MINUTES OF THE JOINT MEETING
OF THE SENATE COMMITTEE ON JUDICIARY
AND THE ASSEMBLY COMMITTEE ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 14, 1981

The Joint Hearing of the Senate Committee on Judiciary and the Assembly Committee on Judiciary was called to order by Chairman Jan Stewart, at 6:40 p.m., Tuesday, April 14, 1981, in Room 131 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William H. Hernstadt
Senator Sue Wagner

COMMITTEE MEMBER ABSENT:

Senator William J. Raggio

ASSEMBLY COMMITTEE ON JUDICIARY

Assemblyman Jan Stewart, Chairman
Assemblyman Robert M. Sader, Vice Chairman
Assemblyman James J. Banner
Assemblyman Helen A. Foley
Assemblyman Patty D. Cafferata
Assemblyman Jane E. Ham
Assemblyman Mike Malone

COMMITTEE MEMBERS ABSENT

Assemblyman Lonie Chaney
Assemblyman Robert E. Price
Assemblyman Danny L. Thompson
Assemblyman Erik Beyer

STAFF MEMBER PRESENT:

Shirley LaBadie, Committee Secretary

JOINT SENATE AND ASSEMBLY COMMITTEE ON JUDICIARY
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SENATE BILL NO. 320--Revises provisions on computation of gross revenue received by gaming establishments.

Mr. Robbins, Cahill, representing the Nevada Resort Association, and Mr. Jerry Higgins, representing the Gaming Industry Association, introduced people in the audience interested in the bills to be discussed on gaming. See Attendance Roster attached hereto as Exhibit B.

Mr. Bunker stated since this is the industry's bill and while they are the proponents and the gaming board is not necessarily opponents, they have proposed several amendments to S. B. No. 320.

Mr. Bob Faiss, Attorney, Nevada Resort Association, stated the industry does not support S. B. No. 320, they oppose the bill. He stated the bill resulted from a draft bill submitted on behalf of the industry as part of a previous conversation with the board. The previous reason for the bill is gone and they oppose the bill in its present form.

Mr. Carl Dodge, Chairman, Gaming Commission, stated for the past five years they have been trying to establish guide lines for the handling of credit markers. He said he had some figures to present to the committee regarding the magnitude of credit play and the role of the state in that regard. During fiscal 1980, ending in June, there was a total credit issued for gaming play in Nevada, 1.77 billion dollars. At a tax rate of 5½% the at risk figure of the state is $97,000,000. That is true exposure to loss. This would justify the prescribing of sound and proven procedures to be followed in connection with the issuance of credit. They should be established in the statutes.

Mr. Dodge stated during fiscal 1980, the industry collected 96.9% of 1.77 billion dollars which left an uncollected amount at 3.1%. This made the total loss on the extension of credit $55,000,000. Of that loss, the industry lost $52,000,000 and the state of Nevada lost $3,000,000 by being deprived of the 5½% of tax on a portion of that. An estimate indicates $40,000,000 of the loss resulted following proper credit procedures by the casinos. The state accepts that loss. Of the total volume of play in Nevada, the percentage was 26% on credit play.

Mr. Dodge advised the committee about $15,000,000 was lost due to improper credit investigations and procedures. The state lost $750,000 because of lost taxes. The state takes the position that if improper procedures are being used by the industry, the state should not be deprived of the revenue at the rate of 5½%.

Mr. Dodge stated when credit is issued, the money goes across the gaming tables and for that reason, it is listed in the gross winnings, or if lost on the tables, becomes a winning for the casinos. If the credit is not collected during the quarter, it is backed out and no taxes paid at that time. As the money is collected, it is reported in the quarter it comes back in. From a revenue standpoint, it is counted in the gross, then backed out, then as collected, brought back into revenue and taxes paid to the state of Nevada.

Mr. Dodge advised the committee a considerable amount of litigation has been occurring recently in which the casinos have been challenging every potential weakness or ambiguity they can find in the statutes and regulations. Many matters are concerning markers, also some concerning the definition of gross revenue. Both these issues are addressed in S. B. No. 320.

Mr. Dodge stated credit procedures are in the internal control procedures of the casinos, not in the regulations of the commission. These are filed with the state of Nevada, approved by the state and subject to amendment. The time has come to spell out in the statutes what will be the proper guidelines for the extension of credit in the gaming industry. This is the reason for S. B. No. 320. The bill as drafted is not acceptable and Mr. Bunker, Gaming Control has suggested some amendments.

Assemblyman Stewart questioned why the casinos would use poor accounting systems and lose money, there should be an incentive for the money to be collected. Mr. Dodge stated if all the casinos followed the established procedures, it would minimize the loss. Most of the losses in 1980 occurred following proper procedures for investigation, the reasons for the inadequacies are not the same in all cases. The state should not be penalized for improper procedures in a casino which result in losses of revenue.

Assemblyman Sader questioned the partnership problem between the state and the casinos as to the losses. It is a conceptional problem. Mr. Dodge said when Nevada legalized gaming, it did it for a revenue reason and that has not changed. The state should not lose revenues needlessly.

Senator Don Ashworth stated he had some problems with the concept of S. B. No. 320. He felt there would be a possibility, however, that money could be siphoned from the industry. Mr. Dodge stated he agreed, if there is not a proper audit, where the money goes is unknown, it could go to a relative or hidden interest.

