originating, underwriting and distributing issues of securities. Establishments primarily engaged in issuing shares of mutual and money market funds, unit investment trusts and face amount certificates are classified in SIC Industry Group 672 (Investment Offices). Establishments primarily engaged in providing investment advice on a contract or fee basis to establishments which deal in financial contracts are classified in SIC Code 6282 (Investment Advice).

(b) Includes, without limitation:

- (1) Agents for mutual funds.
- (2) Bond dealers and brokers.
- (3) Distributors, security.
- (4) Floor traders, security.
- (5) Investment bankers.
- (6) Investment certificates, sale of.
- (7) Investment firm-general brokerage.
- (8) Mineral leases, dealers in.

- (9) Mineral royalties, dealers in.
 - (10) Mortgages, buying and selling (rediscounting).
 - (11) Mutual fund agents.
 - (12) Mutual funds, selling by independent salesperson.
 - (13) Note brokers.
 - (14) Oil and gas lease brokers.
 - (15) Oil royalties, dealers in.
 - (16) Option dealers, stock.
 - (17) Sale of partnership shares in real estate syndicates.
 - (18) Security brokers.
 - (19) Security dealers.
 - (20) Security flotation companies.
 - (21) Security traders.
 - (22) Security underwriters.
 - (23) Stock brokers and dealers.
 - (24) Tax certificate dealers.
- (Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.190 Commodity contracts brokers and dealers. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (3) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6221 (Commodity Contracts Brokers and Dealers), or the corresponding provisions of NAICS Code 52313 or 52314.

2. SIC Code 6221:

(a) Refers to establishments primarily engaged in buying and selling commodity contracts on either a spot or future basis for their own account or for the account of others. These establishments are members, or are associated with members, of recognized commodity exchanges. Establishments primarily engaged in buying and selling commodities are classified in SIC Code 50 or 51 (Wholesale Trade).

(b) Includes, without limitation:

- (1) Commodity brokers (contracts).
- (2) Commodity dealers (contracts).
- (3) Futures brokers, commodity.
- (4) Futures dealers, commodity.
- (5) Traders, commodity contract.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.200 Security and commodity exchanges. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (4) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6231 (Security and Commodity Exchanges), or the corresponding provisions of NAICS Code 52321.

2. SIC Code 6231:

(a) Refers to establishments primarily engaged in furnishing space and other facilities to members for the purpose of buying, selling or otherwise trading in stocks, stock options, bonds or commodity contracts.

(b) Includes, without limitation:

- (1) Commodity contract exchanges.
- (2) Futures exchanges, contract.
- (3) Option exchanges, stock.
- (4) Security exchanges.
- (5) Stock exchanges.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.210 Investment advice. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (5) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6282 (Investment Advice), or the corresponding provisions of NAICS Code 52392 or 52393.

2. SIC Code 6282:

(a) Refers to establishments primarily engaged in furnishing investment information and advice to companies and individuals concerning securities and commodities on a contract or fee basis. Establishments that provide advice and also act as brokers or dealers are classified in SIC Code 6211 (Security Brokers, Dealers, and Flotation Companies).

(b) Includes, without limitation:

- (1) Futures advisory service.
- (2) Investment advisory service.
- (3) Investment counselors.
- (4) Investment research.
- (5) Manager of mutual funds, contract or fee basis.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.220 Services allied with exchange of securities or commodities which are not elsewhere classified. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (6) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6289 (Services Allied With the Exchange of Securities or Commodities, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 523991.

2. SIC Code 6289:

(a) Refers to establishments primarily engaged in furnishing services to security or commodity holders, brokers or dealers, not elsewhere classified.

(b) Includes, without limitation:

- (1) Bondholders protective committees.
- (2) Custodians of securities.
- (3) Exchange clearinghouses, commodity.
- (4) Exchange clearinghouses, security.
- (5) Financial reporting.
- (6) Quotation service, stock.
- (7) Royalty owners protective associations.

- (8) Security custodians.
 - (9) Security holders protective committees.
 - (10) Stock transfer agents.
 - (11) Transfer agents, securities.
- (Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.230 Offices of bank holding companies. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (7) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6712 (Offices of Bank Holding Companies), or the corresponding provisions of NAICS Code 551111.

2. SIC Code 6712:

(a) Refers to establishments primarily engaged in holding or owning the securities of banks for the sole purpose of exercising some degree of control over the activities of bank companies whose securities they hold. Companies holding securities of banks, but which are predominantly operating the banks, are classified according to the kind of bank operated.

(b) Includes, without limitation, bank holding companies.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.240 Offices of holding companies which are not elsewhere classified. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (8) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6719 (Offices of Holding Companies, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 551112.

2. SIC Code 6719:

(a) Refers to establishments primarily engaged in holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities they hold. Companies holding securities, but which are predominantly operating companies, are classified according to the kind of business operated.

(b) Includes, without limitation:

- (1) Holding companies, except bank.
- (2) Investment holding companies, except bank.
- (3) Personal holding companies, except bank.
- (4) Public utility holding companies.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.250 Open-end management investment offices. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (9) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6722 (Management Investment Offices, Open-End), or the corresponding provisions of NAICS Code 52591.

2. SIC Code 6722:

(a) Refers to establishments primarily engaged in issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the security holder.

(b) Includes, without limitation:

(1) Management investment funds, open-end.

(2) Money market mutual funds.

(3) Mutual fund sales on own account.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.260 Unit investment trusts, face-amount certificate offices and closed-end management investment offices. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (10) or (11) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6726 (Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices), or the corresponding provisions of NAICS Code 52599.

2. SIC Code 6726:

(a) Refers to establishments primarily engaged in issuing unit investment trusts or face-amount certificates, and establishments primarily engaged in issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request of the security holder. Unit investment trust companies are organized under a trust indenture, contract of custodianship or agency, or similar instrument, do not have a board of directors, and issue only securities redeemable at the request of the security holder, each of which represents an undivided interest in a unit of specified securities, but does not include voting trusts. Face-amount certificates, sometimes referred to as guaranteed face-amount certificates, are essentially obligations of the issuing company to pay a fixed sum at a specified maturity date and usually require periodic payments by the purchaser.

(b) Includes, without limitation:

(1) Face-amount certificate issuing.

(2) Government National Mortgage Association (GNMA) pools.

(3) Investment funds, closed-end: management of.

(4) Investors' syndicates.

(5) Issuing of face-amount installment certificates.

(6) Management investment funds, closed-end.

(7) Unit investment trusts.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.270 Educational, religious and charitable trusts. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (12) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6732 (Educational, Religious, and Charitable Trusts), or the corresponding provisions of NAICS Code 813211.

2. SIC Code 6732:

(a) Refers to establishments primarily engaged in the management of the funds of trusts and foundations organized for religious, educational, charitable or nonprofit research purposes.

- (b) Includes, without limitation:
 - (1) Charitable trusts, management of.
 - (2) Educational trusts, management of.
 - (3) Religious trusts, management of.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.280 Trusts other than educational, religious and charitable trusts. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (13) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6733 (Trusts, Except Educational, Religious, and Charitable), or the corresponding provisions of NAICS Code 52392, 523991 or 525.

2. SIC Code 6733:

(a) Refers to establishments primarily engaged in the management of the funds of trusts and foundations organized for purposes other than religious, educational, charitable or nonprofit research.

