

LCB File No. R223-03

**PROPOSED REGULATION OF THE STATE
GAMING CONTROL BOARD**

**NOTICE OF PUBLIC HEARING FOR THE ADOPTION AND
AMENDMENT OF PERMANENT REGULATIONS
OF THE STATE GAMING CONTROL BOARD**

The State Gaming Control Board will hold a public hearing on December 4, 2003, commencing at 1:00 p.m. at the Board Offices, Conference Room 100, 1919 E. College Parkway, Carson City, Nevada.

The State Gaming Control board will receive testimony from all interested persons and consider and take action on the following proposed permanent adoption to the Nevada Administrative Code pertaining to the State Gaming Control Board. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the State Gaming Control Board may proceed immediately to act upon any written submissions.

Persons wishing to comment on the proposed action of the State Gaming Control Board may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the State Gaming Control Board, 1919 E. College Parkway, Carson City, Nevada 89706,. Written submissions must be received at least two weeks before the scheduled public hearing.

A copy of this notice and the proposed permanent regulations to be adopted will be on file at the Nevada 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 permanent regulations to be adopted will be available at the State Gaming Control Board offices at 1919 E. College Parkway, Carson City, Nevada, on the State Gaming Control Board's website <http://gaming.state.nv.us> and in all counties in which an office of the state Gaming Control Board is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of the proposed permanent regulations will include the entire text of any section of the Nevada Administrative Code which is proposed. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

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

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise

statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against adoption.

Dennis K. Neilander, Chairman
State Gaming Control Board

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the State Gaming Control Board in writing or by calling 775-684-7700 no later than five working days prior to the hearing.

Notice has been posted at the following locations: The State Gaming Control Board Offices at 1919 E. College Parkway, Carson City, Nevada; 6980 Sierra Ctr Pkwy, Ste. 120, Reno, Nevada; 555 E. Washington St. Ste. 2600, Las Vegas, Nevada, and a copy was mailed to the Main Public Library in counties where an office of the State Gaming Control Board is not located.

LCB File No. R223-03

**PROPOSED REGULATION OF THE STATE
GAMING CONTROL BOARD**

**REGULATIONS FOR LIVE ENTERTAINMENT TAX
FOR LICENSED GAMING ESTABLISHMENTS**

AUTHORITY: NRS 463.010 et seq., 233B.010 et seq., and Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature

Section 1. *Definitions.*

As used in sections 64 to 100, inclusive, of Senate Bill No. 8 of the 20th Special session and this chapter, for the purposes of this regulation, unless the context otherwise requires:

- 1. “Admission charge” shall be construed to include, without limitation, an entertainment fee, a cover charge, a table reservation fee or required minimum purchase of food, refreshments or merchandise.*
- 2. “Ambient entertainment” means entertainment that contributes to the general atmosphere of a facility but is not its primary attraction. The term includes:*
 - a. Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant or lounge if such music does not routinely rise to a volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;*
 - b. Occasional performances by employees whose primary job function is that of preparing or serving food or refreshments to patrons, if such performances are not advertised as entertainment to the public;*
 - c. Performances by performers of any type, if occurring in a licensed gaming establishment other than a licensed gaming establishment that 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; and*
 - d. 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.*
- 3. “Boxing contest or exhibition” shall have the meaning ascribed in NRS 467.0107 to the term “unarmed combat.”*
- 4. “Board” means the state gaming control board.*

