

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R062-15

August 5, 2016

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

AUTHORITY: §§1-17, NRS 360.090 and 368A.140.

A REGULATION relating to taxation; revising provisions governing the tax on live entertainment provided at a facility that is not located on the premises of a licensed gaming establishment; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes an excise tax on admission to certain facilities where live entertainment is provided. (NRS 368A.200) Under existing law, if live entertainment is provided at a facility that is not located on the premises of a licensed gaming establishment, the Department of Taxation administers and collects the tax, and is required to adopt regulations governing the tax. (NRS 368A.140) Existing law also provides that the Nevada Tax Commission is required to prescribe regulations for carrying on the business of the Department. (NRS 360.090) This regulation revises various existing regulations governing the administration and collection of the tax on live entertainment provided at a facility that is not located on the premises of a licensed gaming establishment.

Existing law requires the tax on live entertainment to be collected from the purchaser at the time of the purchase of an admission to a facility where live entertainment is provided, whether or not the admission is purchased for resale. (NRS 368A.200) **Section 4** of this regulation specifies that: (1) the taxpayer must collect the tax from a ticket broker or patron at the time of the sale of the admission; and (2) a ticket service provider must collect the tax from a patron at the time of the sale of the admission. **Sections 2 and 3** of this regulation define the terms “ticket broker” and “ticket service provider” for the purposes of the regulations governing the tax on live entertainment.

Existing law provides that if the license or rental fee paid for a luxury suite, box or similar product at a facility with a maximum occupancy of at least 7,500 persons includes the admission of a certain number of persons to the facility, the taxable admission charge is an amount equal to the lowest priced admission charge multiplied by the number of admissions to the live entertainment event included in the license or rental fee. (NRS 368A.020) **Section 5** of this regulation defines the term “lowest priced admission charge” for the purposes of this provision and requires a taxpayer to provide to the Department, upon request, records to support the lowest priced admission charge. **Section 5** also provides that if a license or rental fee is paid

for a luxury suite, box or similar product at a facility with a maximum occupancy of less than 7,500 persons, the entire amount of the proceeds from the license or rental fee is subject to the tax.

Existing law excludes certain activities from the definition of live entertainment and, thus, the tax on live entertainment does not apply to such activities. The activities excluded from the tax include, without limitation: (1) an activity that does not constitute a performance; and (2) a marketing or promotional activity. (NRS 368A.090) **Section 9** of this regulation specifies the manner in which the Commission will determine whether an activity constitutes a “performance” or a “marketing or promotional activity” for the purpose of determining whether the activity is subject to the tax. **Section 9** further specifies the manner in which the Commission will interpret certain other terms for the purposes of determining the applicability of the tax.

Existing law imposes the tax on live entertainment on the amount charged by an escort or escort service for the service of escorting one or more persons at one or more locations in this State. (NRS 368A.200) **Section 10** of this regulation requires an escorts or escort service to register with the Department to collect the tax. **Section 10** further requires an escort or escort service to keep certain records and to provide those records to the Department under certain circumstances. **Section 13** of this regulation adopts provisions governing the manner in which the tax on the amount charged by an escort or escort service for the service of escorting one or more persons at one or more locations in this State.

Existing law was amended to provide that the tax on live entertainment no longer applies to food, refreshments and merchandise sold at a facility where live entertainment is provided. (NRS 368A.060) **Sections 11, 13 and 14** of this regulation remove provisions governing the taxation of food, refreshments and merchandise sold at a facility where live entertainment is provided. **Section 11** further specifies the circumstances under which the tax is applicable.

Under existing law, the amount of the taxable admission charge includes any service charge or other fee or charge that is required to be paid in exchange for admission to a facility where live entertainment is provided. (NRS 368A.020) **Section 13** revises existing regulations governing the manner in which the amount of the tax is calculated to: (1) require the tax to be paid on all proceeds from the sale of an admission to a facility where live entertainment is provided which are received by a taxpayer, including, without limitation, certain service charges and fees received by, or on behalf of, the taxpayer; and (2) specify that any amounts excluded from taxation must be based on the actual amount imposed collected and retained and not on estimates of those amounts. **Section 13** also adopts a provision governing the manner in which the tax is calculated when an admission to a facility where live entertainment is provided is sold as a component of a package.

Existing law provides that the tax does not apply to live entertainment that is provided by, or entirely for the benefit of, certain nonprofit organizations only if less than 7,500 tickets to the live entertainment are offered for sale or other distribution to patrons. (NRS 368A.200) **Sections 14 and 15** of this regulation: (1) specify the manner in which the Department will determine the number of tickets offered for sale or other distribution to events that offer multiple live entertainment events; (2) require a nonprofit organization to provide to the Department documentation concerning the number of tickets available for sale or other distribution to

patrons; and (3) provide that a person claiming to be a nonprofit organization exempt from the tax has the burden of proving by a preponderance of the evidence that the person satisfies the criteria for the exemption.