(b) Includes, without limitation:

- (1) Administrators of private estates (nonoperating).
- (2) Personal investment trusts, management of.
- (3) Trustees: except for educational, religious, or charitable trusts.
- (4) Trusts except educational, religious, and charitable: management of.
- (5) Vacation funds for employees.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.290 Oil royalty traders. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (14) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6792 (Oil Royalty Traders), or the corresponding provisions of NAICS Code 52391 or 53311.

2. SIC Code 6792:

(a) Refers to establishments primarily engaged in investing in oil and gas royalties or leases, or fractional interests therein.

(b) Includes, without limitation:

- (1) Oil leases, buying and selling on own account.
- (2) Oil royalty companies.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.300 Patent owners and lessors. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (15) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6794 (Patent Owners and Lessors), or the corresponding provisions of NAICS Code 53311.

2. SIC Code 6794:

(a) Refers to establishments primarily engaged in owning or leasing franchises, patents and copyrights which they in turn license others to use.

(b) Includes, without limitation:

- (1) Copyright buying and licensing.
- (2) Franchises, selling or licensing.
- (3) Music licensing to radio stations.
- (4) Music royalties, sheet and record.
- (5) Patent buying and licensing.
- (6) Patent leasing.
- (7) Performance rights, publishing and licensing of.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.310 Real estate investment trusts. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (16) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6798 (Real Estate Investment Trusts), or the corresponding provisions of NAICS Code 52593.

2. SIC Code 6798:

(a) Refers to establishments primarily engaged in closed-end investments in real estate or related mortgage assets operating so that they could meet the requirements of the Real Estate Investment Trust Act of 1960, as amended. The Real Estate Investment Trust Act of 1960 exempts trusts from corporate income and capital gains taxation, provided they invest primarily in specified assets, pay out most of their income to shareholders, and meet certain requirements regarding the dispersion of trust ownership.

(b) Includes, without limitation:

- (1) Mortgage investment trusts.
- (2) Mortgage trusts.
- (3) Real estate investment trusts (REITs).
- (4) Realty investment trusts.
- (5) Realty trusts.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.320 Investors which are not elsewhere classified. (NRS 360.090, 363A.050, 363A.070)

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (17) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6799 (Investors, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 52391, 52392 or 52313.

2. SIC Code 6799:

(a) Refers to establishments primarily engaged in investing, not elsewhere classified.

(b) Includes, without limitation:

- (1) Commodity contract pool operators.
- (2) Commodity contract trading companies.
- (3) Investment clubs.
- (4) Security speculators for own account.

- (5) Tax liens: holding, buying, and selling.
 - (6) Venture capital companies.
- (Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

ADMINISTRATION

NAC 363A.330 Maintenance and availability of records of employer. (NRS 360.090, 363A.070, 363A.080) Each employer shall maintain and, upon the request of the Department, provide to the Department:

1. Copies of any reports filed with or submitted to the Division by the employer.
2. Copies of any records required to be maintained by the employer pursuant to NAC 612.020.
3. If the employer claims the health care deduction:
 - (a) Records describing the nature and amount of any contributions for health insurance or an employee benefit plan made by any employees of the employer.
 - (b) Proof of any payments for health insurance or a health benefit plan made by the employer.
 - (c) A copy of any policy, agreement or other document describing:
 - (1) Any health benefit for which the health care deduction is claimed, including, without limitation, the cost of the benefit; and
 - (2) The number of employees covered under the applicable health insurance or health benefit plan.
 - (d) Such records as are required to explain and verify any apportionment of payments between the employer and any of its employees for any pertinent health insurance or health benefit plan.
4. Any other records reasonably requested by the Department if:
 - (a) The records are available to the employer; and
 - (b) The disclosure of the records is not prohibited pursuant to NRS 49.225, 449.720, 683A.0873 or 689B.280, or any other state or federal law regarding the confidentiality of the records.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

IMPOSITION AND COLLECTION

Excise Tax on Banks

NAC 363A.350 "Bank" interpreted. (NRS 360.090, 363A.070, 363A.120) For the purposes of NRS 363A.120, the Commission interprets the term "bank" to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.360 Amount of tax due for calendar quarter. (NRS 363A.070, 363A.120)

1. The entire amount of the excise tax imposed by NRS 363A.120 becomes due for all the branch offices in excess of one operated or otherwise maintained by a bank in this State on the first day of a calendar quarter, regardless of whether the bank ceases to operate or otherwise maintain any of those branch offices during that calendar quarter.

2. If the operation or other maintenance of a branch office commences after the first day of a calendar quarter, no excise tax is due pursuant to the provisions of NRS 363A.120 for the branch office for that calendar quarter.

3. For the purposes of this section:

(a) The operation or other maintenance of a branch office shall be deemed to commence on the date the branch office first opens for business to the public.

(b) If the first day of a calendar quarter does not occur on a regular banking day for a bank, the bank shall be deemed to operate or otherwise maintain a branch office on that date if the bank:

(1) Held the branch office open for business to the public at any time during the immediately preceding 5 regular banking days for the bank; and

(2) Holds the branch office open for business to the public at any time during the immediately succeeding 5 regular banking days for the bank.

4. As used in this section, the words and terms defined in NRS 363A.120 have the meanings ascribed to them in that section.

(Added to NAC by Dep't of Taxation by R152-03, eff. 10-30-2003)

Payroll Tax

NAC 363A.370 Interpretation of certain statutory terms. (NRS 360.090, 363A.070, 363A.130) For the purposes of NRS 363A.130, the Commission interprets the term:

1. "Claims" to mean claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

2. "Direct administrative services costs" to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:

(a) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;

(b) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;

(c) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;

(d) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;

(e) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and

(f) The depreciation of property other than medical or office supplies, as computed pursuant to NAC 363A.420, used for the provision of medical care or the direct administration of claims.

3. "Employees" to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by NRS 363A.130 and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.

4. "Health benefit plan" to mean a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

5. "Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan" to mean any amounts which are:

(a) Paid by an employer to a Taft-Hartley trust which:

(1) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(2) Qualifies as an employee welfare benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(b) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.380 Registration of employer with Department; filing of returns and reports.
(NRS 360.090, 363A.070, 363A.130)

1. An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by NRS 363A.130.

2. Each employer shall:

(a) File with the Department each quarterly return required by paragraph (a) of subsection 3 of NRS 363A.130, regardless of whether any tax is due from the employer for that quarter; and

(b) Provide to the Department, on such forms as the Department prescribes, any reports required by the Department for the administration or enforcement of this chapter or chapter 363A of NRS.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.390 Exemptions from certain requirements for submission of information.
(NRS 360.090, 363A.070, 363A.130)

1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of NRS 363A.130 if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department shall notify an employer if the Department is unable to obtain that information pursuant to such an agreement.

2. An employer who is in compliance with NAC 363A.330 shall be deemed to have submitted any proof required by subsection 6 of NRS 363A.130.

3. The provisions of this section do not affect any other provision of law requiring an employer to retain or provide any records requested by the Department.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.400 Exemption of Indian tribes, nonprofit organizations and political subdivisions. (NRS 360.090, 363A.070)

1. An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of NRS 363A.130, regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.

