

**REVISED PROPOSED REGULATION OF THE
DEPARTMENT OF TAXATION**

LCB File No. R062-15

PROPOSED AMENDMENT TO NAC 368A

Draft date 9/28/2015

1. ADMINISTRATION OF TAX BY DEPARTMENT OF TAXATION

Section 1. Chapter 368A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive of this regulation.

Sec. 2. *“Operator” defined. (NRS 368A.140) “Operator” has the meaning ascribed to it at paragraph (c) of subsection 5 of NRS 368A.200, unless otherwise specified.*

Sec. 2.1. *“Ticket broker” defined. (NRS 368A.140) “Ticket broker” means a person unaffiliated with the taxpayer or operator who purchases an admission from the taxpayer or operator and resells the admission to a patron.*

Sec. 2.2. *“Ticket service provider” defined. (NRS 368A.140) “Ticket service provider” means a person who, pursuant to an agreement with the taxpayer or operator, sells an admission to a patron on behalf of the taxpayer or operator.*

Sec. 3. *Scope of exclusion for luxury suites, boxes or similar products; computation of tax; documentation required. (NRS 368A.140) For purposes of subsection 4 of NRS 368A.020:*

1. For facilities with a maximum occupancy of at least 7,500 persons, when the license or rental fee for luxury suites, boxes or similar products includes the admission of a certain number of patrons to a facility, the amount of proceeds subject to the tax imposed by NRS 368A.200 is equal to the lowest priced admission charge for the live entertainment event multiplied by the number of admissions to the live entertainment event included in the license

fee or rental fee, regardless of how many of the included admissions are actually utilized for the live entertainment event.

2. For purposes of subsection 1, upon request, the taxpayer must provide the Department with records to support the lowest priced admission charge for the live entertainment event and the number of admission to the live entertainment event included in the license or rental fee.

3. For facilities with a maximum occupancy of less than 7,500 persons, the tax must be paid on the proceeds received for the license or rental fee for luxury suites, boxes or similar products.

Sec. 4. NAC 368A.070 is hereby amended to read as follows

NAC 368A.070 “Nonprofit organization” defined. (NRS 368A.140) “Nonprofit organization” means any organization described in paragraph *(a) of subsection 2 and paragraph ~~(b)~~ (d)* of subsection ~~{5}~~ 4 of NRS 368A.200.

Sec. 5. NAC 368A.080 is hereby amended to read as follows:

NAC 368A.080 “Patron” defined. (NRS 360.090, 368A.140)

1. “Patron” means a person who *pays an admission charge and* gains access to a facility where live entertainment is provided and who neither solicits nor receives, from any source, any payment, reimbursement, remuneration or other form of consideration for *being present in the facility or for* providing live entertainment at the facility.

2. Participation in a contest between patrons does not convert the event to Live Entertainment even when prizes are awarded.

Sec. 6. NAC 368A.100 is hereby amended to read as follows

NAC 368A.100 Interpretation of certain statutory terms. (NRS 360.090, 368A.140) For the purposes of chapter 368A of NRS, 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. “Facility” to encompass

a. 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.

b. *Any location in this State where live entertainment is provided by an escort.*

4. “Shopping mall” *to include any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether they gather inside a facility or outdoors.*

5. “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 or an operator from any unaffiliated person.*

6. “Lowest priced admission charge” *to mean, for purposes of subsection 4 of NRS 368A.020, the lowest priced admission to the live entertainment event available to the general public for purchase.*

7. “Marketing or promotional activity” *to mean a live entertainment activity provided for the primary purpose of drawing attention to a particular product, service or brand.*

8. *“Membership fee” to mean an amount paid for a membership that provides admission to a facility where live entertainment is provided on a regular basis although not necessarily every day.*

9. *“Performance” to mean, as used in subparagraph (5) of paragraph (b) of subsection 2 of NRS 368A.090:*

(a) The presentation of an activity set forth in subparagraphs (1) through (8) of paragraph (a) of subsection 2 of NRS 368A.090, inclusive, that is the primary reason for which a patron or patrons paid an admission charge to access the facility.

(b) When determining if the presentation of an activity is the primary reason a patron or patrons paid an admission charge to access a facility, the Department may consider the following factors:

(1) Whether the activity is advertised, promoted, or otherwise marketed; and/or

(2) Whether the live entertainment activity garners the predominant attention of a patron or patrons of the facility.

