

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R196-05

January 5, 2006

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

AUTHORITY: §§1-7, NRS 360.090 and 368A.140.

A REGULATION relating to the tax on live entertainment; making various changes to the provisions governing the administration of the tax; repealing certain superseded provisions; and providing other matters properly relating thereto.

Section 1. NAC 368A.010 is hereby amended to read as follows:

368A.010 As used in NAC 368A.010 to 368A.170, inclusive, unless the context otherwise requires, the words and terms defined in NAC ~~[368A.020]~~ *368A.030* to 368A.090, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. 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) of subsection 5 of ~~[NRS 368A.200.]~~ *that section.*

Sec. 3. NAC 368A.100 is hereby amended to read as follows:

368A.100 For the purposes of chapter 368A of NRS, the Commission will interpret the term:

1. ~~[“Admission charge” to include, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.~~

~~—2.]~~ “Boxing contest or exhibition” to have the meaning ascribed in NRS 467.0107 to the term “unarmed combat.”

~~{3. “Casual assemblage” to include, without limitation:~~

~~—(a) Participants in conventions, business meetings or tournaments governed by chapter 463 of NRS, and their guests; or~~

~~—(b) Persons celebrating a friend’s or family member’s wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration;~~

~~—4.]~~ 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.

~~{5. “Live entertainment”:~~

~~—(a) To include, without limitation, any one or more of the following activities:~~

~~——(1) Music or vocals provided by one or more professional or amateur musicians or vocalists;~~

~~——(2) Dancing performed by one or more professional or amateur dancers or performers;~~

~~——(3) Acting or drama provided by one or more professional or amateur actors or players;~~

~~——(4) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;~~

~~——(5) Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph (7) of paragraph (b);~~

- ~~—— (6) Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes or sportsmen;~~
- ~~—— (7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;~~
- ~~—— (8) A show or production involving any combination of the activities described in subparagraphs (1) to (8), inclusive; and~~
- ~~—— (9) A performance involving one or more of the activities described in this paragraph by a disc jockey who presents recorded music. For the purposes of this subsection, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this paragraph if the disc jockey generally limits his interaction with patrons to introducing the recorded music, making announcements of general interest to patrons, and explaining, encouraging or directing participatory activities between patrons.~~
- ~~—— (b) To exclude, without limitation, any one or more of the following activities:~~
- ~~—— (1) Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to the volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;~~
- ~~—— (2) Occasional performances by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public;~~
- ~~—— (3) Performances by performers of any type if the performance occurs in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51~~

~~slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, as long as the performers stroll continuously throughout the facility;~~

~~—— (4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;~~

~~—— (5) Television, radio, closed circuit or Internet broadcasts of live entertainment;~~

~~—— (6) Entertainment provided by a patron or patrons, including, without limitation, singing by patrons or dancing by or between patrons; and~~

~~—— (7) Animal behaviors induced by animal trainers or caretakers primarily for the purpose of education and scientific research.~~

~~—— 6. “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.~~

~~—— 7. “Trade show” to mean an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services or discussing matters of interest to members of that trade or industry.]~~

Sec. 4. NAC 368A.110 is hereby amended to read as follows:

368A.110 1. 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.

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 ~~{Board.}~~ *Nevada Gaming Commission*.

Sec. 5. NAC 368A.130 is hereby amended to read as follows:

368A.130 For the purposes of paragraph (c) of subsection ~~{6}~~ *7* 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 that the actual seating capacity of the facility is at least ~~{300}~~ *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 ~~{300 or 7,500 or more.}~~ *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. 6. NAC 368A.160 is hereby amended to read as follows:

368A.160 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, ~~{}~~

~~—1. If the person does not claim to be an exempt religious organization, provide to the Department documentation from the Internal Revenue Service deemed appropriate by the Department indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or~~

~~—2. If the person claims to be an exempt religious organization, or claims to have provided live entertainment entirely for the benefit of an exempt religious organization,]~~ 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 ~~[meets]~~ :

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

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

3. Is organized or existing under the provisions of chapter 82 of NRS.

Sec. 7. NAC 368A.020 and 368A.050 are hereby repealed.

TEXT OF REPEALED SECTIONS

368A.020 “Board” defined. (NRS 360.090, 368A.140) “Board” means the State Gaming Control Board.

368A.050 “Executive Director” defined. (NRS 360.090, 368A.140) “Executive Director” means the Executive Director of the Department.