

SECRETARY OF STATE
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Agency: Department of Taxation

Permanent Regulation
LCB File No. R056-21

Governor's signature

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Classification: ADOPTED BY AGENCY

Brief description of action: The Nevada Tax Commission adopted LCB File No. **R056-21** which establishes 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 pursuant to NRS 368A.200, as amended by section 1.7 of Senate Bill No. 367, chapter 417, Statutes of Nevada 2021, at page 2708); 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.

Authority citation other than 233B: NRS 360.090 and 368A.140

Notice date: September 2, 2022

Date of Adoption by Agency: October 3, 2022

Hearing date: October 3, 2022

**APPROVED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R056-21

Filed December 29, 2022

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.

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.

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.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R056-21

1. A clear and concise explanation of the need for the adopted regulation.

Adopted permanent regulation (R056-21) establishes 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 pursuant to NRS 368A.200, as amended by section 1.7 of Senate Bill No. 367, chapter 417, Statutes of Nevada 2021, at page 2708).

2. 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.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by issuing a questionnaire to interested parties regarding any impact on small businesses and sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop/Hearing</u>	<u>Number Notified</u>
07/27/22	Workshop	08/17/22	198
9/01/22	Adoption Hearing	10/03/22	198

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; Legislative Counsel Bureau; various Department of Taxation locations throughout the State; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email.

See response to #5 for a summary of the public responses to the Regulation.

A copy of the recorded comments, the record of proceedings, and/or the Small Business Impact Statement may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 1550 College Pkwy. Ste 115, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. This must include adverse, beneficial, immediate and long-term effects.**

- (a) **Estimated economic effect on the businesses which they are to regulate.**

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects on businesses. The exemption at issue in this regulation, as required by Senate Bill 367 (2021), is limited to applicable live entertainment taxes for live entertainment conducted by or entirely for the benefit of local government entities and therefor would either not be applicable to private businesses, or would have a beneficial effect on businesses which could use the exemption for providing live entertainment on behalf of governmental entities.

- (b) **Estimated economic effect on the public which they are to regulate.**

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to the public. The regulation does not regulate the public and has no adverse effect on the public. Instead, the regulation provides clarity to the law enacted in 2021 to exempt application of live entertainment taxes for providing live entertainment on behalf of local governmental entities.

8. **The estimated cost to the agency for enforcement of the proposed regulation:**

Enforcement of the adopted regulation presents no significant foreseeable or anticipated cost or decrease in costs.

9. **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 adopted permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities. Instead, this regulation clarifies the legislative exemption for providing live entertainment on behalf of local governmental entities.

10. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

11. **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.**