10. *“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 who are physically present to a patron or group of patrons.*

11. *“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.*

12. *“Service charge or any other fee or charge” to mean, as used in subsection 2 of NRS 368A.020, an amount imposed and received by, or on behalf of, a taxpayer or operator for which the patron could not obtain admission to the facility without its payment. The phrase*

does not include an amount imposed and retained by a ticket broker or a ticket service provider.

13. "Ticket" to mean a physical or electronic document that provides a person admission to a facility where live entertainment is provided.

Sec.7. NAC 368A.110 is hereby amended to read as follows:

NAC 368A.110 Taxpayers: General requirements. (NRS 360.090, 368A.140)

1. If a taxpayer intends to provide live entertainment at a facility or 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 Nevada Gaming Commission.

3. An escort or escort service as defined in section 1.03 and 1.07 respectively of SB No. 266 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.

4. An escort or escort service shall maintain the following records, relating to the business of escorting a person or persons, for a period of at least 4 years after the date on which the record is created:

(a) The date of the service

(b) The full amount charged for the service

5. An escort or escort service shall make those records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 8. NAC 368A.120 is hereby amended to read as follows:

NAC 368A.120 Applicability of tax~~[: Live entertainment status; sale of food, refreshments or merchandise].~~ (NRS 360.090, 368A.140)

~~1. [Live entertainment status commences when any patron is required to pay an admission charge before he is allowed to enter a facility, regardless of when the live entertainment actually commences.~~

~~2. Live entertainment status ceases at the later of:~~

~~(a) The conclusion of the live entertainment; or~~

~~(b) The time when a facility for which an admission charge was required is completely vacated by admitted patrons or is opened to the general public free of any admission charge.~~

~~3. The tax applies to the sale of food, refreshments or merchandise at a facility with a seating capacity of less than 7,500, even if patrons are unable to see, hear or enjoy live entertainment from the location within the facility where the food, refreshments or merchandise is sold.]~~ *Except as otherwise provided in subsection 4, 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

2. Applies to each sale of an admission that affords a patron the right to enter the facility, unless the taxpayer establishes that the patron has received a full refund of the amount paid for the admission.

3. The tax imposed by NRS 368A.200 does not apply to an admission charge paid after the conclusion of the last performance of the live entertainment activity.

4. Does not apply, for purposes of paragraph (b) of subsection 3 of NRS 368A.020, to an amount paid in addition to the admission charge to access a table, seat or chair within a facility.

Sec. 9 NAC 368A.130 is hereby amended to read as follows:

NAC 368A.130 Determination of tax rate when maximum occupancy has not been designated. (NRS 360.090, 368A.140) For the purposes of *subsection 4 of NRS 368A.020 and* paragraph ~~(c)~~ *b* of subsection ~~(7)~~ *5* 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 *presume* ~~[compute the tax rate on the presumption]~~ that the actual seating capacity of the facility is at least 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 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. 10. NAC 368A.140 is hereby amended to read as follows:

NAC 368A.140 Computation of tax; ~~[inclusion of tax in sales price of food, refreshments or merchandise]~~. (NRS 360.090, 368A.140)

1. Pursuant to the provisions of subsection ~~44~~ **I** of NRS 368A.200, the Department shall apply the tax rate to the total admission charge less the sum of any tax imposed by the United States upon or with respect to an admission charge to live entertainment, whether imposed upon the taxpayer or the patron.

2. The Department shall apply the tax rate to the *entire amount charged for the service of escorting a person or persons by an escort or escort service.* ~~{gross receipts from the sale of food, refreshments or merchandise at a facility where live entertainment is provided. As used in this section, "gross receipts" has the meaning ascribed to it in NRS 372.025, except that "gross receipts" will not be construed to include the amount of any tax imposed by this State or a political subdivision upon or with respect to retail sales of tangible personal property.}~~

3. ~~{If applicable, a taxpayer may include the excise tax in the sales price of food, refreshments or merchandise sold at a facility where live entertainment is provided, but if he does so, he shall notify the patrons of the facility by posting a sign which is visible to all purchasers of food, refreshments or merchandise which states that the excise tax is included in the sales price. In the absence of such a notification, the total amount charged to the patron shall be deemed to be the price of the item.}~~ *The tax must be paid on all taxable admission charges, regardless of whether the taxable amounts are paid in cash or through an extension of credit. Any required minimum purchases of food, refreshments or merchandise must be accounted for solely as part of the total amount paid for taxable admission charges*

4. *The amount of any fees imposed in connection with the use of credit cards or debit cards which is excluded from taxation pursuant to paragraph (c) of subsection 2 of NRS 368A.200, must be determined from the actual amount imposed, collected and retained by the independent financial institution and not from an estimate of that amount.*

5. The tax must be paid on all proceeds received by a taxpayer or operator for the sale of an admission. The amount of proceeds collected by a taxpayer or operator includes any service charge or other fee or charge imposed and received by, or on behalf of, a taxpayer or operator, except for any fee excluded from taxation pursuant to paragraph (c) of subsection 2 of NRS 368A.200.