5. *“Casual assemblage” includes, but is not limited to:*
- (a) Participants in conventions, business meetings, or tournaments as defined in NRS 463.0196, 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.*
6. *“Chairman” means the chairman of the state gaming control board or his designee.*
7. *“Facility” defined.*
- (a) If the entertainment is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination within those respective limits, “facility” means any area or premises where live entertainment is provided and an admission charge is collected from one or more persons 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.*
 - (b) If the entertainment is provided at a licensed gaming establishment that is licensed for at least 51 slot machines or at least six games, “facility” means any designated area on the premises of the licensed gaming establishment within which live entertainment is provided.*
8. *“Live entertainment” shall be construed to include, without limitation, the following:*
- (a) Music or vocals provided by one or more professional or amateur musicians or vocalists;*
 - (b) Dancing performed by one or more professional or amateur dancers or performers;*
 - (c) Acting or drama provided by one or more professional or amateur actors or players;*
 - (d) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;*
 - (e) Animal stunts or performances provided or incited by one or more animal handlers or trainers, except as described in subsection 9(d)*
 - (f) Athletic contests, events or exhibitions provided by one or more professional or amateur athletes;*
 - (g) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;*
 - (h) A performance involving one or more of the activities described in this subsection, by a disc jockey who presents recorded music. For purposes of this section, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this subsection 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;*
 - (i) A show or production involving any combination of the activities described above.*

9. *“Live entertainment” shall not be construed to include:*

- (a) Ambient entertainment;*
- (b) Television, radio, closed circuit or Internet broadcasts of live entertainment;*
- (c) Entertainment provided by a patron or patrons including, without limitation, singing by patrons, or dancing by or between patrons; and*
- (d) Animal behaviors induced by animal trainers or caretakers primarily for the purpose of education and scientific research.*

10. *“Live entertainment status” means that condition which renders the selling of food, refreshments or merchandise subject to the tax.*

11. *“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.*

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

13. *“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 that facility.*

14. *“Recorded music” includes, but is not limited to, music on cassette tapes, compact discs, phonograph albums, music videos and music on live television.*

15. *“Shopping Mall” means 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.*

16. *“Taxpayer” means any person described in subsection 1 of section 75 of Senate Bill No. 8 of the 20th Special Session.*

17. *“Trade show” means an event of limited duration primarily attended by members of a particular trade or industry during which the merchandise and services of a particular trade or industry are exhibited and matters of interest to members of the trade or industry are discussed.*

Sec. 2. 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 of hosting, promoting or sponsoring the event at which 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 live 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 64 to 100 of Senate Bill No. 8 of the 20th Special Session or this chapter, the Board shall assess and compute the excise tax in accordance with section 4 of this regulation.

5. 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, 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:

(a) If the person does not claim to be an exempt religious organization, provide to the Board a letter ruling 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, 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, as the case may be, 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. 3. *Applicability of the Tax to Licensed Gaming Establishments.*

1. Live entertainment status commences at the earlier of:

(a) The time taxable entertainment starts; or

(b) The time when any patrons are allowed to enter a facility by virtue of having paid an admission charge.

2. Live entertainment status ceases at the later of:

(a) The conclusion of the last performance; or

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

3. Admission charges are taxable whether or not the patron remains for the live entertainment.

4. In facilities operating under a continual time schedule with no admission charge, charges for food, refreshments and merchandise ordered while the facility is in live entertainment status are taxable.

5. All sales made to patrons in a facility subject to the live entertainment tax during the intervals between performances shall be subject to the tax unless the licensed gaming establishment can account for the volume of sales to persons who entered during an interval between performances and left before the commencement of the next performance.

6. There shall be no distinction made in a restaurant of a licensed gaming establishment as to a “dining period” and “entertainment period” when such restaurant is advertised as an operation of a “dinner show” and is not open on a continual time schedule.

7. All sales of tickets which afford a patron the right to be present during live entertainment shall be subject to the tax, unless the licensee can establish that a full refund has been made to the patron.

8. The live entertainment tax shall also apply to all amounts paid for food or refreshments sold from a place located in close proximity to a live entertainment facility if its primary purpose is to provide food or refreshments to patrons viewing entertainment in that facility.

9. If an admission charge is collected, the live entertainment tax applies to sales of food, refreshments and merchandise sold in any part of the facility to which admission is granted based upon payment of the admission charge, regardless of whether patrons may clearly hear or see the entertainment while ordering or purchasing food, refreshments or merchandise if the admission charge entitles the patron to access areas where the live entertainment is provided.