Ms. Patty Becker, Deputy Attorney General, Gaming Division, presented proposed amendments to S. B. No. 320 to the committee. See Exhibit C attached hereto. She stated the gaming division is not concerned with the unusual credit instruments. Not all credit instruments which are cashed in the casino are used for gaming nor is every instrument deducted from gross gaming revenue. Only those used for gaming that follow a criteria to be collected should be allowed to be deducted from gross gaming revenue. This is the way S. B. No. 320 tracks.

Ms. Becker reviewed the proposed amendments with the committee. Questions concerning individual sections follow.

Senator Wagner asked Ms. Becker to explain Section 6 of the proposed amendments, it seemed to be broad in scope. Ms. Becker stated if the licensee is issuing a large amount of credit which have not signed applications without credit checks, the board would like to be able to file a complaint, prove the allegations and assess a fine.

Assemblyman Sader asked if the deductions are being liberalized or checking on them, in relation to the promotions. Ms. Becker stated they codified the present policies with the proposed amendments which is in the division's regulation 6080, which states no prizes or premiums may be deducted from gross revenues. The division is being challenged on this and is in court now.

Senator Wagner asked Ms. Becker if she would be more specific about the challenge in court. Ms. Becker made reference to the Desert Inn, Summa Corporation. They took the division into court on the audit assessments on uncollected receivables. The decision was issued by Judge Goldman in December. There are two interpretations of his decision, but under either of them, it does allow the division to collect for certain types of markers. Ms. Becker gave the committee a copy of the rulings regarding the Desert Inn, Summa Corporation case. See Exhibit D attached hereto. Ms. Becker stated the decision is being appealed. Another case is Harrahs, they are challenging the division on premium point deduction, that case was filed years ago. That refund could amount to $2,000,000. Another case is the rake-off of poker, whether it is a sum received as a winning. Under the gross revenue statute, the division has determined it is and is now being challenged in Reno and Washoe County. That could amount to a $9,000,000 refund.

Ms. Becker stated the bill does allow the board and the commission to promulgate on the computation of gross revenue.

Mr. Jeff Kahn, Chief of the Audit Division, Gaming Control, state there are three different ways to view this issue. S. B. No. 287 basically provides cash basis of accounting. It provides that tax is paid on money collected in cash, no exceptions. An opposite approach is not presented in either S. B. No. 287 or S. B. No. 320, not will it be presented by the gaming control board. The opposite of the cash basis would be the accural basis of accounting. An accural basis provides tax to be paid on money received in cash but also that which is earned but not yet received. The Internal Revenue Service recognizes the accural system and large businesses can only use this type of system. If the accural basis was set up in gaming, it would allow the federal government to require that all gaming establishments must be on an accural basis. This would present a problem because markers are enforceable in the state of Nevada. There is a possibility none of the markers issued could be collected. Even if taken to court, a marker would not be collected. An accural basis would place an undue burden on the licensees.

Mr. Kahn said the division felt the bill was a compromise bill. It is not on the cash basis, as S. B. No. 287 or the accural basis but a compromise that tax is paid only on what is collected plus items of uncollected markers which should be picked up in revenue. S. B. No. 287 would be perfect for an auditor. It would take the audit division out of the marker business. Time would be saved by not looking at each individual marker. Approximately $400,000 a year in payroll would be saved.

Senator Don Ashworth asked how much money is generated by looking at markers. Mr. Kahn said in a sample of 22 audits, assessments have been made per proposed amended S. B. No. 320, which add up to $44.000.000. Taxes on that would be about $2,500,000.

Senator Wagner asked what kinds of records are kept on markers. Mr. Kahn replied when a licensee writes off a marker to reduce it from revenue, a list by name and amount of individuals is kept. There is a list of items requested in S. B. No. 320 to cover these situations. There is nothing new in S. B. No. 320 which has not been done before in regard to auditing a licensee.

Senator Hernstadt stated he had introducted S. B. No. 287, but his intent was not to put the major clubs on a cash basis accounting system. He hoped there would be a good accounting trail kept on all markers whether collected or not. They could be used as a skimming device if they were not carefully monitered. The idea behind the bill was that the tax would be paid when the marker is collected. He did not see a large savings even if S. B. No. 287 was passed.

Mr. Kahn stated some licensees grant large amounts of credit to individuals, one in particular granted $23,000,000. The hotel wrote off $11,600,000 of that amount over a period of six years. There was never an attempt to collect this money. This $11,600,000 was deducted from revenue. That individual had the money to pay. The gaming board has a problem with situations like this when the amount is collectable but is not ever collected. It appears part of the reasons these people are not forced to pay is to generate goodwill and in some cases of well-known persons is to keep a person's gambling problems from the public.

Assemblyman Stewart asked if these types of situations would be a violation of the operating procedures in the casinos. Mr. Kahn stated yes. In auditing, many cases are found but the attorney general office is not staffed to follow up on a complaint action. The commission would not want to hear every audit on appeal.

Assemblyman Sader asked what recourse is available to the board if a casino has violated its internal operating procedures. Mr. Kahn stated a show cause action or complaint action would be used.

Mr. Kahn handed out additional proposed amendments to S. B. No. 320. See Exhibit E attached hereto. The first part of the amendment changes the tone of S. B. No. 320. The changes on page one will help the board find the problem areas and pick them up and include them in revenue.

Mr. Kahn stated the proposed amendment on page 2, which refers to (b), it says you cannot exclude a settlement with the patron that occurs solely for the purpose of maintaining the continued patronage of the patron. This is called a goodwill write-off.

