

SENATE BILL NO. 103—COMMITTEE ON JUDICIARY

PREFILED JANUARY 27, 2011

Referred to Committee on Judiciary

SUMMARY—Clarifies that certain service charges are subject to the tax on live entertainment. (BDR 32-828)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

AN ACT relating to gaming; clarifying that certain service charges are subject to the tax on live entertainment; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, there is an excise tax that is imposed, with certain
2 exceptions, on admission to any facility in this State where live entertainment is
3 provided. Certain admission charges, gratuities and service charges are not subject
4 to such tax on live entertainment. (NRS 368A.200) This bill clarifies existing law
5 and specifies that service charges which are collected and retained by certain third
6 parties are subject to the tax on live entertainment. This provision applies
7 retroactively from January 1, 2004, the date on which the imposition of the tax on
8 live entertainment became effective.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** (Deleted by amendment.)
2 **Sec. 2.** (Deleted by amendment.)
3 **Sec. 3.** NRS 368A.200 is hereby amended to read as follows:
4 368A.200 1. Except as otherwise provided in this section,
5 there is hereby imposed an excise tax on admission to any facility in
6 this State where live entertainment is provided. If the live
7 entertainment is provided at a facility with a maximum occupancy
8 of:
9 (a) Less than 7,500 persons, the rate of the tax is 10 percent of
10 the admission charge to the facility plus 10 percent of any amounts



* S B 1 0 3 R 1 *

1 paid for food, refreshments and merchandise purchased at the
2 facility.

3 (b) At least 7,500 persons, the rate of the tax is 5 percent of the
4 admission charge to the facility.

5 2. Amounts paid for:

6 (a) Admission charges collected and retained by a nonprofit
7 religious, charitable, fraternal or other organization that qualifies as
8 a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or by a
9 nonprofit corporation organized or existing under the provisions of
10 chapter 82 of NRS, are not taxable pursuant to this section.

11 (b) Gratuities directly or indirectly remitted to persons employed
12 at a facility where live entertainment is provided or for service
13 charges, including those imposed in connection with the use of
14 credit cards or debit cards, which are collected and retained by
15 persons other than the taxpayer, *the operator of the entertainment*
16 *facility or an affiliate of the taxpayer or the operator* are not
17 taxable pursuant to this section. *As used in this paragraph,*
18 *“affiliate” has the meaning ascribed to it in NRS 463.0133.*

19 3. A business entity that collects any amount that is taxable
20 pursuant to subsection 1 is liable for the tax imposed, but is entitled
21 to collect reimbursement from any person paying that amount.

22 4. Any ticket for live entertainment must state whether the tax
23 imposed by this section is included in the price of the ticket. If the
24 ticket does not include such a statement, the taxpayer shall pay the
25 tax based on the face amount of the ticket.

26 5. The tax imposed by subsection 1 does not apply to:

27 (a) Live entertainment that this State is prohibited from taxing
28 under the Constitution, laws or treaties of the United States or the
29 Nevada Constitution.

30 (b) Live entertainment that is provided by or entirely for the
31 benefit of a nonprofit religious, charitable, fraternal or other
32 organization that qualifies as a tax-exempt organization pursuant to
33 26 U.S.C. § 501(c), or a nonprofit corporation organized or existing
34 under the provisions of chapter 82 of NRS.

35 (c) Any boxing contest or exhibition governed by the provisions
36 of chapter 467 of NRS.

37 (d) Live entertainment that is not provided at a licensed gaming
38 establishment if the facility in which the live entertainment is
39 provided has a maximum occupancy of less than 200 persons.

40 (e) Live entertainment that is provided at a licensed gaming
41 establishment that is licensed for less than 51 slot machines, less
42 than 6 games, or any combination of slot machines and games
43 within those respective limits, if the facility in which the live
44 entertainment is provided has a maximum occupancy of less than
45 200 persons.



* S B 1 0 3 R 1 *

1 (f) Merchandise sold outside the facility in which the live
2 entertainment is provided, unless the purchase of the merchandise
3 entitles the purchaser to admission to the entertainment.

4 (g) Live entertainment that is provided at a trade show.

5 (h) Music performed by musicians who move constantly
6 through the audience if no other form of live entertainment is
7 afforded to the patrons.

8 (i) Live entertainment that is provided at a licensed gaming
9 establishment at private meetings or dinners attended by members of
10 a particular organization or by a casual assemblage if the purpose of
11 the event is not primarily for entertainment.

12 (j) Live entertainment that is provided in the common area of a
13 shopping mall, unless the entertainment is provided in a facility
14 located within the mall.

15 (k) Food and product demonstrations provided at a shopping
16 mall, a craft show or an establishment that sells grocery products,
17 housewares, hardware or other supplies for the home.

18 (l) Live entertainment that is incidental to an amusement ride, a
19 motion simulator or a similar digital, electronic, mechanical or
20 electromechanical attraction. For the purposes of this paragraph, live
21 entertainment shall be deemed to be incidental to an amusement
22 ride, a motion simulator or a similar digital, electronic, mechanical
23 or electromechanical attraction if the live entertainment is:

24 (1) Not the predominant element of the attraction; and

25 (2) Not the primary purpose for which the public rides,
26 attends or otherwise participates in the attraction.

27 (m) Live entertainment that is provided to the public in an
28 outdoor area, without any requirements for the payment of an
29 admission charge or the purchase of any food, refreshments or
30 merchandise.

31 (n) An outdoor concert, unless the concert is provided on the
32 premises of a licensed gaming establishment.

33 (o) Beginning July 1, 2007, race events scheduled at a race track
34 in this State as a part of the National Association for Stock Car Auto
35 Racing Nextel Cup Series, or its successor racing series, and all
36 races associated therewith.

37 (p) Beginning July 1, 2007, a baseball contest, event or
38 exhibition conducted by professional minor league baseball players
39 at a stadium in this State.

40 (q) Live entertainment provided in a restaurant which is
41 incidental to any other activities conducted in the restaurant or
42 which only serves as ambience so long as there is no charge to the
43 patrons for that entertainment.

44 6. The Commission may adopt regulations establishing a
45 procedure whereby a taxpayer that is a licensed gaming



* S B I 0 3 R 1 *

1 establishment may request an exemption from the tax pursuant to
2 paragraph (q) of subsection 5. The regulations must require
3 the taxpayer to seek an administrative ruling from the Chair of the
4 Board, provide a procedure for appealing that ruling to the
5 Commission and further describe the forms of incidental or ambient
6 entertainment exempted pursuant to that paragraph.

7 7. As used in this section, "maximum occupancy" means, in
8 the following order of priority:

9 (a) The maximum occupancy of the facility in which live
10 entertainment is provided, as determined by the State Fire Marshal
11 or the local governmental agency that has the authority to determine
12 the maximum occupancy of the facility;

13 (b) If such a maximum occupancy has not been determined, the
14 maximum occupancy of the facility designated in any permit
15 required to be obtained in order to provide the live entertainment; or

16 (c) If such a permit does not designate the maximum occupancy
17 of the facility, the actual seating capacity of the facility in which the
18 live entertainment is provided.

19 **Sec. 4.** Section 3 of this act becomes effective upon passage
20 and approval and applies retroactively from January 1, 2004.