10. If no admission charge is collected, all sales of food, refreshments and merchandise made anywhere in the facility shall be subject to the tax unless the licensee is able to identify through its recordkeeping system the sales made to patrons who could not clearly see and hear the entertainment.

Sec. 4. Computation of the Tax for Licensed Gaming Establishments.

1. The tax will be applied to 100 percent of the taxable sale only, without regard to other taxes, either federal, state, or local, imposed upon said sale.

2. The tax shall be paid on all cash and credit sales of food, refreshments and merchandise while the facility is in live entertainment status. The tax shall also be paid on all admission charges. For purpose of computing sales subject to the tax, required minimum purchases of food, refreshment or merchandise shall be included in admission charges or in the total sales of food, refreshments or merchandise, but not both.

3. Subject to the provisions of subsection 4 of section 5 of this regulation, any ticket for admission to a facility, or redeemable for food or refreshments subject to the live entertainment tax, which is sold as a component of a package, shall be taxed as follows:

(a) The average retail value of the ticket will be prorated against the average retail value of all components of the package, and the resulting prorated fraction will then be multiplied times the actual price paid for the package, with the live entertainment tax being paid on the product thereof;

(b) Any value advertised to the public as being the retail value of a package component shall be rebuttably presumed to be the retail value of that component;

(c) If no average retail value can be established for a component of a package, its cost to the licensee will be used for the purpose of determining prorated values;

(d) Notwithstanding any other provision of this subsection 3, any ticket redeemable for food or refreshments with an average retail value of less than \$5.00 shall be taxed at full retail value and shall not be assigned a package value; and

(e) Nothing in this subsection 3 precludes a licensee from paying live entertainment tax on the full retail value of the taxable package components, at the licensee's option.

4. 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 licensee are not subject to the live entertainment tax. Only actual, and not estimated, credit and debit card fees may be excluded.

5. If a ticket for admission is sold by a person that is not an affiliate of the person licensed to conduct gaming or the operator of the live entertainment facility, the taxable sale shall be calculated based upon the portion of the proceeds remitted to the person licensed to conduct gaming or the operator of the live entertainment facility. If the ticket for admission is sold by an affiliate of the licensee or the operator of the live entertainment facility, the taxable sale shall be computed on the amount of the sale.

Sec. 5. Payment Of Tax by Licensed Gaming Establishments.

1. The person who is the licensee of the licensed gaming establishment where live entertainment is provided is responsible for the payment of the tax.

2. The tax imposed shall be paid by the gaming licensee even if some other person is affording entertainment subject to the tax on the premises of the establishment, and it shall be the responsibility of the gaming licensee of the licensed gaming establishment to collect the tax from the person affording the entertainment, and to remit the tax based upon the records of such operator.

3. In the event the licensee does not operate the facilities located in a licensed gaming establishment which provides live entertainment in connection with the selling of food, refreshments, or merchandise that are subject to the tax, but such facilities are operated in the establishment by some other person, the following shall apply:

(a) The licensee must keep all records required by chapter 463 of NRS, Regulation 6 of the Nevada gaming commission and state gaming control board, and by section 83 of Senate Bill No. 8 of the 20th Special Session.

(b) The licensee shall either obtain and keep the records required by Section 7 herein or shall require the person that does operate the facilities to keep such records.

4. Any ticket for admission to a facility subject to the live entertainment tax must state whether the live entertainment tax is included in the price of the ticket in substantially this form: "Includes Entertainment Tax," "Inc. Ent. Tax," "Includes Live Ent. Tax," or "LET included." If the ticket does not include such a statement, the licensed gaming establishment shall pay the live entertainment tax on the face amount of the ticket.

5. If live entertainment is offered in 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 or an affiliate of the person licensed to conduct gaming, the person licensed to conduct gaming shall be responsible for payment of the tax and shall include all taxable sales in the report required by subsection 6 or 7 herein.

6. Each nonrestricted licensee shall file with the Board, on or before the 24th day of each month, a report showing the amount of all live entertainment taxable receipts for the preceding month. The report must be on a form prescribed by the Board and be accompanied by the amount of the tax that is due for the period covered by the report.