Assemblyman Malone questioned the proposed amendment No. 7 with reference to the "laundry list". "Reasonable" basically means what both sides agree to as being fair. There is no specific items, it depends on the individual case.

Senator Close asked if some leeway should be given a casino in using his business judgment to write off a marker or portion of it. Mr. Kahn stated there is, they decided not to go forth with it because it would put the licensees in a conflict position with the Internal Revenue Service. The reason being internal revenue could say the licensees were on an accural basis which would have a severe impact. Senator Close restated his question. Mr. Kahn stated yes, but the legislature would have to decide on how much.

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Mr. Bob Faiss, Nevada Resort Association, stated the industry does support S. B. No. 287, but does oppose S. B. No. 320. S. B. No. 287 does not limit the state and does not decrease the responsibility for the full audit or decrease their full and complete authority to disciplinary action and make sure the full interests of the state and industry are protected. The industry is for certain internal controls. The industry does this for two reasons, they are required to do so by regulation, the other being to protect the interests of the casino. They want to collect every dollar they can. The process of collecting on markers could take as many as 100 steps. Under the proposed procedures, 99 could be done properly and fail on one step or the procedures are reversed and under that theory, it could be taxed.

Chairman Close stated he felt it was appropriate to impose upon the licensee, the obligation to assure that a marker is at least collectible, if the marker is not signed, it would be difficult to collect it against an individual. Mr. Faiss asked if the legislature had ever given the gaming control board the power to assess a tax on a marker, he did not feel they had and was part of the problem.

Mr. Faiss stated a reference had been made to the $2,500,000 assessed but none of it had been paid, because of a legal opinion that it is illegal to assess. There were also assessments of showroom ticket sales, when the board's audit division tried to assess the licensee for the amount of money a wholesaler made. After a full hearing before the commission, the commission rejcted the board's audit position, the law was incorrectly interpreted. For months the law has been interpreted incorrectly.

Mr. Faiss stated there is a gross revenue license fee, imposed by NRS 463.370 which S. B. No. 287 would amend. When the gross revenue license fee was adopted in 1945, the legislature did not leave it to interpretation as to what gross revenue was. They adopted a statute, NRS 463.0114 which provides gross revenue means, the total of all sums received, received as winnings less the total of all sums paid out as losses. That is basis of the tax. Nothing else can be taxed, except the net sums received as winnings. There was no problem with that from 1945 until 1960. Since that time the industry has paid a tax on cash, when a marker was collected, it paid on the cash received, not on cash that was uncollectible. In 1960, the audit division discovered there was no way to keep track of the markers so a tax reporting form was prepared. The form provided information which allowed the tax paid only on cash, all the problems current today are not from an act of the legislature, or the Nevada Gaming Commission, or act from the State Gaming Control Board, because it put down the process of deducting markers from the total winnings were included in the

chips which had been given in exchange for markers. It did not change the procedures, the industry continued to pay tax on cash as the markers were deducted. About ten years after that, auditors decided that only certain markers could be deducted. No statute was adopted, the board or commission did not adopt any regulations which gave them that power. The audit division started objecting to markers. The audit division started assessing some markers for insufficient collection activity. In 1974, the Nevada Gaming Commission adopted Regulation 6.080 which provided the procedures for reporting items, including the treatment of markers, the licensees have complied with that procedure, but not understanding that that may change the obligation to pay only on cash received. In 1977, the chief of the board's audit division incorporated the theories into the audit manual and put them in writing. The board or commission did not adopt that audit manual, and the licensees did not know about the audit manual.

Mr. Faiss stated the licensees did not fight assessments because in calculating the legal fees and court costs, they would offer it as a compromise and accepted in most cases. In 1977, the gaming control board approached the legislature and asked that the definition of gross revenue be changed. It asked that markers which were uncollectible be included in gross revenue. The assembly committee would not introduce the bill and so far as he knew is the only time at attempt was made to have the statute changed. In 1977, the present fight started because the board decided they could no longer compromise audit assessments. The industry would not pay the assessments on the advise of their counsel because there is no statute which gives the gaming control board or the audit division the power to assess a tax. The board does have full authority to take action if they find the licensee has not handled the markers properly. The industry asked that the board specify a statute giving them the power to tax markers. They have refused to give any specific statute for two years to have this authority.

Assemblyman Stewart said if the marker was issued to a relative or associate and it was never intended to be collected and an attempt was being made to avoid a taxable cash situation, then it would be covered.

Mr. Faiss stated the amendments proposed would make markers irrelevant, the definition of gross revenue puts the industry on a flat accrual basis and the I. R. S. can use that under a supreme court decision to win all the fights lost in federal court. S. B. No. 320 would allow this to happen.

Senator Close asked if the position of the industry is to go back to the time when markers were no longer included and it is strictly on a cash basis. Mr. Faiss answered that is the law now and should be maintained in that way, so far as taxation is concerned.

Mr. Faiss continued on that the industry was still trying to find a statute which provided for the taxing of markers. The commission felt the board should provide the information. The attorney general office filed a brief, which said in effect, there is no existing statute. It stated the assessment was invalid, the gaming control board has always misinterpreted the law and the industry is on the accrual system. The markers are irrelevant to taxation, what is paid on is the chips on the tables. Extension of credit to get the chips is not considered. This was the I.R.S. theory which they had used against the industry and had been defeated on in the tax court. The commission had not way out except to adopt the recommendation and interpretation of the attorney general office. If the commission had accepted that decision, it would put the industry on an accrual basis and forcing some licensees to come up with as much as $15,000,000 immediately in tax funds. That is the reason the industry was forced to bring action. A decision said that when a state regulatory agency adopts a system of reporting revenue, that is almost conclusive that is the way I.R.S. should do it. That is why a suit was brought. Judge Goldman has issued a decision which is on appeal.