Section 1. Chapter 368A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Ticket broker” means a person who is not affiliated with a taxpayer and who purchases an admission to a facility where live entertainment is provided from the taxpayer for the purpose of resale to a patron.*

Sec. 3. *“Ticket service provider” means a person who, pursuant to an agreement with a taxpayer and on behalf of the taxpayer, sells to a patron an admission to a facility where live entertainment is provided.*

Sec. 4. *The tax imposed by chapter 368A of NRS must be collected by:*

1. A taxpayer from a ticket broker or patron at the time of the sale of an admission to a facility where taxable live entertainment is provided.

2. A ticket service provider from a patron at the time of the sale of an admission to a facility where taxable live entertainment is provided.

Sec. 5. *1. For the purposes of subsection 4 of NRS 368A.020:*

(a) If a license or rental fee paid for a luxury suite, box or similar product at a facility with a maximum occupancy of at least 7,500 persons includes the admission of a certain number of patrons to live entertainment provided at the facility, the amount of the proceeds from the license or rental fee that is subject to the tax imposed by chapter 368A of NRS is equal to the lowest priced admission charge for the live entertainment event at the facility multiplied by the number of admissions to the live entertainment event included in the license or rental fee, regardless of the number of admissions utilized for the live entertainment event. Upon request,

a taxpayer shall provide to the Department records to support the lowest priced admission charge for the live entertainment event at the facility and the number of admissions to the live entertainment event included in the license or rental fee.

(b) If a license or rental fee is paid for a luxury suite, box or similar product at a facility with a maximum occupancy of less than 7,500 persons, the entire amount of the proceeds from the license or rental fee is subject to the tax imposed by chapter 368A of NRS.

2. For the purposes of this section and subsection 4 of NRS 368A.020, the Commission will interpret the term “lowest priced admission charge” to mean the lowest price available to the general public for an admission to the facility where the live entertainment is provided.

Sec. 6. 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 to 5, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 368A.030 to 368A.090, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 368A.070 is hereby amended to read as follows:

368A.070 “Nonprofit organization” means any organization described in paragraph (a) of subsection 2 of NRS 368A.200 or paragraph ~~(b)~~ (d) of subsection ~~(5)~~ 4 of that section.

Sec. 8. NAC 368A.080 is hereby amended to read as follows:

368A.080 “Patron” means a person who 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, *other than a prize for participation in a contest between patrons*, for *being present in the facility or* providing live entertainment at the facility.

Sec. 9. NAC 368A.100 is hereby amended to read as follows:

368A.100 For the purposes of chapter 368A of NRS ~~H~~ *NAC 368A.010 to 368A.170, inclusive, and sections 2 to 5, inclusive, 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.”

~~{2. “Facility” to encompass 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.}~~

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. 10. 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 ~~[this chapter and]~~ chapter 368A of NRS ~~¶~~ *and NAC 368A.010 to 368A.170, inclusive, and sections 2 to 5, inclusive, 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 ~~[such regulations as may be prescribed by the Nevada Gaming Commission.]~~ *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, and sections 2 to 5, inclusive, of this regulation.

(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.

Sec. 11. NAC 368A.120 is hereby amended to read as follows:

368A.120 1. ~~{Live entertainment status commences when any patron is required to pay an admission charge before the patron is allowed to enter}~~ *An admission charge is subject to the tax imposed by chapter 368A of NRS when the admission charge is paid in exchange for admission to a facility {,} where taxable live entertainment is provided,* regardless of when the live entertainment actually commences ~~{.~~

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

~~—(a) The{ and regardless of whether the patron is present for any portion of the live entertainment.~~

2. *Except as otherwise provided in NRS 368A.200, the tax imposed by chapter 368A of NRS:*

(a) Applies to an admission charge for a patron regardless of whether the patron is present for any portion of the live entertainment.

(b) Applies to each sale of an admission that affords a patron the right to enter, or have access to, a facility where live entertainment is provided, unless the taxpayer establishes that the person has received a full refund of the amount paid for the admission.

3. *The tax imposed by chapter 368A of NRS does not apply to:*

(a) An admission charge paid after the conclusion of the last performance of the taxable 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.~~ *Any amount of consideration paid in addition to the admission charge to have access to a table, seat or chair within a facility where live entertainment is provided.*

(c) Entertainment provided by a patron or patrons who receive a prize for participation in a contest between patrons.