6. The tax on any taxable admission sold as a component of a package must be computed in accordance with the following provisions:

(a) Except as otherwise provided in paragraph (b):

(1) The average retail value of the admission must be prorated against the average retail value of all the components of the package, and the tax must be paid on the sum obtained by multiplying the resulting prorated fraction by the actual price paid for the package.

(2) Any value advertised to the public as the retail value of a component of a package is rebuttably presumed to constitute the actual retail value of that component.

(3) If no average retail value can be established for a component of a package, the cost of the component to the taxpayer must be used to carry out subparagraph (1).

(b) This subsection does not prohibit a taxpayer from paying, at the option of the taxpayer, the tax on the full retail value of the admission component of a package.

6. The amount of any charges which are excluded from taxation pursuant to subsections 3 and 4 of NRS 368A.020 must be determined from the actual amount imposed, collected and retained and not from an estimate of that amount.

7. The tax is imposed on the sale of an admission at the time the ticket is sold:

(a) By a taxpayer or operator to a ticket broker or a patron; or

(b) By a ticket service provider to a patron.

8. When an admission is sold by a taxpayer or operator to a ticket broker, the tax will be imposed on and collected from the ticket broker.

9. When an admission is sold by a ticket service provider to a patron, the tax will be imposed on and collected from the patron.

Sec. 11 NAC 368A.150 is hereby amended to read as follows:

NAC 368A.150 Scope of exemption for nonprofit organizations; assessment and computation of tax by Department; *determination of number of tickets offered for sale or distribution.* (NRS 360.090, 368A.140)

1. For the purposes of paragraph ~~(b)~~ *d*) of subsection ~~3~~ *4* of NRS 368A.200, 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. The proceeds of the admission charges do not become the property of a person other than a nonprofit organization 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. Subject to the provisions of subsection 1, a nonprofit organization providing live entertainment, or a person providing live entertainment entirely for the benefit of a nonprofit organization, incurs no liability for the excise tax on entertainment if the nonprofit organization or person contracts for goods or services with a person other than a nonprofit organization, even if the proceeds from the sale of food, refreshments or merchandise do not become the property of the nonprofit organization.~~

~~3. If live entertainment is provided by or entirely for the benefit of a nonprofit organization, there will be no tax on amounts paid for food, refreshments or merchandise sold within the facility where the live entertainment is provided, even if the proceeds from the sale of food, refreshments or merchandise do not become the property of the nonprofit organization.~~

~~4.]~~ 2. Unless live entertainment is provided by or entirely for the benefit of a nonprofit organization, and except as otherwise provided in this chapter or chapter 368A of NRS, the Department shall assess and compute the excise tax in accordance with NAC 368A.140.

3. For purposes of paragraph (a) of subsection 2 and paragraph (d) of subsection 4 of NRS 368A.200, in determining the total number of tickets offered for sale or distribution:

(a) If a single ticket provides admission to multiple live entertainment events, such ticket constitutes a ticket for each event.

(b) If a ticket is required for admission to an individual live entertainment event that is part of a multiple live entertainment event offering, such individual live entertainment event shall constitute a separate live entertainment event.

4. In the absence of support for number of admission tickets available for sale or other distribution the Department will presume the amount is more than 7,500.

Sec.12 NAC 368A.160 is hereby amended to read as follows:

NAC 368A.160 Documentation required for exemption of nonprofit organization. (NRS 360.090, 368A.140)

1. 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, 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:

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

~~2-1~~ (b) Has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or

~~3-1~~ (c) Is organized or existing under the provisions of chapter 82 of NRS; *and*

2. Provide to the Department documentation to support the number of admission tickets available for sale or other distribution to patrons, either directly or indirectly through a partner, subsidiary, client, affiliate or other collaborator.

Sec. 13. NAC 368A.060 is hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 368A.060 “Live entertainment status” defined. (NRS 360.090, 368A.140) “Live entertainment status” means that condition which renders the admission to a facility or the selling of food, refreshments or merchandise subject to the tax imposed by chapter 368A of NRS.