2. Any person who claims to be a nonprofit organization exempt from the provisions of NRS 363A.130 shall, upon the request of the Department:

(a) If the person does not claim to be an exempt religious organization, provide to the Department a letter from the Internal Revenue Service indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or

(b) If the person claims to be an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person meets the criteria

to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.410 Health care deduction: Limitations. (NRS 360.090, 363A.070, 363A.130)
The health care deduction does not:

1. Except as otherwise provided in subsection 6 of NRS 363A.130, allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.

2. Allow an employer to deduct any sum paid by the employer before October 1, 2003.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.420 Health care deduction: Depreciation of property by self-insured employer. (NRS 360.090, 363A.070, 363A.130) If a self-insured employer claims the depreciation of property as a direct administrative services cost for purposes of the health care deduction, the employer must compute that depreciation for each calendar quarter, beginning with the calendar quarter in which the property is first placed into service, according to a straight-line method which is based upon:

1. For tangible personal property other than a mobile home:

- (a) Ninety-five percent of the cost of acquisition of the property; and

- (b) A useful life determined in accordance with the *Personal Property Manual* adopted by the Commission for the period in which the property is first placed into service;

2. For a mobile home which has not been converted to real property:

- (a) Eighty percent of the cost of acquisition of the mobile home; and

- (b) A useful life of 15 years; and

3. For an improvement to real property:

- (a) Seventy-five percent of the cost of acquisition of the improvement; and

- (b) A useful life of 50 years.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

NAC 363A.430 Correction of errors in filed returns. (NRS 360.090, 363A.070, 363A.130)
If an employer files a return pursuant to paragraph (a) of subsection 3 of NRS 363A.130 which contains any errors, the employer shall:

1. File with the Department an amended or adjusted return which corrects those errors. Any corrections to:

- (a) The wages reported by the employer must be accompanied by an explanation of those corrections; and

- (b) Any health care deduction claimed by the employer must be supported by appropriate documentation and explained to the satisfaction of the Department.

2. Remit to the Department any applicable amount due.

(Added to NAC by Tax Comm'n by R205-03, eff. 12-4-2003)

APPENDIX I

Letter of Concern Regarding Modified Business Tax on Home Healthcare Services

*Marilyn L. Skender
5420 Kietzke Lane, Suite 108
Reno, Nevada 89511*

The Honorable Kenny Guinn
Governor of the State of Nevada
Capitol Building
Carson City, Nevada 89701

Re: SB 8 Payroll Tax

Dear Governor Guinn:

I have received from the Department of Taxation a "**Modified Business Tax Return General Business**" form requesting that I pay a tax of .007% of my payroll. I have reviewed SB 8 and to my surprise it states that this payroll tax applies to "employers" in the broadest generic sense of the word and not "businesses". It was my prior understanding that this tax applied to "businesses" as the Department of Taxation's form is entitled.

I employ two (2) people in my home to provide home health care services to my mother. I personally provide her care at night seven days a week. My mother is 89 years old. She suffered a massive hemorrhagic stroke eight years ago and has left side paralysis and is wheel chair bound. My mother has no means of support other than myself and social security of \$484.00 per month. It has been a great financial struggle for me to keep her in my home and out of the Medicaid nursing home system. Over the past eight (8) years her physical and mental condition has worsened and there is very little she is able to do on her own without assistance.

Unlike many well publicized stories of people who have evaded their obligations to pay payroll and other taxes related to domestic employees, from the inception I have withheld income taxes, paid social security, Nevada unemployment taxes, FUTA, and workmen's compensation insurance on all my mother's care givers at all times.

Now, you (having signed SB 8 into law) and the Nevada Legislature are imposing a gross payroll tax on my mother's caregivers. I am not a business. I do not have the option of passing this tax on to the consumer, as other businesses will do, because I am the consumer. Providing for my mother's care is already breaking me financially and now you want me to pay a tax. I have saved the State of Nevada hundreds of thousands of dollars over the last eight years by not placing my mother in a Medicaid nursing home. It is absurd that SB 8 applies to all "employers". I very much doubt that SB 8 was intended to apply to the instant situation.

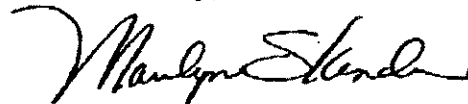
As my father used to say, "this is the straw that broke the camel's back." Since you have wittingly or unwittingly increased the cost for me to care for my mother I may perhaps give consideration to placing my mother in a Medicaid nursing home where the State of Nevada and the Federal Government can support her. So for want of a tax of approximately \$450.00 per year,

The Honorable Kenny Guinn
Governor of the State of Nevada
February 4, 2004
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the State could receive a new financial burden of many tens of thousands of dollars. You may not consider \$450.00 to be a substantial sum but it would pay my mother's prescription drug bill for a month or so.

I hope you will encourage the 2005 Legislative session to consider the unexpected hardship this tax has created for non-business employers and to take corrective measures.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn L. Skender". The signature is fluid and cursive, with the first name "Marilyn" being more prominent than the last name "Skender".

Marilyn L. Skender

cc: Members of the Nevada State Senate
and Assembly

APPENDIX J

Statutes for the Live Entertainment Tax (NRS Chapter 368A)

APPENDIX J

STATUTES FOR THE LIVE ENTERTAINMENT TAX (NRS CHAPTER 368A)

CHAPTER 368A TAX ON LIVE ENTERTAINMENT

GENERAL PROVISIONS

<u>NRS 368A.010</u>	Definitions.
<u>NRS 368A.020</u>	"Admission charge" defined.
<u>NRS 368A.030</u>	"Board" defined.
<u>NRS 368A.040</u>	"Business" defined.
<u>NRS 368A.050</u>	"Business entity" defined.
<u>NRS 368A.060</u>	"Facility" defined.
<u>NRS 368A.070</u>	"Game" defined.
<u>NRS 368A.080</u>	"Licensed gaming establishment" defined.
<u>NRS 368A.090</u>	"Live entertainment" defined.
<u>NRS 368A.100</u>	"Slot machine" defined.
<u>NRS 368A.110</u>	"Taxpayer" defined.
<u>NRS 368A.120</u>	Natural persons who are deemed to be business entities.

ADMINISTRATION

<u>NRS 368A.130</u>	Adoption by Department of regulations for determining whether activity is taxable.
<u>NRS 368A.140</u>	Duties of Board and Department; applicability of chapters 360 and 463 of NRS.
<u>NRS 368A.150</u>	Establishment of amount of tax liability when Board or Department determines that taxpayer is acting with intent to defraud State or to evade payment of tax.
<u>NRS 368A.160</u>	Maintenance and availability of records for determining liability of taxpayer; liability to taxpayer of lessee, assignee or transferee of certain premises; penalty.
<u>NRS 368A.170</u>	Examination of records by Board or Department; payment of expenses of Board or Department for examination of records outside State.
<u>NRS 368A.180</u>	Confidentiality of records and files of Board and Department.

IMPOSITION AND COLLECTION

<u>NRS 368A.200</u>	Imposition and amount of tax; liability and reimbursement for payment; ticket for live entertainment must indicate whether tax is included in price of ticket; exemptions from tax.
<u>NRS 368A.210</u>	Taxpayer to hold taxes in separate account.
<u>NRS 368A.220</u>	Filing of reports and payment of tax; deposit of amounts received in State General Fund.
<u>NRS 368A.230</u>	Extension of time for payment; payment of interest during period of extension.
<u>NRS 368A.240</u>	Credit for amount of tax paid on account of certain charges taxpayer is unable to collect; violations.

