

AAA Team Sales Tax, LLC

September 19, 2023

Nevada Tax Commission
1550 College Parkway, Suite 115
Carson City, NV 89706

Subject: Administrative Law Judge (ALJ)'s Potential Conflict of Interest in the Blackout Inc case.

I was taking another look at the ALJ's decision in the Blackout Inc, and it clicked in my head, the ALJ who issued the decision in this case was also the same individual who represented the Nevada Department of Taxation before the Nevada Supreme Court as the lead attorney from the Nevada Attorney General in the case against Adult Strip Clubs on if the Live Entertainment Tax applied to the admission fees that they charged their customers. I have been wondering why he did not quote Nevada Revised Statute (NRS) 372.025 in the decision-making process then it again clicked. The ALJ, better than anyone else, knew that Gross Receipts as defined by NRS 372.025 does not include admission fees. He knew that the Nevada Supreme Court has indicated in their opinions or ruled in their opinions that admission fees are not subject to sales tax because it is not included in Gross Receipts/Total Retail Sales Price as defined in NRS 372.025. All you have to do is examine NRS 372.050, NRS 372.085, and NRS 372.105 to reach this conclusion. It is strange that he did not quote any of these NRSs in the decision-making process. In this case, you needed to quote NRS 372.025, NRS 372.050, NRS 372.085, NRS 372.105, and NRS 360B.480.1(c) in the discussion. NRS 372.155 does not apply in this situation because admission fees are not considered part of Gross Receipts as defined in NRS 372.025. The ALJ also erred in using the phrase "all gross receipts" at the bottom of page 6 of his decision. The correct quote is "sales tax is imposed on gross receipts/total retail sales price". He is trying to make it sound like it is imposed on all gross revenue which is incorrect. The sales tax rate is imposed on the individual total retail sales price. I am in the process of obtaining a copy of the Department's audit report to see if the ALJ quoted their wording of NRS 372.105. I will not go as far as to say he was in cahoots with the Department but quoting NRS 372.065 instead of quoting to NRS 372.025 is very odd. NRS 372.065 has nothing to do with defining a retail sale or calculating the sales tax on a retail sale. To say that "Any services that are part of a sale for a wholesaler (NRS 372.065) is the same as "Any services that are part of the sale for a retailer (372.025) is just a plain wrong conclusion. I do think his heavily involvement in the Live Entertainment Tax debate with the Adult Strip Clubs when he worked for the Nevada Attorney General office may have played a major role in his decision. Maybe he had a concern that going in the opposite direction with sales tax would cause a negative impact with the Adult Strip Clubs on the issue of the Live Entertainment Tax in the future. I have read in news articles that the Adult Strip Clubs have been successful in having the Nevada Legislature pass bills in the last few years that do give the clubs a chance to get relief from the Live Entertainment Tax. The discussion on the Live Entertainment Tax will have to wait until an opportunity to discuss is presented.

You would have to agree, even if just out of fairness (Nevada Taxpayers' Bill of Rights), the ALJ needed to inform the Taxpayer Representative for Blackout Inc, about his prior employment with the Nevada Attorney General and his involvement with representing the Department in its disagreement with the Adult Strip Clubs on the taxability issue of the Live Entertainment Tax. The Taxpayer needed to be offered the option of another ALJ even if the other ALJ may had been involved in ruling on the Adult Strip Club cases. Listening to evidence at the Administrative Law Judge (ALJ) level is not as questionable as actually representing the Department before the Nevada Supreme Court on the subject.

The United States Supreme Court has ruled that federal district courts can consider constitutional challenges to administrative proceedings before a federal agency issues final rulings (Axon vs FTC and Cochran vs SEC). I realize this happen at the federal level but you see a flaw in our State Administrative Law Judge (ALJ) review process. Ask yourself, Do you think the appearance of a potential conflict of interest is good for the Department or the Taxpayer? In fact, with the ALJ not quoting NRS 372.025, NRS 372.050, NRS 372.085, and NRS 372.105, and NRS 360B.480.1(c) in reaching a decision, Do you think Blackout Inc was treated fairly by the ALJ? As for your incorrect decision in the case, you relied on the information provided by the Department and the ALJ. Not to say you could do your own research.

Thank You and Be Safe!

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