Mr. Faiss stated no one ever supported S. B. No. 320. The legislature might consider changing the law on markers which might make some markers taxable, the bill was originally drafted that way. The proposed amendments however came in to make it a flat accrual basis statute which taxes every marker. The industry has been willing accept taxation on certain categories of markers.

Mr. David Russell, Gaming Industry Association, stated there has been testimony that 97% of all markers had been collected. The concern is that the remaining 3% would amount to $750,000 of lost revenue to the state. The audit mechanism currently established is taking approximately 80% of the audit divisions time in the industry. If S. B. No. 287 which merely taxes the money is received is not passed, the industry will be a position where an auditor will have to check the trail of every credit instrument and those not meeting certain criteria will be challenged by the gaming industry. The Goldman decision would require the gaming commission to hear testimony on each credit instrument in question. The gaming control board has the ability now to discipline any licensed establishment of Nevada for irregularities in their internal control system. The mechanism is there.

Mr. Russell stated that the gaming industry's position is that they are better off with S. B. No. 287.

Mr. Phil Griffith, President of the Gaming Industry, Northern Nevada and President of Harolds Club stated 50% of the items involved were questions of business judgment. There is a vast change from the regulations which the industry is working under. It is assumed that anything over $2,500 at the cage will be called a documentation procedure. There is an assumption that everything that involves the cage is non-gaming. He felt the law is correctly written and there is a suitable operation statute which can be relied on to discipline licensees.

Mr. Jack Campbell, Vice President of Finance at MGM Hotels stated the the marker issue is not a tax problem. It is an enforcement problem. The tools are available to promote a clean industry. The legislation of S. B. No. 320 has a list of items which should be left to the judgement of the management of the company and not to the whims of the control board auditors.

Chairman Close asked Mr. Faiss if he could explain the compromises proposed by the industry to S. B. No. 320. He stated the board was working on a compromise that would protect both interests and industry would be willing to accept. Mr. Faiss would make the information available to the secretary of the committee.

Mr. Richard Bunker, Gaming Control Board stated the board was being put in the position of an adversary, and it should be the the industry and the legislature rather than with him. He said the board is the enforcement and taxing arm of the legislature. He said he would push the auditors and industry as far as possible in the collection of taxes. He stated if the legislature tells the board that there are business decisions that should be made by the industry, he will abide by them. He will follow the direction of the legislature, however it should be put in the statutes. Any areas in question, the board will push for the tax dollar. He said if it is an enforcement problem, the burden of proof is is on the control board. If it is a taxing problem, the burden is on the licensee.

Mr. Bunker said in regard to the rake on poker tables, if the decision is that it is not taxable, eight and one-half million dollars in taxes will have to be reimbursed. Mr. Bunker stated anything done in the audit division of the board has been at his direction. The decision will have to be made by the legislature as to what guidelines to follow. The problem is not between the control board and the industry, it is what is written in the statute.

Assemblyman Sader asked what statute was being referred to with regard to this situation. Mr. Bunker stated he is a victim of his legal advise, whatever legal advise is given is followed. If there is no statute, then Judge Goldman has upheld something which the board has been doing. If the Supreme Court decides things are handled wrong, his attorney will inform him and it will be changed.

Assemblyman Sader asked Ms. Becker what the authority is for the agency to enforce regulations. Ms. Becker NRS 463.0114, the gross revenue statute. The judge interpreted it to say that a tax assessment can be issued on credit instruments. Mr. Sader asked why the policy was that credit instruments could not be considered gross revenue prior to 1960. Ms. Becker stated that in the last five years, credit play has increased. The courts have determined that credit play is taxable. Until the time when that is changed, the board has no choice but to abide by that decision. Unless the court case is reversed, the board will proceed under the decision. (See Exhibit D attached hereto)

Ms. Becker stated under S. B. No. 287, the gross revenue fees are prepaid, therefore it would allow a licensee in the last quarter of doing business to issue large amounts of credit, reducing the gross revenue fee. Once the business goes out of business, no revenue could be collected.

Senator Hernstadt stated in this regard, tax would be paid on what is collected. Mr. Becker stated as the law stands now, markers which are collected after a licensee goes out of business, if not sold as assets, no tax is received on them by the state. Senator Hernstadt stated that is a loophole which exists in the present law, not in S. B. No. 287.

Mr. Carl F. Dodge, Gaming Commission stated the gross revenue definition is not clear. In regard to poker, the rake-off is not a winning, it is percentage of the rake-off. He felt any revenue producing game should allow the state to participate. In regard to the statement of "less only the total of all cash or its equivalent paid out of losses", he stated if the words "or its equivalent" remain, more litigation will result. Any type of expense or allowance which is made to the patron or casino will be involved. Equivalent means of equal value. The same argument could be made on meals, comps on rooms, and the repayment of airplane tickets on junkets. This is all done for the patron. Revenue should be based solely on gross. The words "or equivalent" should be deleted.