OVERPAYMENTS AND REFUNDS

<u>NRS 368A.250</u>	Certification of excess amount collected; credit and refund.
<u>NRS 368A.260</u>	Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim.
<u>NRS 368A.270</u>	Interest on overpayments; disallowance of interest.
<u>NRS 368A.280</u>	Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund.
<u>NRS 368A.290</u>	Action for refund: Period for commencement; venue; waiver.

<u>NRS 368A.300</u>	Rights of claimant upon failure of Board or Department to mail notice of action on claim; allocation of judgment for claimant.
<u>NRS 368A.310</u>	Allowance of interest in judgment for amount illegally collected.
<u>NRS 368A.320</u>	Standing to recover.
<u>NRS 368A.330</u>	Action for recovery of erroneous refund: Jurisdiction; venue; prosecution.
<u>NRS 368A.340</u>	Cancellation of illegal determination.

MISCELLANEOUS PROVISIONS

<u>NRS 368A.350</u>	Prohibited acts; penalty.
<u>NRS 368A.360</u>	Revocation of gaming license for failure to report, pay or truthfully account for tax.
<u>NRS 368A.370</u>	Remedies of State are cumulative.

NRS 368A.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.110, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2003, 20th Special Session, 146)

NRS 368A.020 “Admission charge” defined. “Admission charge” means the total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live entertainment is provided.

(Added to NRS by 2003, 20th Special Session, 146)

NRS 368A.030 “Board” defined. “Board” means the State Gaming Control Board.

(Added to NRS by 2003, 20th Special Session, 146)

NRS 368A.040 “Business” defined. “Business” means any activity engaged in or caused to be engaged in by a business entity with the object of gain, benefit or advantage, either direct or indirect, to any person or governmental entity.

(Added to NRS by 2003, 20th Special Session, 146)

NRS 368A.050 “Business entity” defined.

1. “Business entity” includes:

(a) A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this state or another jurisdiction and any other type of entity that engages in business.

(b) A natural person engaging in a business if he is deemed to be a business entity pursuant to NRS 368A.120.

2. The term does not include a governmental entity.

(Added to NRS by 2003, 20th Special Session, 146)

NRS 368A.060 “Facility” defined. “Facility” means:

1. Any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises if the live entertainment is provided at:

(a) An establishment that is not a licensed gaming establishment; or

(b) A licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits.

2. Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

(Added to NRS by 2003, 20th Special Session, 147)

NRS 368A.070 “Game” defined. “Game” has the meaning ascribed to it in NRS 463.0152.

(Added to NRS by 2003, 20th Special Session, 147)

NRS 368A.080 “Licensed gaming establishment” defined. “Licensed gaming establishment” has the meaning ascribed to it in NRS 463.0169.

(Added to NRS by 2003, 20th Special Session, 147)

NRS 368A.090 “Live entertainment” defined. “Live entertainment” means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.

(Added to NRS by 2003, 20th Special Session, 147)

NRS 368A.100 “Slot machine” defined. “Slot machine” has the meaning ascribed to it in NRS 463.0191.

(Added to NRS by 2003, 20th Special Session, 147)

NRS 368A.110 “Taxpayer” defined. “Taxpayer” means:

1. If live entertainment that is taxable under this chapter is provided at a licensed gaming establishment, the person licensed to conduct gaming at that establishment.

2. Except as otherwise provided in subsection 3, if live entertainment that is taxable under this chapter is not provided at a licensed gaming establishment, the owner or operator of the facility where the live entertainment is provided.

3. If live entertainment that is taxable under this chapter is provided at a publicly owned facility or on public land, the person who collects the taxable receipts.

(Added to NRS by 2003, 20th Special Session, 147)

NRS 368A.120 Natural persons who are deemed to be business entities. A natural person engaging in a business shall be deemed to be a business entity that is subject to the provisions of this chapter if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

(Added to NRS by 2003, 20th Special Session, 147)

ADMINISTRATION

NRS 368A.130 Adoption by Department of regulations for determining whether activity is taxable. The Department shall provide by regulation for a more detailed definition of “live entertainment” consistent with the general definition set forth in NRS 368A.090 for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.

(Added to NRS by 2003, 20th Special Session, 147)

NRS 368A.140 Duties of Board and Department; applicability of chapters 360 and 463 of NRS.

1. The Board shall:

(a) Collect the tax imposed by this chapter from taxpayers who are licensed gaming establishments; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a). The regulations must be adopted in accordance with the provisions of chapter 233B of NRS and must be codified in the Nevada Administrative Code.

2. The Department shall:

(a) Collect the tax imposed by this chapter from all other taxpayers; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a).

3. For the purposes of:

(a) Subsection 1, the provisions of chapter 463 of NRS relating to the payment, collection, administration and enforcement of gaming license fees and taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.

(b) Subsection 2, the provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.

4. To ensure that the tax imposed by NRS 368A.200 is collected fairly and equitably, the Board and the Department shall:

(a) Jointly, coordinate the administration and collection of that tax and the regulation of taxpayers who are liable for the payment of the tax.

(b) Upon request, assist the other agency in the collection of that tax.

(Added to NRS by 2003, 20th Special Session, 149)

NRS 368A.150 Establishment of amount of tax liability when Board or Department determines that taxpayer is acting with intent to defraud State or to evade payment of tax.

1. If:

(a) The Board determines that a taxpayer who is a licensed gaming establishment is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter, the Board shall establish an amount upon which the tax imposed by this chapter must be based.

(b) The Department determines that a taxpayer who is not a licensed gaming establishment is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter, the Department shall establish an amount upon which the tax imposed by this chapter must be based.

2. The amount established by the Board or the Department pursuant to subsection 1 must be based upon the tax liability of business entities that are deemed comparable by the Board or the Department to that of the taxpayer.

(Added to NRS by 2003, 20th Special Session, 152)

NRS 368A.160 Maintenance and availability of records for determining liability of taxpayer; liability to taxpayer of lessee, assignee or transferee of certain premises; penalty.

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of this chapter;

(b) Preserve those records for:

(1) At least 5 years if the taxpayer is a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; or

(2) At least 4 years if the taxpayer is not a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Board or the Department upon demand at reasonable times during regular business hours.

2. The Board and the Department may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer from whom they are required to collect the tax imposed by this chapter.

3. Any agreement that is entered into, modified or extended after January 1, 2004, for the lease, assignment or transfer of any premises upon which any activity subject to the tax imposed by this chapter is, or thereafter may be, conducted shall be deemed to include a provision that the taxpayer required to pay the tax must be allowed access to, upon demand, all books, records and financial papers held by the

lessee, assignee or transferee which must be kept pursuant to this section. Any person conducting activities subject to the tax imposed by NRS 368A.200 who fails to maintain or disclose his records pursuant to this subsection is liable to the taxpayer for any penalty paid by the taxpayer for the late payment or nonpayment of the tax caused by the failure to maintain or disclose records.

4. A person who violates any provision of this section is guilty of a misdemeanor.

(Added to NRS by 2003, 20th Special Session, 150)

NRS 368A.170 Examination of records by Board or Department; payment of expenses of Board or Department for examination of records outside State.