Sec. 12. NAC 368A.130 is hereby amended to read as follows:

368A.130 *1. For the purposes of subsection 4 of NRS 368A.020, the Department shall determine the maximum occupancy of a facility where live entertainment is provided in accordance with the provisions of paragraph (b) of subsection 5 of NRS 368A.200.*

*2. For the purposes of subsection 1 and paragraph ~~(e)~~ (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 compute the tax rate on the presumption~~ **must presume** 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~~ **admissions** 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. 13. NAC 368A.140 is hereby amended to read as follows:

368A.140 *1. Pursuant to the provisions of subsection ~~4~~ 1 of NRS 368A.200 ~~5~~ :*

(a) If the taxable event is an admission to a facility in this State where live entertainment is provided, 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}~~

(b) If the taxable event is the live entertainment provided by an escort who is escorting a person or persons at one or more locations in this State, the Department shall apply the tax rate to the ~~[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 the taxpayer does so, he or she 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.] total amount, expressed in terms of money, of consideration paid for the service of escorting the person or persons at one or more locations in this State.~~

2. The tax must be paid on all taxable admission charges and amounts paid for the service of escorting a person or persons at one or more locations in this State, regardless of whether the taxable amounts are paid in cash or through an extension of credit. Any required

minimum purchase of food, beverages or merchandise must be accounted for solely as part of the total amount paid for the admission charge.

3. 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.

4. The tax must be paid on all the proceeds received by a taxpayer, in exchange for the sale of an admission to a facility, including, without limitation, the proceeds of any service charge or other fee or charge, other than a fee excluded from the tax pursuant to paragraph (c) of subsection 2 of NRS 368A.200 that is imposed and received by, or on behalf of, the taxpayer.

5. The tax on any taxable admission to a facility where live entertainment is provided which is 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 charge or fee excluded from the tax pursuant to subsection 3 or 4 of NRS 368A.020 must be determined from the actual amount imposed, collected and retained by the taxpayer, and not from an estimate of that amount.

7. As used in this section, “package” means any aggregation of rights to rooms, food, refreshments, merchandise, entertainment, services or other items which is advertised to the public as a single unit and sold for a single price.

Sec. 14. NAC 368A.150 is hereby amended to read as follows:

368A.150 1. For the purposes of paragraph ~~[(b)]~~ (d) of subsection ~~[(5)]~~ 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.— Unless~~ *Except as otherwise provided in chapter 368A of NRS and NAC 368A.010 to 368A.170, inclusive, and sections 2 to 5, inclusive, of this regulation, 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,}~~ *and the number of tickets to that live entertainment which are offered for sale or other distribution to patrons is less than 7,500,* the Department shall assess and compute the excise tax in accordance with NAC 368A.140.

3. For the purpose of determining the number of tickets to live entertainment which are offered for sale or distribution to patrons pursuant to paragraph (a) of subsection 2 of NRS 368A.200 and paragraph (d) of subsection 4 of that section:

(a) A single ticket providing admission to more than one live entertainment event constitutes a ticket for each such event.

(b) A live entertainment event that is part of an offering of multiple live entertainment events and that requires a separate ticket for admission constitutes a separate live entertainment event.

Sec. 15. NAC 368A.160 is hereby amended to read as follows:

368A.160 *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, 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 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}~~

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

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

~~{3}~~ (3) Is organized or existing under the provisions of chapter 82 of NRS.

(b) *Documentation to support the number of tickets for admission to the live entertainment offered for sale or other distribution to patrons, either directly or indirectly through a partner, subsidiary, client, affiliate or other collaborator.*

Sec. 16. NAC 368A.170 is hereby amended to read as follows:

368A.170 1. As used in this section, “over-collection” means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection ~~{5}~~ 4 of NRS 368A.200, or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 ~~{to 4, inclusive,}~~ , 2 and 3 of NRS 368A.200.

2. Any over-collection must, if possible, be refunded by the taxpayer to the patron from whom it was collected.

3. A taxpayer shall:

(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 2 and the name and address of the person to whom the refund is to be made.

(b) Within 60 days after reporting to the Department that a refund must be made, make an accounting to the Department of all refunds paid. The accounting must be accompanied by any supporting documents required by the Department.

4. If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the Department.

5. If an audit of a taxpayer reveals the existence of an over-collection, the Department shall:

(a) Credit the over-collection toward any deficiency that results from the audit, if the taxpayer furnishes the Department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 2.

(b) Within 60 days after receiving notice from the Department that a refund must be made, seek an accounting of all refunds paid. The accounting must be accompanied by any supporting documents required by the Department.

Sec. 17. NAC 368A.060 is hereby repealed.

TEXT OF REPEALED SECTION

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.