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NRS 463.401 Levy; amount; exemptions.

Repealed

1. In addition to any other license fees and taxes imposed by this chapter, a casino entertainment tax equivalent to 10 percent of all amounts paid for admission, food, refreshments and merchandise is hereby levied, except as provided in subsection 2, upon each licensed gaming establishment in this state where music and dancing privileges or any other entertainment is provided to the patrons in a cabaret, nightclub, cocktail lounge or casino showroom in connection with the serving or selling of food or refreshments or the selling of any merchandise. Amounts paid for gratuities directly or indirectly remitted to employees of the licensee or for service charges, including those imposed in connection with use of credit cards or debit cards, that are collected and retained by persons other than the licensee are not taxable pursuant to this section.

2. A licensed gaming establishment is not subject to tax pursuant to this section if:

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(a) The establishment is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits;

(b) The entertainment is presented in a facility that would not have been subject to taxation pursuant to 26 U.S.C. § 4231(6) as that provision existed in 1965;

(c) The entertainment is presented in a facility that would have been subject to taxation pursuant to 26 U.S.C. § 4231(1), (2), (3), (4) or (5) as those provisions existed in 1965; or

(d) In other cases, if:

(1) No distilled spirits, wine or beer is served or permitted to be consumed;

(2) Only light refreshments are served;

(3) Where space is provided for dancing, no charge is made for dancing; and

(4) Where music is provided or permitted, the music is provided without any charge to the owner, lessee or operator of the establishment or to any concessionaire.

3. The tax imposed by this section does not apply to merchandise sold outside the facility in which the entertainment is presented, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.

4. The tax imposed by this section must be paid by the licensee of the establishment.

(Added to NRS by 1965, 1468; A 1967, 980; 1979, 1558; 1983, 592; 1985, 1244; 1993, 1165; 1995, 1799; 1999, 3175)

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REVISER'S NOTES.

Ch. 363, Stats. 1993, which made various changes to this section, contains the following provision not included in NRS:

"The amendatory provisions of section 1 of this act are intended to clarify the original intent of the legislature when it adopted section 2 of chapter 525 of Statutes of Nevada 1965, now codified as NRS 463.401, and to clarify the intent of the legislature when it adopted section 2 of chapter 664 of Statutes of Nevada 1979, to amend NRS 463.401."

Ch. 589, Stats. 1999, which made certain amounts paid in connection with credit and debit cards not taxable, contains the following provision not included in NRS:

"The amendatory provisions of section 5 of this act do not apply to any taxes paid pursuant to NRS 463.401 before the effective date of this act [June 9, 1999]."

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Gaming ← 4.
WESTLAW Topic No. 188.
C.J.S. Gaming §§ 50, 82.

NEVADA CASES.

Commission could not apply statute to tax the taking of photographs of patrons in showrooms and lounges; statute construed in favor of the taxpayer. Regulation of the Nevada gaming commission which applied the casino entertainment tax imposed by NRS 463.401 to the taking of photographs of patrons in the showrooms and lounges of gaming establishments was invalid because the taking of photographs was a "service," not a sale of merchandise, the statute made no specific mention of services, the court was required to construe the statute in favor of the taxpayer and not extend it by implication, and the rulemaking power of the administrative agency did

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other activity or entertainment is presented in a cabaret, nightclub, cocktail lounge or casino showroom which is located within such a facility or area.

- (h) Interactive entertainment;
 - (i) Participation in physical or sporting activities other than dancing;
 - (j) Instrumental music alone;
 - (k) Music by musicians who move constantly through the audience, whether the music is vocal or instrumental, or both, if no other form of entertainment such as dancing privileges is afforded the patrons; and
 - (l) Mechanical music alone, mechanical speech alone or a combination of these.
2. Entertainment is also not subject to the casino entertainment tax if the entertainment is:
- (a) Provided or occurs at private meetings or dinners attended by members of a particular organization or by a casual assemblage and the purpose of the event is not primarily for entertainment;
 - (b) Provided to the public without requirement for payment of an admission charge or the purchase of food, refreshment or merchandise or the expectation that the patron will not remain to view or participate in the entertainment without purchasing food, refreshment or merchandise;
 - (c) Presented in or about a swimming pool, water park or on a natural or artificial beach;
 - (d) Presented in an auditorium; or
 - (e) Presented in a common area of a shopping mall.
- (Added to NRS by 1995, 1798)

REVISER'S NOTE.
Chapter 497, Stats. 1995, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act are intended to affirm the principles set forth in Attorney General's Opinion No. 85-17 as a guide for determining whether a facility or entertainment is subject to the casino entertainment tax."