1. To verify the accuracy of any report filed or, if no report is filed by a taxpayer, to determine the amount of tax required to be paid:

(a) The Board, or any person authorized in writing by the Board, may examine the books, papers and records of any licensed gaming establishment that may be liable for the tax imposed by this chapter.

(b) The Department, or any person authorized in writing by the Department, may examine the books, papers and records of any other person who may be liable for the tax imposed by this chapter.

2. Any person who may be liable for the tax imposed by this chapter and who keeps outside of this state any books, papers and records relating thereto shall pay to the Board or the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Board or the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

(Added to NRS by 2003, 20th Special Session, 151)

NRS 368A.180 Confidentiality of records and files of Board and Department.

1. Except as otherwise provided in this section and NRS 360.250, the records and files of the Board and the Department concerning the administration of this chapter are confidential and privileged. The Board, the Department and any employee of the Board or the Department engaged in the administration of this chapter or charged with the custody of any such records or files shall not disclose any information obtained from the records or files of the Board or the Department or from any examination, investigation or hearing authorized by the provisions of this chapter. The Board, the Department and any employee of the Board or the Department may not be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Board and the Department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Board or the Department and production of records, files and information on behalf of the Board or the Department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter, if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any report or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Board or the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

(Added to NRS by 2003, 20th Special Session, 151)

IMPOSITION AND COLLECTION

NRS 368A.200 Imposition and amount of tax; liability and reimbursement for payment; ticket for live entertainment must indicate whether tax is included in price of ticket; exemptions from tax.

1. Except as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in this state where live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.

(b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

5. The tax imposed by subsection 1 does not apply to:

(a) Live entertainment that this state is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) Any boxing contest or exhibition governed by the provisions of chapter 467 of NRS.

(d) Live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.

(e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.

(f) Merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.

(g) Live entertainment that is provided at a trade show.

(h) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.

(i) Live entertainment that is provided at a licensed gaming establishment at private meetings or dinners attended by members of a particular organization or by a casual assemblage if the purpose of the event is not primarily for entertainment.

(j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.

6. As used in this section, "maximum seating capacity" means, in the following order of priority:

(a) The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;

(b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or

(c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

(Added to NRS by 2003, 20th Special Session, 147)

NRS 368A.210 Taxpayer to hold taxes in separate account. A taxpayer shall hold the amount of all taxes for which he is liable pursuant to this chapter in a separate account in trust for the State.

(Added to NRS by 2003, 20th Special Session, 149)

NRS 368A.220 Filing of reports and payment of tax; deposit of amounts received in State General Fund.

1. Except as otherwise provided in this section:

(a) Each taxpayer who is a licensed gaming establishment shall file with the Board, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Board.

(b) All other taxpayers shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.

2. The Board or the Department, if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by NRS 368A.200, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Board and the Department shall deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

(Added to NRS by 2003, 20th Special Session, 149)

NRS 368A.230 Extension of time for payment; payment of interest during period of extension. Upon written application made before the date on which payment must be made, the Board or the Department may, for good cause, extend by 30 days the time within which a taxpayer is required to pay the tax imposed by this chapter. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

(Added to NRS by 2003, 20th Special Session, 150)

NRS 368A.240 Credit for amount of tax paid on account of certain charges taxpayer is unable to collect; violations.

1. If a taxpayer:

(a) Is unable to collect all or part of an admission charge or charges for food, refreshments and merchandise which were included in the taxable receipts reported for a previous reporting period; and

(b) Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect,

He is entitled to receive a credit for the amount of tax paid on account of that uncollected amount. The credit may be used against the amount of tax that the taxpayer is subsequently required to pay pursuant to this chapter.

2. If the Internal Revenue Service disallows a deduction described in paragraph (b) of subsection 1 and the taxpayer claimed a credit on a return for a previous reporting period pursuant to subsection 1, the taxpayer shall include the amount of that credit in the amount of taxes reported pursuant to this chapter in the first return filed with the Board or the Department after the deduction is disallowed.

3. If a taxpayer collects all or part of an admission charge or charges for food, refreshments and merchandise for which he claimed a credit on a return for a previous reporting period pursuant to subsection 2, he shall include:

(a) The amount collected in the charges reported pursuant to paragraph (a) of subsection 1; and

(b) The tax payable on the amount collected in the amount of taxes reported,
In the first return filed with the Board or the Department after that collection.

4. Except as otherwise provided in subsection 5, upon determining that a taxpayer has filed a return which contains one or more violations of the provisions of this section, the Board or the Department shall:

(a) For the first return of any taxpayer that contains one or more violations, issue a letter of warning to the taxpayer which provides an explanation of the violation or violations contained in the return.

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported.

5. For the purposes of subsection 4, if the first violation of this section by any taxpayer was determined by the Board or the Department through an audit which covered more than one return of the taxpayer, the Board or the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

(Added to NRS by 2003, 20th Special Session, 152)

OVERPAYMENTS AND REFUNDS

NRS 368A.250 Certification of excess amount collected; credit and refund. If the Department determines that any tax, penalty or interest it is required to collect has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person or his successors in interest.

(Added to NRS by 2003, 20th Special Session, 153)

NRS 368A.260 Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim.

1. Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund may be allowed unless a claim for it is filed with:

(1) The Board, if the taxpayer is a licensed gaming establishment; or

(2) The Department, if the taxpayer is not a licensed gaming establishment.

EA claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Board or the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in this chapter constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Board or the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(Added to NRS by 2003, 20th Special Session, 153)

NRS 368A.270 Interest on overpayments; disallowance of interest.

1. Except as otherwise provided in this section and NRS 360.320, interest must be paid upon any overpayment of any amount of the tax imposed by this chapter in accordance with the provisions of NRS 368A.140.

2. If the overpayment is paid to the Department, the interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a

claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

3. If the Board or the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Board or the Department shall not allow any interest on the overpayment.

(Added to NRS by 2003, 20th Special Session, 153)

NRS 368A.280 Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund.

1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this state or against any officer of the State to prevent or enjoin the collection under this chapter of the tax imposed by this chapter or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

(Added to NRS by 2003, 20th Special Session, 154)

NRS 368A.290 Action for refund: Period for commencement; venue; waiver.

1. Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by:

(a) The Nevada Gaming Commission, the claimant may bring an action against the Board on the grounds set forth in the claim.

(b) The Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set forth in the claim.

2. An action brought pursuant to subsection 1 must be brought in a court of competent jurisdiction in Carson City, the county of this state where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Board or the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

3. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

(Added to NRS by 2003, 20th Special Session, 154)

NRS 368A.300 Rights of claimant upon failure of Board or Department to mail notice of action on claim; allocation of judgment for claimant.

1. If the Board fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Gaming Commission within 30 days after the last day of the 6-month period.

2. If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period.

3. If the claimant is aggrieved by the decision of:

(a) The Nevada Gaming Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(b) The Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

4. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

5. The balance of the judgment must be refunded to the plaintiff.
(Added to NRS by 2003, 20th Special Session, 154)

NRS 368A.310 Allowance of interest in judgment for amount illegally collected. In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Board or the Department.

