

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R212-03

Effective December 4, 2003

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

AUTHORITY: §§ 1-18, NRS 360.090 and sections 77 and 83 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 147 and 150, respectively (NRS 368A.130 and 368A.160, respectively).

Section 1. Chapter 368A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Board” means the State Gaming Control Board.*

Sec. 4. *“Commission” means the Nevada Tax Commission.*

Sec. 5. *“Department” means the State Department of Taxation.*

Sec. 6. *“Executive Director” means the Executive Director of the Department.*

Sec. 7. *“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.*

Sec. 8. *“Nonprofit organization” means any organization described in paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada*

Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.200).

Sec. 9. “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.

Sec. 10. “Taxpayer” means any person described in section 75 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (NRS 368A.110).

Sec. 11. For the purposes of sections 65 to 100, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.350, inclusive), 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. “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.

4. “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 six 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 six 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.

5. *“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.*

6. *“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.*

7. *“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.*

Sec. 12. 1. *For the purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (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 sections 65 to 100 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.350, inclusive), the Department shall assess and compute the excise tax in accordance with section 15 of this regulation.

Sec. 13. *Any person who claims to be a nonprofit organization exempt from the provisions of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (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 a 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.

Sec. 14. 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.

Sec. 15. 1. *Pursuant to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, at page 147 (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.

Sec. 16. *For the purposes of paragraph (c) of subsection 6 of section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (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.

Sec. 17. 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 section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (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 section 78 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 147 (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.

Sec. 18. *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 the provisions of this chapter and sections 65 to 100, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 146 to 155, inclusive (NRS 368A.010 to 368A.350, inclusive).*

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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R212-03

The Nevada Tax Commission adopted regulation assigned LCB File No. R212-03, which pertain to chapter 368A of the Nevada Administrative Code on NOVEMBER 25, 2003.

Notice date: 10/24/2003
Hearing date: 11/25/2003

Date of adoption by agency: 11/25/2003
Filing date: 12/4/2003

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed permanent regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed permanent regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on November 25, 2003 video conferenced between the Desert Research Institute, 2215 Raggio Parkway, Conference Room A, Reno, Nevada and the Desert Research Institute, 755 E. Flamingo Road, Room 182, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed permanent regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed permanent regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed permanent regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on November 24, 2003. Thus, the proposed permanent regulation, for practical purposes, was discussed at four workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:

(a) Attended the hearing: 50

(b) Testified at the hearing: 3

(c) Submitted to the Tax Commission written comments: Written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission from the Nevada Resort Association, both the Nevada Gaming Commission and Gaming Control Board, various affected business establishments, the Fiscal & Legal Division's of the Legislative Counsel Bureau and the Nevada Taxpayers Association.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 250 interested businesses and persons on the Department of Taxation's mailing list.

4. If the permanent regulation was adopted without changing any part of the proposed permanent regulation, a summary of the reasons for adopting the regulation without change.

The proposed permanent regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, the Attorney General or Tax Commission members, and the Tax Commission believed no changes other than those made at the workshops were necessary.

5. The estimated economic effect of the adopted permanent regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

The proposed permanent regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public.

(b) Immediate and long-term effects.

Same as #5(a) above.

6. The estimated cost to the agency for enforcement of the adopted permanent regulation.

The proposed permanent regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some initial administrative costs for the Department, which are not quantifiable at this time.

7. A description of any regulations of other state or governmental agencies which the permanent regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the permanent regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed permanent regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the permanent regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations pertaining to the live entertainment tax procedure, which are the subject of the proposed permanent regulation.

9. If the permanent regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed permanent regulation does not provide a new fee or increase an existing fee.