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Mr. Dodge said in reference to irregularities in gaming establishments, fines could be assessed. However, then the burden of proof rests on the control board and not the industry. That is not the right approach. The revenue concept should be based on a taxing statute not on a disciplinary procedure. Fining persons in the industry is not the way to operate, the guidelines should be thorough and well established. Public relations could be a problem because of numerous complaints, fines and disciplinary action against a licensee. He did not feel regulations should be used but a specific statute passed to handle this situation.

Senator Ford asked how the audit manual is prepared which is currently being used by the board. Mr. Kahn stated the manual was prepared prior to his employment by the board. He felt the way the manual was presented to the industry was unfair. He felt the regulation should be in the statutes. Mr. Bunker stated any document or regulation in the manual has always been given to the industry. If the industry has any questions, they have the opportunity to respond before it is placed in the manual. Mr. Kahn stated he is under pressure to produce a certain amount of audits, 82 have to be done a year. If S. B. No. 287 is passed, the production of audits could be increased tremendously, but at the expense of the general fund.

There being no further business, the meeting adjourned at 9:50 p.m.

Respectfully submitted:

Shirley LaBadie

Shirley LaBadie, Secretary

APPROVED BY:

Melvin D. Close Jr.

Senator Melvin D. Close, Chairman

DATE: April 21, 1981

Also attached:
Exhibit F

1380

AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Joint Senate and Assembly Committees on Judiciary, Room 131.

Day Tuesday, Date April 14, Time 6:30 p.m.

S. B. No. 287--Excludes evidence of debt from gross revenues of gaming for purposes of state license fee.

S. B. No. 320--Revises provisions on computation of gross revenue received by gaming establishments.

S. B. No. 413--Makes various changes in provisions regarding supervision of certain gaming establishments.

S. B. No. 414--Limits requirements for termination of employment of persons denied gaming license.

S. B. No. 418--Authorizes state gaming control board to charge for cost of certain investigations outside state after licensing or registration.

S. B. No. 527--Makes various changes to the laws regulating gaming.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

JOINT
SENATE COMMITTEE ON JUDICIARY
AND ASSEMBLY
DATE: ~~April 14~~, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT	PLEASE PRINT TELEPHONE
Robbins Hallie	Nevada Test Association		882 8801
Jerry Higgins	Gaming Industry Assoc		883 8806
Frank Shatto	Hilton Hotels Corp		732-5208
Bob Faiss	Nevada Resort Ass'n		385-2188
David Russell	Gaming Industry Association		786-2366
Steven Michel	Hilton Hotels Corp		732-5213
Jack Campbell	MGM Grand Hotels		739-4111
Barrie Brunet	MGM Grand Hotel - Reno, Inc		789-2001
David T. Smith	Harvey's Resort Hotel		588-2411
Mike Mills	Harolds Club		329-0881
Pat Mayzen	Caesars Palace		731-7311
Richard Bunker	GCB		
Carl F. Dodge	Gaming Commission		
Phil Griffith	Harolds Club / GIA		
Patty Berkley	DAG - gaming		
Bill Champion	MGM Grand Hotels		
[illegible]	GCB - Audit		
Jeff Kahn			

GCB Amendment No. 7
Date: 4/8/81

GCB PROPOSED AMENDMENTS TO S.B. 320

EXHIBIT C

Senate Bill 320 should be amended to read as follows. Note that additions and deletions to the bill as drafted are indicated by underscoring and brackets.

SECTION 1:

1. For the purposes of this chapter, the computation of gross revenue must include the face value of a credit instrument if, within 5 years after the last day of the month following the calendar quarter within which the credit instrument was accepted by the licensee, the [commission] board finds that:

(a) The credit instrument was not signed by the patron or otherwise acknowledged by him in a written form satisfactory to the board;

(b) [The licensee has not provided the board, within a reasonable time after its request, the current address of the patron to whom the credit was extended;] The licensee did not have an address for the patron at the time of taking the credit instrument;

(c) The licensee has not provided the board [any] adequate evidence that the licensee made a reasonable effort to collect the debt;

(d) The licensee has not provided the board [any] evidence that the licensee adequately checked the credit history of the patron before extending the credit to him;

(e) The licensee has not produced the original credit instrument or a certified copy of the credit instrument in the possession of a court or governmental agency within a reasonable time after a request by the board for the instrument ; [unless it is in the possession of a court or governmental agency;]

(f) The signature of the patron on the credit instrument was forged; [or]

(g) Upon an audit by the board, the licensee requested the auditors not to confirm the unpaid balance of the debt with the patron ; [and there is no other satisfactory means of confirmation.]

(h) The patron's credit application was not signed by the patron;

(i) The credit instrument was not issued or authorized in compliance with the licensee's submitted system of internal control;

(j) The licensee has not provided the board evidence that settlement or write-off of the credit instrument was reasonable and that the licensee followed the settlement procedures established in the licensee's submitted system of internal control; or

(k) The licensee has not provided the board with evidence that it was reasonable to issue the credit instrument after negotiated settlement or write-off of a previous debt with the same patron;

(l) The credit instrument has been fraudulently produced or altered by the licensee, his employee, or an agent of the licensee.

2. For the purposes of this chapter, the computation of gross revenue must not include cash or its equivalent which is received in full or partial payment of a debt previously included in the computation of gross revenue pursuant to subsection 1.

3. For the purposes of this section, "credit instrument" means an instrument which evidences credit granted by a licensee to a patron for the purposes of gaming. The term includes an instrument sometimes referred to as a "marker" or "hold check" and an instrument taken in consolidation, redemption or payment of another credit instrument.