(Added to NRS by 2003, 20th Special Session, 154)

NRS 368A.320 Standing to recover. A judgment may not be rendered in favor of the plaintiff in any action brought against the Board or the Department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

(Added to NRS by 2003, 20th Special Session, 155)

NRS 368A.330 Action for recovery of erroneous refund: Jurisdiction; venue; prosecution.

1. The Board or the Department may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.

2. The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.

3. The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

(Added to NRS by 2003, 20th Special Session, 155)

NRS 368A.340 Cancellation of illegal determination.

1. If any amount in excess of \$25 has been illegally determined, either by the person filing the return or by the Board or the Department, the Board or the Department shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Board or the Department.

2. If an amount not exceeding \$25 has been illegally determined, either by the person filing a return or by the Board or the Department, the Board or the Department, without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Board or the Department.

(Added to NRS by 2003, 20th Special Session, 155)

MISCELLANEOUS PROVISIONS

NRS 368A.350 Prohibited acts; penalty.

1. A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any report or declaration, with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by this chapter.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

(Added to NRS by 2003, 20th Special Session, 155)

NRS 368A.360 Revocation of gaming license for failure to report, pay or truthfully account for tax. Any licensed gaming establishment liable for the payment of the tax imposed by NRS 368A.200 who willfully fails to report, pay or truthfully account for the tax is subject to the revocation of his gaming license by the Nevada Gaming Commission.

(Added to NRS by 2003, 20th Special Session, 155)

NRS 368A.370 Remedies of State are cumulative. The remedies of the State provided for in this chapter are cumulative, and no action taken by the Board, the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

(Added to NRS by 2003, 20th Special Session, 153)

APPENDIX K

**Nevada Administrative Code for the Live Entertainment Tax
(NAC Chapter 368A)**

APPENDIX K

NEVADA ADMINISTRATIVE CODE FOR THE LIVE ENTERTAINMENT TAX (NAC CHAPTER 368A)

CHAPTER 368A - TAX ON LIVE ENTERTAINMENT

ADMINISTRATION OF TAX BY DEPARTMENT OF TAXATION

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<u>368A.150</u>	Scope of exemption for nonprofit organizations; assessment and computation of tax by Department.
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<u>368A.540</u>	Violation constitutes unsuitable method of operation.

ADMINISTRATION OF TAX BY DEPARTMENT OF TAXATION

NAC 368A.010 Definitions. (NRS 360.090, 368A.140) As used in NAC 368A.010 to 368A.170, inclusive, unless the context otherwise requires, the words and terms defined in NAC 368A.020 to 368A.090, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.020 "Board" defined. (NRS 360.090, 368A.140) "Board" means the State Gaming Control Board.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.030 "Commission" defined. (NRS 360.090, 368A.140) "Commission" means the Nevada Tax Commission.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.040 "Department" defined. (NRS 360.090, 368A.140) "Department" means the Department of Taxation.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.050 "Executive Director" defined. (NRS 360.090, 368A.140) "Executive Director" means the Executive Director of the Department.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.060 "Live entertainment status" defined. (NRS 360.090, 368A.140) "Live entertainment status" means that condition which renders the admission to a facility or the selling of food, refreshments or merchandise subject to the tax imposed by chapter 368A of NRS.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.070 "Nonprofit organization" defined. (NRS 360.090, 368A.140) "Nonprofit organization" means any organization described in paragraph (b) of subsection 5 of NRS 368A.200.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.080 "Patron" defined. (NRS 360.090, 368A.140) "Patron" means a person who gains access to a facility where live entertainment is provided and who neither solicits nor receives, from any source, any payment, reimbursement, remuneration or other form of consideration for providing live entertainment at the facility.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.090 “Taxpayer” defined. (NRS 360.090, 368A.140) “Taxpayer” means any person described in NRS 368A.110.

(Added to NAC by Tax Comm’n by R212-03, eff. 12-4-2003)

NAC 368A.100 Interpretation of certain statutory terms. (NRS 360.090, 368A.130, 368A.140) For the purposes of chapter 368A of NRS, the Commission will 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.
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 any area or premises where live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises.
5. “Live entertainment”:
 - (a) To include, without limitation, any one or more of the following activities:
 - (1) Music or vocals provided by one or more professional or amateur musicians or vocalists;
 - (2) Dancing performed by one or more professional or amateur dancers or performers;
 - (3) Acting or drama provided by one or more professional or amateur actors or players;
 - (4) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;
 - (5) Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph (7) of paragraph (b);
 - (6) Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes or sportsmen;
 - (7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;
 - (8) A show or production involving any combination of the activities described in subparagraphs (1) to (8), inclusive; and
 - (9) A performance involving one or more of the activities described in this paragraph by a disc jockey who presents recorded music. For the purposes of this subsection, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this paragraph if the disc jockey generally limits his interaction with patrons to introducing the recorded music, making announcements of general interest to patrons, and explaining, encouraging or directing participatory activities between patrons.
 - (b) To exclude, without limitation, any one or more of the following activities:
 - (1) Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to the volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;
 - (2) Occasional performances by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public;
 - (3) Performances by performers of any type if the performance occurs in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines,

less than 6 games, or any combination of slot machines and games within those respective limits, as long as the performers stroll continuously throughout the facility;

(4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;

(5) Television, radio, closed circuit or Internet broadcasts of live entertainment;

(6) Entertainment provided by a patron or patrons, including, without limitation, singing by patrons or dancing by or between patrons; and

(7) Animal behaviors induced by animal trainers or caretakers primarily for the purpose of education and scientific research.

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.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

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

1. If a taxpayer intends to provide live entertainment at a facility that is not a licensed gaming establishment, the taxpayer shall register with the Department to collect the tax. The taxpayer shall thereafter collect and remit the tax to the Department in accordance with the provisions of this chapter and chapter 368A of NRS.

2. If a taxpayer intends to provide live entertainment at a facility that is a licensed gaming establishment, the taxpayer shall act in accordance with such regulations as may be prescribed by the Board.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

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

1. Live entertainment status commences when any patron is required to pay an admission charge before he is allowed to enter a facility, regardless of when the live entertainment actually commences.

2. Live entertainment status ceases at the later of:

(a) The conclusion of the live entertainment; or

(b) The time when a facility for which an admission charge was required is completely vacated by admitted patrons or is opened to the general public free of any admission charge.

3. The tax applies to the sale of food, refreshments or merchandise at a facility with a seating capacity of less than 7,500, even if patrons are unable to see, hear or enjoy live entertainment from the location within the facility where the food, refreshments or merchandise is sold.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.130 Determination of tax rate when maximum occupancy has not been designated. (NRS 360.090, 368A.140) For the purposes of paragraph (c) of subsection 6 of NRS 368A.200, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Department shall compute the tax rate on the presumption that the actual seating capacity of the facility is at least 300 and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Department, that the actual seating capacity of the facility is less than 300 or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the

Department shall consider all evidence provided by the taxpayer, including, without limitation, evidence of actual attendance, the number of tickets sold or offered for sale, the square footage of the facility, the physical needs or requirements of the patrons in relation to the nature of the live entertainment provided and any other evidence tending to establish the actual seating capacity of the facility.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.140 Computation of tax; inclusion of tax in sales price of food, refreshments or merchandise. (NRS 360.090, 368A.140)

1. Pursuant to the provisions of subsection 4 of NRS 368A.200, the Department shall apply the tax rate to the total admission charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.

