

**LCB File No. R212-03**

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

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

**AUTHORITY:** NRS 360.090, Senate Bill 8 of the 20<sup>th</sup> Special Session.

**Section 1.** *Title 32 of NAC is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 17, inclusive, of this regulation.*

**Section 2.** *As used in sections 2 to 17, 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.*

**Section 3.** *"Board" means the Nevada Gaming Control Board.*

**Section 4.** *"Commission" means the Nevada Tax Commission.*

**Section 5.** *"Department" means the Nevada Department of Taxation.*

**Section 6.** *"Executive Director" means the executive director of the department.*

**Section 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.*

**Section 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.*

**Section 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, with the taxpayer's knowledge or consent, any payment, reimbursement, remuneration or other form of consideration for providing live entertainment at the facility.*

**Section 10.** *"Taxpayer" means any person described in section 75 of Senate Bill No. 8 of the 20th Special Session.*

**Section 11.** *For purposes of sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20th Special Session, the Commission interprets 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 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:

- (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 provided or incited by one or more animal handlers or trainers;
- (6) Athletic contests, events or exhibitions provided by one or more professional or amateur athletes;
- (7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers; and
- (8) A show or production involving any combination of the activities described above.

(b) To exclude:

- (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) Instrumental or vocal music performed in restaurants by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such instrumental or vocal music is not advertised as entertainment to the public;
- (3) Performances by performers of any type, if occurring 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, so long as the performers stroll continuously throughout the facility;
- (4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if occurring in a gaming establishment other than a gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, so 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; and
- (7) The presentation of recorded music, if the person presenting the recorded music does not engage in a performance that constitutes live entertainment.

(c) For purposes of this subsection 4, a person who presents recorded music does not engage in a performance that constitutes live entertainment if the person limits his or her interaction with patrons to:

- (1) Introducing or generally describing the recorded music;

(2) Periodically making comedic remarks or engaging patrons in banter or conversation; and

(3) Directing or explaining participatory activities between patrons.

5. "Shopping Mall" to include any area or premises where multiple vendors assemble for the primary purpose of selling commercial products 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" includes, but is not limited to:

(a) Participants in conventions, business meetings or tournaments 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.

### **Section 12. Nonprofit Organizations.**

1. For purposes of paragraph (b) of subsection 5 of section 78 of Senate Bill No. 8 of the 20th Special Session, 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 so long as such person retains no more of the proceeds than is necessary to cover the direct, supportable costs associated with his operation of the facility where the live entertainment is provided.

2. Subject to the provisions of paragraph 1 of this section, 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 it contracts for goods or services with a person other than a nonprofit organization, even if the proceeds from sales 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 shall 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 sales 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 section 65 to 100 of Senate Bill No. 8 of the 20th Special Session or this chapter, the Department shall assess and compute the excise tax in accordance with section 14.

### **Section 13. Applicability of the Tax.**

1. Live entertainment status commences when any patron is allowed to enter a facility by virtue of having paid an admission charge, regardless of when the live entertainment actually commences.

2. Live entertainment status ceases at the later of:

(a) The conclusion of live entertainment; or

*(b) The time when a facility that was restricted by admission is completely vacated by admitted patrons, or is opened to the general public free of any admission charge.*

*3. The tax applies to sales of food, refreshments or merchandise sold 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 are sold.*

**Section 14. Computation of the Tax.**

*1. Subject to the provisions of subsection 4 of section 78 of Senate Bill No. 8 of the 20th Special Session, 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, provided that "gross receipts" shall not 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 and 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.*

**Section 15. Determination of Seating Capacity in the Absence of a Permit.**

*1. For purposes of paragraph (c) of subsection 6 of Section 78 of Senate Bill No. 8 of the 20th Special Session, 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 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.*

**Section 16. Over-Collection of Tax.**

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

*2. If an audit of a taxpayer reveals the existence of an over-collection, the department shall credit the over-collection toward any deficiency that results from the audit, provided that the taxpayer furnishes the department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 1. The department shall not provide a credit for interest assessed on an over-collection that the taxpayer failed to report to the Department, but*

*the executive director may approve a credit of not more than 75 percent of the penalty assessed, provided that the taxpayer refunds the over-collection as required by subsection 1.*

*3. A taxpayer shall:*

*(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 1 and the name and address of the person to whom the refund is to be made.*

*(b) Within 60 days after receiving notice from 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. 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, or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 through 4, inclusive, of section 78 of Senate Bill No. 8 of the 20th Special Session.*

**Section 17. Jurisdiction of the Department.**

*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 64 to 100, inclusive, of Senate Bill No. 8 of the 20th Special Session.*

*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.*