4. For purposes of this chapter, the face value of any credit instrument or other evidence of indebtedness not issued at a gaming table shall not be deducted from gross revenue. A credit instrument taken in consideration, redemption or payment of another credit instrument which was issued at the gaming table shall be deemed to be taken at the gaming table.

5. For purposes of this chapter interest pursuant to NRS 463.370 shall be computed from the date the original credit instrument was issued.

6. This section does not limit the board or commission from pursuing any remedy or combination of remedies provided in this chapter.

SECTION 2:

1. "Gross revenue" means the total of all:

[1.] (a) Cash , tokens and chips received as winnings; and

[2.] (b) Cash or its equivalent received in payment for credit extended by a licensee to a patron for purposes of gaming [;] . Payment to an agent, employee or person having a contractual relationship with the licensee will be deemed payment to the licensee; and

[3.] (c) Cash , tokens and chips received as compensation for conducting any game in which the licensee is not party to a wager,

less only the total of all cash , chips and tokens [or its equivalent] paid out as losses [.] to patrons.

2. The commission shall adopt regulations prescribing the manner in which gross revenue shall be computed.

CASE NO. A189417

DEPT. NO. 10

DOCKET "K"

EXHIBIT D

BY MARY HAUGEN

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

SUMMA CORPORATION, d/b/a DESERT INN,

Plaintiff,

vs.

STATE GAMING CONTROL BOARD and NEVADA GAMING COMMISSION,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION AND ORDER

FINDINGS OF FACT

1. The Court finds it has subject-matter jurisdiction under NRS 30.030, as a result of the actual, concrete controversy caused by different legal interpretations regarding the proper treatment of so-called "markers"[1] under NRS 463.0114, which defines Gross Revenue, and NRS 463.370, which sets the quarterly license fee schedules for gross revenue. Further actual controversy is presented by the lack of precision in the wording of Gaming Control Board Regulations 6.080, and 6.260; the conduct of the Audit Division of the Gaming Control Board concerning the treatment of so-called "irregular markers" (see plaintiff's Exhibit "2", Request for Notice of Authority, Plaintiff's Reply Brief); and an April 2, 1979, legal brief of the Attorney General. (T. pp. 2,3)

[1] By "markers," this Court refers to gaming credit instruments, a generic category of casino receivables granted to patrons and used for gaming, including but not limited to IOU's, checks, hold checks, returned checks, cage markers and pit markers.

2. The Court finds that a declaration of the parties' rights under these statutes and regulations will settle and afford relief from uncertainty existing as to the taxation of so-called "irregular markers."[2]

3. This action for Declaratory Relief was filed in June of 1979.

4. On October 29, 1979, Summa Corporation, d/b/a the Desert Inn, was served with a Statement of Determination, following an audit of the period of July 1, 1974 through December 31, 1978, which assessed a license fee of $52,090.00 upon $83,543.78 of certain uncollected markers issued by the Desert Inn to gaming patrons. (The Court notes that the Complaint has not been supplemented to reflect this occurrence.) These markers were characterized by the State as "irregular." The net effect of such a characterization is to forbid the plaintiff from excluding these uncollected markers from its quarterly winnings in determining its tax liability, as is its usual practice under Reg 6.080(2), and as is customary in the industry, (Plaintiff's Reply Brief, Page 2).

5. Summa Corporation filed a Motion for Summary Judgment on October 1, 1980. The Defendants filed a Cross Motion for Summary Judgment on November 7, 1980.

6. Counsel for the State conceded, at the hearing on December 4, 1980, that regular markers, (e.g., those properly issued in accord with gaming regulations and with the licensee's internal control procedures) are excluded from winnings in the determination of gross revenue under NRS 463.370, and are not subject to taxation until they are collected. (Reg. 6.080(2)(a)). (T.pp.6,7; 11. 27-32; 1-6).

[2] By "irregular markers," the Court refers to gaming credit instruments issued either improvidently or improperly, i.e., in violation of Regulations or accepted internal controls.

. . . .

7. It has elsewhere been asserted and the Court takes judicial notice of the same, that the use of markers plays a vital role in enchancing play at licensed gaming establishments. It has been asserted herein that the significance of this Opinion and Order will affect some twenty administrative proceedings pending against various licensees concerning the taxation of irregular markers. (Defendants' Motion, Page 2).

8. The Court takes judicial notice of the rulings of two Federal Courts concerning the taxation of markers. In Desert Palace, Inc. v. Commissioner, 72. T.C. No. 1033 (Sept. 11, 1979), the Court held that markers do not represent taxable income until collected. In Flamingo Resort, Inc., v. United States, 485 F. Supp. 926 (D.Nev. 1980), the Court determined that markers represent taxable income upon their accrual and that legal enforceability is not a fixed right to receive income. (The Flamingo, however, as opposed to the Desert Inn, used an accrual basis accounting system.)

9. The Nevada Supreme Court in Sea Air Support v. Hermann, 96 AO 148 (1980), and past decisions of our High Court have decided that markers are not judicially enforceable.

CONCLUSIONS OF LAW

1. THE COURT DECLARES THAT: the meaning of "Gross Revenue" in NRS 463.0114 is that "Sums received as winnings" refers to cash taken in by the licensee, after markers have been exempted from winnings, and that a cash basis of an accounting is appropriate to this analysis.