2. The Department shall apply the tax rate to the gross receipts from the sale of food, refreshments or merchandise at a facility where live entertainment is provided. As used in this section, "gross receipts" has the meaning ascribed to it in NRS 372.025, except that "gross receipts" will not be construed to include the amount of any tax imposed by this State or a political subdivision upon or with respect to retail sales of tangible personal property.

3. If applicable, a taxpayer may include the excise tax in the sales price of food, refreshments or merchandise sold at a facility where live entertainment is provided, but if he does so, he shall notify the patrons of the facility by posting a sign which is visible to all purchasers of food, refreshments or merchandise which states that the excise tax is included in the sales price. In the absence of such a notification, the total amount charged to the patron shall be deemed to be the price of the item.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.150 Scope of exemption for nonprofit organizations; assessment and computation of tax by Department. (NRS 360.090, 368A.140)

1. For the purposes of paragraph (b) of subsection 5 of NRS 368A.200, live entertainment is provided by or entirely for the benefit of a nonprofit organization if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the nonprofit organization. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization as long as the person retains not more of the proceeds than is necessary to cover the direct, supportable costs of hosting, promoting or sponsoring the event at which the live entertainment is provided.

2. Subject to the provisions of subsection 1, a nonprofit organization providing live entertainment, or a person providing live entertainment entirely for the benefit of a nonprofit organization, incurs no liability for the excise tax on entertainment if the nonprofit organization or person contracts for goods or services with a person other than a nonprofit organization, even if the proceeds from the sale of food, refreshments or merchandise do not become the property of the nonprofit organization.

3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there will be no tax on amounts paid for food, refreshments or merchandise sold within the facility where the live entertainment is provided, even if the proceeds from the sale of food, refreshments or merchandise do not become the property of the nonprofit organization.

4. 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 Department shall assess and compute the excise tax in accordance with NAC 368A.140.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.160 Documentation required for exemption of nonprofit organization. (NRS 360.090, 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 Department:

1. If the person does not claim to be an exempt religious organization, provide to the Department documentation from the Internal Revenue Service deemed appropriate by the Department 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 Department such records as the Department 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.

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

NAC 368A.170 Over-collection of tax: Duties of taxpayer and Department. (NRS 360.090, 368A.140)

1. 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 5 of NRS 368A.200, or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 to 4, inclusive, of NRS 368A.200.

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

3. A taxpayer shall:

(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 2 and the name and address of the person to whom the refund is to be made.

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

4. If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the Department.

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

(a) Credit the over-collection toward any deficiency that results from the audit, if the taxpayer furnishes the Department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 2.

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

(Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

ADMINISTRATION OF TAX BY STATE GAMING CONTROL BOARD

NAC 368A.300 Definitions. (NRS 368A.140) As used in NAC 368A.300 to 368A.540, inclusive, unless the context otherwise requires, the words and terms defined in NAC 368A.310 to 368A.390, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.310 "Board" defined. (NRS 368A.140) "Board" means the State Gaming Control Board.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.320 "Chairman" defined. (NRS 368A.140) "Chairman" means the Chairman of the Board or a person designated by him.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.340 “Nonprofit organization” defined. (NRS 368A.140) “Nonprofit organization” means any organization described in paragraph (b) of subsection 5 of NRS 368A.200.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.350 “Nonrestricted license” defined. (NRS 368A.140) “Nonrestricted license” has the meaning ascribed to it in NRS 463.0177.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.360 “Package” defined. (NRS 368A.140) “Package” means any aggregation of rights to rooms, food, refreshments, merchandise, entertainment, services or other items which is advertised to the public as a single unit and sold for a single price.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.370 “Patron” defined. (NRS 368A.140) “Patron” means a person who gains access to a facility where live entertainment is provided and who neither solicits nor receives, from any source, any payment, reimbursement, remuneration or other form of consideration for providing live entertainment at the facility.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.380 “Restricted license” defined. (NRS 368A.140) “Restricted license” has the meaning ascribed to it in NRS 463.0189.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.390 “Taxpayer” defined. (NRS 368A.140) “Taxpayer” means any person described in subsection 1 of NRS 368A.110.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.400 Interpretation of certain statutory terms. (NRS 368A.140) For the purposes of chapter 368A of NRS, the Board will 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.

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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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.

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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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

1. Except as otherwise provided in NRS 368A.200, the tax imposed by that section:

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

(b) Applies to each sale of a ticket that affords a patron the right to be present for any taxable live entertainment, 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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.440 Determination of tax rate when maximum occupancy has not been designated. (NRS 368A.140) For the purposes of paragraph (c) of subsection 6 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 that the actual seating capacity of the facility is at least 300 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 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 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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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 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 imposed in connection with the use of credit cards or debit cards which is excluded from taxation pursuant to subsection 2 of NRS 368A.200, must be determined from the actual amount collected and retained by persons other than the taxpayer 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 tax must be paid on all the proceeds of those sales.

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

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

(1) The average retail value of the ticket 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 components of a package.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.460 Inclusion of tax in price of ticket: Form of required statement. (NRS 368A.140)

The statement required by subsection 4 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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.470 Scope of exemption for nonprofit organizations; assessment and computation of tax by Board. (NRS 368A.140)

1. For the purposes of paragraph (b) of subsection 5 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 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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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 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 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.

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. Each person that holds:

(a) A nonrestricted license shall file with the Board, on or before the 24th 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 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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.500 Maintenance and availability of records of taxpayers. (NRS 368A.140, 368A.160) A taxpayer 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. Keep records evidencing any exemption from the tax imposed by chapter 368A of NRS of live entertainment provided at the licensed gaming establishment of the taxpayer.

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

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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 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 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 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 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 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 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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

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.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.530 Penalty for evasion or nonpayment of tax. (NRS 368A.140) Any taxpayer liable for the payment of the tax imposed by chapter 368A of NRS who willfully fails to report, pay or truthfully account for the tax is liable for a penalty in the amount of the tax evaded or not paid, to be assessed and collected in the same manner as charges, taxes, licenses and penalties are assessed and collected pursuant to chapter 463 of NRS.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

NAC 368A.540 Violation constitutes unsuitable method of operation. (NRS 368A.140) A violation of any of the provisions of NAC 368A.300 to 368A.540, inclusive, or chapter 368A of NRS constitutes an unsuitable method of operation subjecting a licensed gaming establishment to the suspension or revocation of its gaming license.

(Added to NAC by Gaming Control Bd. by R223-03, 2-25-2004, eff. 1-1-2004)

APPENDIX L

**Statutes for the Taxpayers' Bill of Rights
(NRS 360.2905 – 360.291)**

APPENDIX L

STATUTES FOR THE TAXPAYERS' BILL OF RIGHTS (NRS 360.2905 to 360.291)

RIGHTS AND RESPONSIBILITIES OF TAXPAYERS

NRS 360.2905 Citation of NRS 360.291. NRS 360.291 may be cited as the Taxpayers' Bill of Rights.

(Added to NRS by 1991, 1579)

NRS 360.291 Taxpayers' Bill of Rights.

1. The Legislature hereby declares that each taxpayer has the right:

(a) To be treated by officers and employees of the Department with courtesy, fairness, uniformity, consistency and common sense.

(b) To a prompt response from the Department to each communication from the taxpayer.

