

October 20, 2015

VIA HAND DELIVERY

Deonne E. Contine, Executive Director
Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937

Re: Workshop on Proposed Regulation R062-15 Pertaining to the Live Entertainment Tax

Dear Ms. Contine:

I am outside legal counsel for Burning Man, and I am providing this Public Comment on its behalf.

Without conceding that it is subject to the Live Entertainment Tax, Burning Man offers the following comments regarding Proposed Regulation R062-15:

NAC 368A.100

NRS 368A.060, as recently amended, defines a “facility” as “any area or premises, indoor or outdoor, where live entertainment is provided and for which consideration is collected for the right or privilege of entering, or having access to, that area or those premises.”

NAC 368A.100 contains no further clarification regarding the definition of a “facility,” or regarding the definition of an “area” or a “premises.” The regulation may therefore result in the taxation of patrons who do not enter a facility for live entertainment or enjoy live entertainment.

NAC 368A.120

A proposed amendment to NAC 368A.120 states that, except in limited circumstances, “an admission charge is subject to the tax imposed by NRS 368A.200 when it is paid in exchange for admission to a facility where live entertainment is provided, *regardless of when the live entertainment actually commences and regardless of whether the patron is present for any portion of the live entertainment*” (emphasis added). This proposed language also appears inconsistent with NRS 368A.090’s stated intent of regulating certain activities “by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.” Based on the plain language of the proposed regulation, patrons not

physically present when live entertainment is presented – and who therefore are not engaged in any activity constituting live entertainment – would nonetheless be subject to the live entertainment tax.

This proposed language also makes no effort to proportionately assess the live entertainment actually being provided for purposes of applying the tax. Instead, the language affirmatively confirms that no such proportioning should be done. If the amount of live entertainment provided is not considered in proportion to the admission as a whole, it is inevitable that circumstances will arise where live entertainment makes up a small (or nonexistent) portion of the time spent by a patron at a facility, yet the entire admission fee is taxed as live entertainment. In such circumstances, the tax being applied to live entertainment would be grossly disproportionate, far in excess of the percentage rate identified by the Legislature. Therefore, the tax would not be applied in a uniform manner.

NAC 368A.150

The proposed amended regulation states that “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.” This language imputes the activities of patrons to the organization simply because the organization is collecting the admission fee, and despite the fact that the organization has no control over its patrons or their activities. This language, and the result it mandates, is therefore counter to traditional notions of agency.

Thank you for the opportunity to present this Public Comment on behalf of Burning Man.

Very truly yours,

DOWNEY BRAND LLP



Elizabeth B. Stallard
1423729.2