2. The taxation of irregular markers by disallowing their exclusion from winnings to arrive at gross revenue in accord with the general rule is proper only under certain circumstances. If the licensee adduces evidence that rebuts the presumption that such markers were not used for gaming purposes, or shows that the claimed improprieties were neither improvident nor in such violation of internal controls or

other regulations as to constitute bad faith on the part of the licensee (so as to make the markers uncollectable, ab initio) then the exclusion is proper. By "improvident," the Court means bad faith or recklessness on the part of the licensee of such magnitude as to render a marker uncollectable, ab initio.

3. The taxation of irregular markers to punish or coerce licensees is improper as part of a taxation scheme and is therefore beyond the power of the Control Board.

4. The licensee bears the burden by a preponderance of evidence demonstrating that irregular markers were used for gaming purposes, and that improvidences and/or irregularities have not rendered such markers virtually uncollectable, ab initio.

OPINION

At the outset, this Court notes that there is no allegation present in this case of impropriety in the order of skimming, hidden ownership or diversion of assets in the issuance of the markers here in question.

The general rule that markers are excluded from winnings to determine gross revenue for tax purposes is found in Gaming Control Board Regulation 6.080(2)(a). This point was conceded by counsel for the State at oral argument of these motions. (Transcript, Page 7).

The uncertainty at the center of the dispute between the parties centers on the tax treatment of irregular markers. This Court's characterization of markers as irregular refers to markers:

1. which "are taken for purposes other than gaming credit,"

2. which fail to rebut the presumptions of Reg.6.080 (2)(a)(1), (2) and (3), which are as follows:

. . . .

. . . .

GCB Reg. 6.080(2): "Treatment of credit instruments in determining gross gaming revenue shall be as follows:

(a) Any marker, IOU, check, hold check, returned check, or other similar credit instrument evidencing the granting of gaming credit to a patron (hereinafter referred to as "gaming credit instrument") may be excluded by the licensee in determining gross gaming revenue. Any credit instrument taken for purposes other than gaming credit shall not be so excluded.

(1) A credit instrument not in excess of $2,500 taken at the cage shall be presumed to be a gaming credit instrument.

(2) A credit instrument in excess of $2,500 taken at the cage shall not be presumed to be a gaming credit instrument unless the licensee shall have specifically provided for the handling of such items in systems of internal control submitted pursuant to Reg. 6.050. The presumptions of subparagraphs (1) and (2) herein are rebuttable.

(3) Any other credit instrument taken in accordance with Reg. 6.260 or the systems of internal control submitted pursuant to Reg. 6.050 shall be a gaming credit instrument."

The State has, by regulation, set certain standards for the exclusion of certain markers from winnings to determine gross revenue. The nature and extent of the State's authority to do so is at issue in this case.

The presumptions of 6.080 (2)(a)(1) and (2), while not models of clear drafting, provide an opportunity for the licensee to exclude an irregular marker from winnings in order to calculate gross revenue.

For purposes of this action, the State has taken the position that it was justified in denying the exclusion from gross revenue of the markers it refers to in pages 13 through 17 of its Motion, which include the following deficiencies: a missing original credit instrument; the patron's address not available; the credit instruments were not taken in accordance with the licensee's system of internal controls (approved by the Board); the marker was not submitted for collection on a timely basis; forged or fraudulent credit instruments were accepted; good will credit or write-off settlements were not properly approved; the credit instruments had no signature; fictitious address was given by the patron; and the credit instrument balances could not be confirmed. (See also affidavit of John W. Alderfer, Exhibit 3, Plaintiff's Reply Points and Authorities).

Gaming credit transactions involving markers have been described by the State as follows: (Defendant's Motion for Summary Judgment, Page 2)

> "In other words, each time Summa has extended credit, allegedly for gaming purposes, it has subtracted the amount of that credit from its gross revenue for that quarter, and has thereby reduced its quarterly state license fees under NRS 463.370. Summa would thereafter add whatever portion of the gaming credit it collects back into gross revenue in the quarter in which it is received. (See also Plaintiff's Reply Brief, Pages 6 and 7)."

Summa's position, in essence, appears to be that the use of words "sums received as winnings" in NRS 463.0114, refers to a cash basis of accounting and tax reporting, which excludes markers issued for gaming purposes from taxation until they have been collected by the licensee. This position

is consonant with NCG Reg. 6.080(4): No provision in this Reg. 6.080 shall be construed as compelling any licensee to adopt an accrual, as distinguished from a cash basis system of accounting." (See U.S. v Hall, 307 Fed. 2d 238).

From the conclusion that the plaintiff asserts, it follows that the State therefore has no authority to tax uncollected credit instruments, or markers of any nature, until they have been collected from the patrons.

The State's response focuses on the deviations from the internal control procedures of the licensee in issuing certain markers. Since the markers at issue in this matter do not comply with the internal controls of the licensee, they are presumed to not have been used for gaming credit pruposes, and hence, are not excludable from winnings in calculating gross revenue. The State therefore requests that the Court make certain factual findings regarding whether or not the licensee has complied with its own, approved internal control procedures. The Court declines to do so, because of its determination that such findings should first be made in an appropriate administrative proceeding, in accord with the views expressed in this Opinion.

The Court's Opinion draws the following line between the two positions taken by the litigants:

As a matter of gaming enforcement, to collect taxes on irregular markers appears to be a punitive measure, beyond the tax power of the State. This follows from an analysis of Regs. 6.050(7) and 6.110(2)(c) and NRS 463.310 which provide for actual penalties for the violation of internal control procedures in the issuance of markers.