(c) To provide the minimum documentation and other information as may reasonably be required by the Department to carry out its duties.

(d) To written explanations of common errors, oversights and violations that taxpayers experience and instructions on how to avoid such problems.

(e) To be notified, in writing, by the Department whenever its officer, employee or agent determines that the taxpayer is entitled to an exemption or has been taxed or assessed more than is required by law.

(f) To written instructions indicating how the taxpayer may petition for:

(1) An adjustment of an assessment;

(2) A refund or credit for overpayment of taxes, interest or penalties; or

(3) A reduction in or the release of a bond or other form of security required to be furnished pursuant to the provisions of this title that are administered by the Department.

(g) Except as otherwise provided in NRS 361.485, to recover an overpayment of taxes promptly upon the final determination of such an overpayment.

(h) To obtain specific advice from the Department concerning taxes imposed by the State.

(i) In any meeting with the Department, including an audit, conference, interview or hearing:

(1) To an explanation by an officer, agent or employee of the Department that describes the procedures to be followed and the taxpayer's rights thereunder;

(2) To be represented by himself or anyone who is otherwise authorized by law to represent him before the Department;

(3) To make an audio recording using the taxpayer's own equipment and at the taxpayer's own expense; and

(4) To receive a copy of any document or audio recording made by or in the possession of the Department relating to the determination or collection of any tax for which the taxpayer is assessed, upon payment of the actual cost to the Department of making the copy.

(j) To a full explanation of the Department's authority to assess a tax or to collect delinquent taxes, including the procedures and notices for review and appeal that are required for the protection of the taxpayer. An explanation which meets the requirements of this section must also be included with each notice to a taxpayer that an audit will be conducted by the Department.

(k) To the immediate release of any lien which the Department has placed on real or personal property for the nonpayment of any tax when:

(1) The tax is paid;

(2) The period of limitation for collecting the tax expires;

(3) The lien is the result of an error by the Department;

(4) The Department determines that the taxes, interest and penalties are secured sufficiently by a lien on other property;

(5) The release or subordination of the lien will not jeopardize the collection of the taxes, interest and penalties;

(6) The release of the lien will facilitate the collection of the taxes, interest and penalties; or

(7) The Department determines that the lien is creating an economic hardship.

(l) To the release or reduction of a bond or other form of security required to be furnished pursuant to the provisions of this title by the Department in accordance with applicable statutes and regulations.

(m) To be free from investigation and surveillance by an officer, agent or employee of the Department for any purpose that is not directly related to the administration of the provisions of this title that are administered by the Department.

(n) To be free from harassment and intimidation by an officer, agent or employee of the Department for any reason.

(o) To have statutes imposing taxes and any regulations adopted pursuant thereto construed in favor of the taxpayer if those statutes or regulations are of doubtful validity or effect, unless there is a specific statutory provision that is applicable.

2. The provisions of this title governing the administration and collection of taxes by the Department must not be construed in such a manner as to interfere or conflict with the provisions of this section or any applicable regulations.

3. The provisions of this section apply to any tax administered and collected pursuant to the provisions of this title or any applicable regulations by the Department.

(Added to NRS by 1991, 1579; A 1997, 2595, 2600; 1999, 577, 2482; 2001, 1538)

NRS 360.2915 Adoption of regulations by Department: Taxpayers' Bill of Rights; payment of taxes in installments. The Department:

1. Shall adopt regulations to carry out the provisions of the Taxpayers' Bill of Rights.

2. May adopt regulations providing:

(a) For the payment of any tax in installments over a period not to exceed 12 months upon the execution of a written agreement by the taxpayer and the Department; and

(b) That the Executive Director may:

(1) Upon good cause shown, allow a taxpayer to pay in installments over a period longer than 12 months; and

(2) Cancel the installment method of payment for a taxpayer who becomes delinquent in his payments.

(Added to NRS by 1991, 1580)

NRS 360.292 Preparation and distribution of pamphlet regarding Taxpayers' Bill of Rights. The Executive Director shall cause:

1. To be prepared in simple nontechnical terms a pamphlet setting forth the Taxpayers' Bill of Rights and a description of the regulations adopted by the Department pursuant to NRS 360.2915.

2. A copy of the pamphlet to be distributed:

(a) To each taxpayer on record with the Department and to any other person upon request; and

(b) With each notice to a taxpayer that an audit will be conducted by the Department.

(Added to NRS by 1991, 1580; A 1997, 2597)

NRS 360.2925 Provision of instructions and information to taxpayer liable for first time for taxes on business. The Department shall provide each taxpayer who it determines may be liable for taxes on a business for the first time with:

1. Simplified written instructions concerning the rights and responsibilities of the taxpayer, including the:

(a) Keeping of records sufficient for audit purposes;

- (b) Procedures for depositing or paying taxes;
- (c) Procedures for challenging any liability for taxes, penalties or interest and for requesting refunds, adjustments or credits of erroneously assessed taxes, including the steps for appealing a denial thereof;
- (d) Procedures for recovering interest on overpayments of taxes; and
- (e) Procedures for obtaining the release of bonds, liens, levies or other forms of security for the payment of taxes.

2. Information concerning the most common errors made by taxpayers in similar businesses with regard to the collection, reporting and payment of taxes.

(Added to NRS by 1991, 1580)

NRS 360.293 Provision of response to request submitted by taxpayer. The Department shall provide a taxpayer with a written response to any written request submitted by the taxpayer within 30 days after it receives the request.

(Added to NRS by 1991, 1581)

NRS 360.2935 Refund to taxpayer of overpayment together with payment of interest. Except as otherwise provided in this title, a taxpayer is entitled to receive on any overpayment of taxes, after the offset required by NRS 360.320 has been made, a refund together with interest at a rate determined pursuant to NRS 17.130. No interest is allowed on a refund of any penalties or interest paid by a taxpayer.

(Added to NRS by 1991, 1581; A 1999, 2483; 2001, 1540; 2003, 20th Special Session, 158)

NRS 360.294 Waiver of taxes, penalties and interest owed by taxpayers who rely on certain advice, opinions or audits.

1. Except as otherwise provided in subsection 2, upon proof that a taxpayer has relied to his detriment on written advice provided to him by an officer, agent or employee of the Department or on an opinion of the Attorney General:

(a) The Department may waive any tax, penalty and interest owed by the taxpayer if the taxpayer meets the criteria adopted by regulation by the Nevada Tax Commission pursuant to NRS 360.093; and

(b) If a waiver is granted pursuant to paragraph (a), the Department shall prepare and maintain on file a statement which contains:

- (1) The reason for the waiver;
- (2) The amount of the tax, penalty and interest owed by the taxpayer;
- (3) The amount of the tax, penalty and interest waived by the Department; and
- (4) The facts and circumstances which led to the waiver.

2. Upon proof that a taxpayer has in good faith collected or remitted taxes imposed pursuant to the provisions of this title that are administered by the Department, in reliance upon written advice provided by an officer, agent or employee of the Department, an opinion of the Attorney General or the Nevada Tax Commission, or the written results of an audit of his records conducted by the Department, the taxpayer may not be required to pay delinquent taxes, penalties or interest if the Department determines after the completion of a subsequent audit that the taxes he collected or remitted were deficient.

(Added to NRS by 1991, 1581; A 1999, 2483)