

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R196-05**

Effective February 23, 2006

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

AUTHORITY: §§1-7, NRS 360.090 and 368A.140.

A REGULATION relating to the tax on live entertainment; making various changes to the provisions governing the administration of the tax; repealing certain superseded provisions; and providing other matters properly relating thereto.

**Section 1.** NAC 368A.010 is hereby amended to read as follows:

368A.010 As used in NAC 368A.010 to 368A.170, inclusive, unless the context otherwise requires, the words and terms defined in NAC ~~[368A.020]~~ *368A.030* to 368A.090, inclusive, have the meanings ascribed to them in those sections.

**Sec. 2.** NAC 368A.070 is hereby amended to read as follows:

368A.070 “Nonprofit organization” means any organization described in *paragraph (a) of subsection 2 of NRS 368A.200 or* paragraph (b) of subsection 5 of ~~[NRS 368A.200.]~~ *that section.*

**Sec. 3.** NAC 368A.100 is hereby amended to read as follows:

368A.100 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.] 2. “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.]~~

**Sec. 4.** NAC 368A.110 is hereby amended to read as follows:

368A.110 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.}~~ *Nevada Gaming Commission*.

**Sec. 5.** NAC 368A.130 is hereby amended to read as follows:

368A.130 For the purposes of paragraph (c) of subsection ~~{6}~~ 7 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}~~ *200 persons* and less than 7,500 ~~{.}~~ *persons*. 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.}~~ *200 persons or at least 7,500 persons*. 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. 6.** NAC 368A.160 is hereby amended to read as follows:

368A.160 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 *who claims to be a nonprofit organization* or the organization for whose benefit the person provided live entertainment ~~[meets]~~ :

*1. Meets* the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto ~~[H]~~ ;

*2. Has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or*

*3. Is organized or existing under the provisions of chapter 82 of NRS.*

**Sec. 7.** NAC 368A.020 and 368A.050 are hereby repealed.

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## TEXT OF REPEALED SECTIONS

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**368A.020 “Board” defined. (NRS 360.090, 368A.140)** “Board” means the State Gaming Control Board.

**368A.050 “Executive Director” defined. (NRS 360.090, 368A.140)** “Executive Director” means the Executive Director of the Department.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R196-05**

The Nevada Tax Commission adopted regulations assigned LCB File No. R196-05 which pertain to chapter 368A of the Nevada Administrative Code on January 9, 2006.

**Notice date:** 12/7/2005  
**Hearing date:** 1/9/2006

**Date of adoption by agency:** 1/9/2006  
**Filing date:** 2/23/2006

**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 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; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada.

A copy of the notice of hearing and the proposed 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, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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 January 9, 2006 video conferenced between the Nevada Legislative Building, 401 S. Carson Street, Room 3138, Carson City, Nevada and the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed 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) 684-2096 or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on January 5, 2006. Thus, the proposed regulation, for practical

purposes, was discussed at one workshop 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:** 41

**(b) Testified at the hearing:** 1

**(c) Submitted to the Tax Commission written comments:** No written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission.

**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 240 interested businesses and persons on the Department of Taxation's mailing list.

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

The proposed regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes were necessary.

**5. The estimated economic effect of the adopted 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 regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. There may be some beneficial economic effects to certain taxpayers which are the subject of the adopted regulation. Those anticipated benefits are not quantifiable at this time.

**(b) Immediate and long-term effects.**

Same as #5(a) above.

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

The proposed regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some minor 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 regulation overlaps or duplicates and a statement explaining why the duplication or overlap is**



**necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The proposed 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 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 Nevada's live entertainment tax, which is the subject of the proposed regulation.

**9. If the 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 regulation does not provide a new fee or increase an existing fee.