The focus and relative burdens on the parties at punitive and tax hearings are quite distinct. In a punitive, diciplinary hearing (for violation of internal controls

or regulations), the burden (non-technical) is on the State, (NRS 463.310; 463.312; GCB Reg. 7). At a non-punitive tax hearing, the burden is on the licensee, by a preponderance of the evidence. Other indicia of quasi-criminal and purely civil hearings are also quite different.

As a matter of tax policy, however, if the State determines that markers, after an audit, were not used for gaming credit play, and hence were issued improperly or improvidently, then disallowing an exclusion is in order. (Reg. 6.080(2)).

The burden is on the licensee, therefore, to rebut the presumption that irregular markers were not used for credit play, to allow the licensee to make the exclusion. The good faith of the licensee's attempt to follow internal controls, and the fact that a marker may have been improvidently granted but nevertheless used for gaming, are factors which must be considered by the Board, in a hearing on the merits of the exclusion.

At the hearing, the burden by a preponderance is on the licensee to make a showing that the marker was in fact used for gaming purposes, that it has not been collected, and that there are no illegalities or improprieties involved with the marker's issuance. If the marker was used for gaming purposes, then an exclusion should be allowed, since the licensee receives no cash in terms of winnings until the marker is collected.

Tax statutes are strictly construed, and one claiming an exclusion must overcome the presumption that the State does not intend to exclude items from taxation. Here, the fact that the Legislature, presented with the opportunity to alter the long-standing practice of the industry regarding exclusion of uncollected markers, declined to act indicates

that the Legislature has acquiesced to past industry practices. (See Hannifin Affidavit, Exhibit 1, Plaintiff's Reply Brief, Sierra Pacific Power v. Department of Taxation, 96 Adv Op 71(1980).

A tax statute particularly must say what it means, and a Court will not extend a tax statute by implication. Cashman Photo v. Nevada Gaming Commission, 91 Nev. 424 (1975)

ORDER

THE COURT THEREFORE:

1. Partially grants the Plaintiff's Motion for Summary Judgment as to the exclusion of regularly issued markers from gross revenue.

2. The Court further partially grants the plaintiff's Motion for Summary Judgment as to the exclusion of irregular markers regarding which the licensee has met the burden set forth in this opinion.

3. The Court partially grants the Defendants' Motion for Summary Judgment as to the denial of the exclusion of irregular markers regarding which the licensee has not or cannot sustain its burden to rebut the presumption that the markers were not used for gaming purposes.

4. The Court denies the Defendants' Motion for Summary Judgment insofar as it calls for factual findings more appropriate to an administrative hearing, which should proceed in accordance with this Opinion.

5. The Court denies the balance of the parties motions, in all respects.

DATED this 29TH day of December, 1980.

PAUL S. GOLDMAN
District Judge

GCB Amendment No. 7a
Date: 4/7/81

GCB PROPOSED AMENDMENT TO S.B. 320 EXHIBIT E

Amend Section 1, page 1, lines 3-7 to read:

1. For the purposes of this chapter, the computation of gross revenue shall include the outstanding balance of any credit instrument to which any of the following conditions of this section apply:

At the end of Section 1, subsection 1, the following new language should be added:

For the purposes of this subsection, the computation of gross revenue by the licensee shall include the outstanding balance of any credit instrument to which any condition in this section shall apply in the calendar quarter that the credit instrument was issued.

Amend Page 2 by including the following new language as a Subsection of Section 1:

For the purposes of this chapter, the computation of gross revenue must include amounts previously excluded from revenue if, the excluded portion is a result of:

(a) An irregular settlement of the patron's debt with the licensee; or

(b) A settlement with the patron occurs solely for the purpose of maintaining the continued patronage of the patron.

For the purposes of this subsection, the computation of gross revenue by the licensee shall include the previously excluded portion of any credit instrument subjected to settlement between the licensee and patron in the same calendar quarter that such settlement occurs.

April 7, 1981

PROPOSED REGULATION

EXHIBIT F

1. The "gross revenue" on counter games, which includes but is not limited to bingo, keno, race books and sports pools, shall be computed as the total write or amount wagered by players less payouts to patrons of winning wagers.

2. The "gross revenue" on table games, which includes but is not limited to twenty-one, roulette, craps, baccarat, big six, chuck-a-luck, pai-gow, wheel of fortune, faro, chemin de fer, dai shu and monte, shall be computed as the closing table bank inventories plus drop less opening table bank inventories and table bank inventory fills.

3. The "gross revenue" on slot machines shall be computed as drop less fills to the machine and jackpot payouts. The initial hopper load is not a fill and shall not affect gross revenue. The difference between the initial hopper load and the amount, if any, required to overflow the hopper shall be added to the drop in the calendar quarter succeeding the quarter in which the initial hopper load is made, except that if the machine is removed from play prior to such time, any increase from the initial hopper load shall be included in drop in the quarter of the machine's removal from play. When a slot machine is removed from play after quarterly license fees were paid on the increase from the original hopper load and the hopper load is less than overflow, the difference between the overflow amount and the actual amount in the hopper load shall be deemed to be a fill.

4. "Drop" means the total of the following:

(a) Cash contained in the drop box; and

(b) Foreign chips contained in the drop box; and

(c) Credit slips contained in the drop box.

If for the purposes of calculation the licensee includes credit instruments in drop, then the licensee shall be allowed to exclude said instruments for purposes of computing gross revenue, except as otherwise provided by statute.