

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R056-21

December 29, 2021

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

AUTHORITY: §§ 1-6, NRS 360.090 and 368A.140.

A REGULATION relating to taxation; establishing criteria for when live entertainment is provided by or entirely for the benefit of a governmental entity for the purposes of an exemption from the live entertainment tax administered by the Department of Taxation; providing that a person claiming the exemption on the live entertainment tax for entertainment provided by or entirely for the benefit of a governmental entity has the burden of proving by a preponderance of the evidence that the person satisfies the criteria for the exemption; requiring such a person to submit certain records to the Department; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes a tax on the charge for admission to a facility where live entertainment is provided. (NRS 368A.200) Existing law exempts from the tax live entertainment that is provided by or entirely for the benefit of a governmental entity. (NRS 368A.200, as amended by section 1.7 of Senate Bill No. 367, chapter 417, Statutes of Nevada 2021, at page 2708) **Section 2** of this regulation establishes when live entertainment is provided by or entirely for the benefit of a governmental entity for the purposes of this exemption from the live entertainment tax administered by the Department of Taxation. **Section 3** of this regulation: (1) provides that a person claiming to be a governmental entity exempt from the tax, or a person claiming to provide live entertainment for the benefit of such an governmental entity, has the burden of proving by a preponderance of the evidence that the person satisfies the criteria for the exemption; and (2) requires a person claiming to be a governmental entity exempt from the tax, or a person claiming to provide live entertainment for the benefit of such an governmental entity, to submit certain records to the Department. **Sections 4, 5 and 6** of this regulation make conforming changes to apply the provisions of sections 2 and 3 of this regulation to the live entertainment tax administered by the Department.

Section 1. Chapter 368A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *For the purposes of paragraph (p) of subsection 4 of NRS 368A.200, as amended by section 1.7 of Senate Bill No. 367, chapter 417, Statutes of Nevada 2021, at page 2708, live entertainment is provided by or entirely for the benefit of a governmental entity if the proceeds of the admission charges to the facility where the live entertainment is provided become the property of the governmental entity. The proceeds of the admission charges do not become the property of a person other than a governmental entity 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. Except as otherwise provided in this section and chapter 368A of NRS and NAC 368A.010 to 368A.170, inclusive, and section 3 of this regulation, unless the live entertainment is provided by or entirely for the benefit of a governmental entity, the Department shall assess and compute the excise tax in accordance with NAC 368A.140.

Sec. 3. 1. *Any person who claims to be a governmental entity exempt from the provisions of NRS 368A.200, as amended by section 1.7 of Senate Bill No. 367, chapter 417, Statutes of Nevada 2021, at page 2708, or any person who claims to provide live entertainment entirely for the benefit of such a governmental entity, has the burden of proving by a preponderance of the evidence that the person is exempt from the tax imposed by chapter 368A of NRS.*

2. Any person who claims to be a governmental entity exempt from the provisions of NRS 368A.200, as amended by section 1.7 of Senate Bill No. 367, chapter 417, Statutes of Nevada 2021, at page 2708, or any person who claims to provide live entertainment entirely for the benefit of such a governmental entity, shall, upon the request of the Department, provide to the Department such records as the Department deems necessary to demonstrate that the

person who claims to be a governmental entity or the organization for whose benefit the person provided live entertainment is a governmental entity.

Sec. 4. NAC 368A.010 is hereby amended to read as follows:

368A.010 As used in NAC 368A.010 to 368A.170, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 368A.030 to 368A.095, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NAC 368A.100 is hereby amended to read as follows:

368A.100 For the purposes of chapter 368A of NRS and NAC 368A.010 to 368A.170, inclusive, *and sections 2 and 3 of this regulation*, the Commission will interpret the term:

1. “Admission” to mean the right or privilege to enter, or have access to, a facility where live entertainment is provided.
2. “Boxing contest or exhibition” to have the meaning ascribed in NRS 467.0107 to the term “unarmed combat.”
3. “Complimentary” to mean the granting of admission to a facility where live entertainment is provided without the receipt of any form of payment or consideration by the taxpayer from any person who is not affiliated with the taxpayer.
4. “Marketing or promotional activity” to mean an activity described in subparagraphs (1) to (8), inclusive, of paragraph (a) of subsection 2 of NRS 368A.090 that is provided for the primary purpose of drawing attention to a particular product, service or brand.
5. “Membership fee” to mean an amount paid for a membership that provides admission to a facility where live entertainment is provided.
6. “Performance” to mean the presentation of an activity described in subparagraphs (1) to (8), inclusive, of paragraph (a) of subsection 2 of NRS 368A.090 that is the primary reason for

which a patron or patrons paid an admission charge to enter, or have access to, the facility. In determining whether an activity constitutes a performance pursuant to this subsection, the Commission may consider, without limitation, the following factors:

- (a) Whether the activity is advertised, promoted or otherwise marketed; and
- (b) Whether the activity garners the predominant attention of a patron or patrons of the facility.

7. “Performance by a disc jockey” to mean the playing of recorded music, the mixing of audio or the adding of sound, video and lighting effects by a person or group of persons to a patron or group of patrons. For the purposes of this subsection and subparagraph (9) of paragraph (a) of subsection 2 of NRS 368A.090, the Commission will interpret the term “recorded music” to include, without limitation, music on a cassette tape, compact disc, phonograph album, digital media or video tape or disc, or on live television.

8. “Service charge or any other fee or charge” to mean an amount imposed and received by, or on behalf of, a taxpayer without the payment of which a patron could not obtain admission to a facility where live entertainment is provided. The term does not include an amount imposed and retained by a ticket broker or a ticket service provider.

9. “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 and regardless of whether the vendors gather indoors or outdoors.

10. “Ticket” to mean a physical or electronic document that provides a patron admission to a facility where live entertainment is provided.

Sec. 6. NAC 368A.110 is hereby amended to read as follows:

368A.110 1. Except as otherwise provided in subsection 3, 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 chapter 368A of NRS and NAC 368A.010 to 368A.170, inclusive ~~H~~, *and sections 2 and 3 of this regulation.*

2. Except as otherwise provided in subsection 3, if a taxpayer intends to provide live entertainment at a facility that is a licensed gaming establishment, the taxpayer shall act in accordance with NAC 368A.300 to 368A.540, inclusive.

3. If a taxpayer is an escort or escort service, the taxpayer must:

(a) Register with the Department to collect the tax on live entertainment. The taxpayer shall thereafter collect and remit the tax to the Department in accordance with the provisions chapter 368A of NRS and NAC 368A.010 to 368A.170, inclusive.

(b) Maintain the following records for a period of at least 4 years after the date on which the record is created:

(1) The date on which the service of escorting a person or persons at one or more locations in this State is provided; and

(2) The full amount charged for that service.

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