7. Each restricted licensee shall file with the Board, on or before the 10th day of each applicable month, a report showing the amount of all taxable sales for the preceding calendar quarter. The report must be on a form prescribed by the Board and be accompanied by the amount of the tax that is due for the period covered by the report.

Sec. 6. Merchandise.

For purposes of this regulation, merchandise shall be deemed to be sold inside the facility if the purchase of a ticket or payment of an admission, cover, minimum or other similar charge is required for a patron to gain access to the merchandise being sold or if the merchandise is in the area where the live entertainment is being offered.

Sec. 7. Records of Licensed Gaming Establishments.

1. All sales subject to the tax must be recorded in a manner that reflects the amount of taxable sale, unless the licensee provides adequate alternative accounting procedures approved by the chairman.

2. If food or refreshments are ordered prior to the commencement of live entertainment status but the sale is finalized after the commencement of live entertainment status, records showing the dollar value of food or refreshments ordered prior to entertainment status must be maintained for such sales to not be subject to the tax.

3. Licensees shall keep records evidencing that live entertainment is exempt from the live entertainment tax pursuant to these regulations or Senate Bill No. 8 of the 20th Special Session.

4. The records shall be kept and made available at any reasonable time for audit by the board.

Sec. 8. Penalty for Willful Evasion.

Any licensee who willfully fails to report, pay or truthfully account for the tax shall be liable to a penalty in the amount of the tax evaded or not paid, which will be assessed and collected in the same manner as other charges, taxes, licenses and penalties under NRS 463.

Sec. 9. Violation of Statute or Regulation.

Violation of any provision of this regulation or the live entertainment provisions of Senate Bill No. 8 of the 20th Special Session shall constitute an unsuitable method of operation subjecting the licensee to suspension or revocation of his gaming license.

Sec. 10. Determination of Seating Capacity in the Absence of a Permit.

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 Board 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 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 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.

Sec. 11. Claims for Refund by Licensed Gaming Establishments.

Any claim for refund of overpaid live entertainment taxes must be filed in accordance with NRS 463.387, except that a claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made. If the Board determines that any overpayment has been made intentionally or by reason of carelessness, the Board shall not allow any interest on the overpayment.

Sec. 12. Internal Control for Licensed Gaming Establishments.

1. Each Group I licensee (as defined in Nevada Gaming Commission Regulation 6.010) who offers live entertainment shall include in its system of internal control submitted pursuant to Nevada Gaming Commission Regulation 6.090 a description of the procedures adopted to comply with this regulation. Each Group I licensee shall comply with both its system of internal control and the minimum internal control standards for entertainment. Group II licensees (as defined in Nevada Gaming Commission Regulation 6.010) and restricted licensees shall comply with the internal control procedures for entertainment adopted pursuant to Nevada Gaming Commission Regulation 6.100. A licensee may not implement internal control procedures that deviate from the published internal control standards or procedures unless the deviations are approved in writing by the chairman.

2. Using guidelines, checklists and other criteria established by the chairman, each Group I licensee shall direct its independent accountant to perform observations, document examinations and inquiries of employees to determine compliance with the live entertainment statutes, the minimum internal control standards for entertainment and this regulation. The independent accountant shall report his findings as part of the report required by Regulation 6.090(9).

3. Using guidelines, checklists, and other criteria established by the chairman, the Group I licensee's internal auditor shall perform observations, document examinations, and inquiries of employees to determine compliance with live entertainment statutes, minimum internal control standards for entertainment, and this regulation. Two copies of the internal auditor's report summarizing all instances of noncompliance and management responses must be submitted to the board within 120 days after the end of the first six months of the licensee's business year and must include all work required to be performed during that six-month period along with any additional procedures that were performed. Noncompliance noted in the second half of the business year must be submitted to the board within 120 days after the end of the business year unless the noncompliance is to be disclosed in the independent accountant's report submitted pursuant to Nevada Gaming Commission Regulation 6.090(9).

Effective January 1, 2004.