

NEVADA TAX COMMISSION MEETING  
MINUTES

October 8, 2024  
9:00 a.m.

Members Present:

Thom Sheets, Chairman pro tempore  
George Kelesis, Commissioner  
Jeff Rodefer, Commissioner  
H. Stan Johnson, Commissioner  
Sharon Byram, Commissioner  
Craig Witt, Commissioner (Virtual)  
Ryan Bellows, Commissioner

Members Absent:

Caryn Adelhoch, Commissioner

- I. Call the meeting to order and a quorum was established.

Presiding Officer Sheets called the meeting to order. A quorum was established.

- II. Public Comment.

There was no public comment.

Director Hughes administered an oath to all witnesses and parties testifying.

III. COMPLIANCE DIVISION:

1. Hearing regarding Taxpayer's Appeal of Advisory Opinion No. 24-004 dated March 28, 2024, In Re: Broadacres Open Air Marketplace, LLC, dba Broadacres Swap Meet, including, without limitation, consideration of any motions or other pleadings filed by the Taxpayer or Department of Taxation in relation to the Appeal.

Commissioner Sheets stated that he would be presiding over this hearing and confirmed that the Attorney General's Office and counsel for Broadacres orally asserted during the last hearing on this matter that the appeal of this Advisory Opinion was not a contested case proceeding. Therefore, Presiding Officer Sheets stated the portions of 233B related to contested cases that have been cited in the paperwork is inapplicable because this is not a contested case. Moreover, Presiding Officer Sheets confirmed that this matter does not address anything prior to August 31, 2019, as the audit period between 2015 to 2019 was final. A new request for an advisory opinion specified with particularity that it was related to the period September 1, 2019, moving forward. This is not an opportunity to re-litigate what has already been litigated and accepted by the Commission and an appeal rejected by the court. It's a final order. The \$140,000 plus dollar deficiency has already been paid based on my understanding of what the Department's records show.

The hearing scheduling order confirms that the Commission will consider the following 3 issues:

- 1) Whether the business operations and activities of the taxpayer for purposes of applicability of the Live Entertainment Tax (LET) set forth in NRS and NAC Chapter 368A are different from those presented to and determined by the Commission in the issuance of its decision in

Case Number 50580 issued March 11, 2022, related to the audit period October 1, 2015, through August 31, 2019.

- 2) Whether the Doctrine of Administrative Res Judicata bars the issuance of an advisory opinion in response to the request for advisory opinion based upon a finding that the issues and parties are the same as those established in the Commission's decision.
- 3) If the Commission were to determine that the Doctrine of Administrative Res Judicata does not apply, whether the LET set forth in NRS and NAC Chapter 368A should be imposed on taxpayer for the period on or after September 1, 2019, based upon the facts and circumstances. Such determination will not impact the taxability and deficiency determination set forth in the Commission's decision for the period affected by that decision.

Presiding Officer Sheets initiated the hearing by confirming appearances and admission of evidence as provided in accordance with the Notice of Hearing and Scheduling Order.

Dan Reaser, Esq. and Taylor Gould, Esq., with Fennemore Craig, appeared on behalf of Broadacres Open Air Marketplace, LLC, dba Broadacres Swap Meet.

Andrea Nichols, Senior Deputy Attorney General, and Mary Huck, Deputy Attorney General, appeared on behalf of the Department.

The Commission admitted and heard all evidence submitted by the parties and issued the following motions:

Commissioner Rodefer moved that stare decisis does not apply to administrative agencies in the State of Nevada. Commissioner Rodefer made a second motion that administrative res judicata is not applicable in this particular matter. Commissioner Kelesis seconded the motions. All in favor. Both motions carried.

Commissioner Byram moved to accept for good cause the material and testimony that was received. Commissioner Kelesis seconded the motion. All in favor. Motion carried.

Commissioner Kelesis moved that the Commission issue an interim order remanding the matter to the Executive Director to conduct an investigation and audit from September 1, 2019 forward and present those audit findings to the Commission at a future meeting for a final decision. Commissioner Byram seconded the motion. All in favor. Motion carried.

IV. Next Meeting Date: December 4, 2024.

V. Public Comment.

There was no public comment.

VI. Items for Future Agendas.

No items for future agendas were discussed.

VII. Meeting adjourned.