NRS 463.402 Forms for reports; regulations and standards.
1. To administer the collection of the tax imposed by NRS 463.401, the commission:
(a) Shall prescribe and cause to be printed and issued free of charge all forms for reports.
(b) May adopt and enforce any necessary or convenient rules, regulations and standards.
2. Funds for such administration shall be provided in the regular budget of the commission.
(Added to NRS by 1965, 1468)

NRS 463.403 Monthly reports and payments; overpayments and underpayments; interest.
1. Every person required to pay the tax imposed by NRS 463.401 shall file with the commission, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month.
2. Each report must be accompanied by the amount of tax which is due for the month covered by the report.
3. If the amount of tax required to be reported and paid pursuant to NRS 463.401 is later determined to be greater or less than the amount actually reported and paid, the commission shall:
(a) Charge and collect the additional tax determined to be due, with interest thereon until paid; or

Effect of federal tax on tax under the statute. Under NRS 463.401, which imposes a tax on certain licensed gaming establishments equal to 50 percent of the federal cabaret tax, no tax could be collected from an establishment not licensed with or remitting taxes to the Federal Government. If the federal tax were abolished, a state tax equivalent in amount would be collected from all establishments covered by the language imposing the tax, whether or not they had paid such tax to the Federal Government. AGO 240 (6-21-1965)

Tax under statute may be passed on to customers if amount shown on the check. Tax imposed by NRS 463.401 upon licensed gaming establishments furnishing entertainment in connection with sales can be passed on to customers if the amount of the tax is plainly shown on the check. AGO 240 (6-21-1965)

Responsibility for payment of tax under statute remains on licensee even though lessee of cabaret assumes payment. Under NRS 463.401, which provides that the tax imposed on certain licensed gaming establishments shall be paid by the licensee, responsibility for the payment remains on the licensee even though the lessee of the cabaret assumes payment. AGO 240 (6-21-1965)

Statute inapplicable when boxing exhibition held in a licensed casino. Casino exhibition tax cannot be imposed where a boxing exhibition is held in a licensed gaming establishment, because such an exhibition is not entertainment within the meaning of NRS 463.401. AGO 317 (3-30-1966)

Statute inapplicable to rock concert held in casino apart from lounges or showrooms. Casino entertainment tax imposed by NRS 463.401 does not apply to a rock concert held on the premises of a gaming establishment where the concert is held in an outdoor stadium or in an indoor auditorium separate from the establishment's lounges or showrooms. AGO 85-17 (11-12-1985)

NRS 463.4015 Types of entertainment which are not subject to casino entertainment tax.

1. The following kinds of entertainment are not subject to the casino entertainment tax:
- (a) A charitable or nonprofit benefit;
 - (b) An exhibition in a museum;
 - (c) A sporting event;
 - (d) A trade show;
 - (e) A motion picture film;
 - (f) An outdoor concert;
 - (g) A concert or other activity or entertainment presented in an amusement park, arcade, theme park, outdoor area, area with a man-made body of water, area customarily used for trade shows or conventions, or any similar area, unless the concert or

not empower it to impose the tax on any item not mentioned in the statute as taxable. Cashman Photo Concessions & Labs, Inc. v. Nevada Gaming Comm'n, 91 Nev. 424, 538 P.2d 158 (1975), cited, State v. Rosenthal, 93 Nev. 36, at 46, 559 P.2d 830 (1977), Nevada Gaming Comm'n v. Desert Palace, Inc., 101 Nev. 173, at 175, 697 P.2d 477 (1985), Raley v. Nevada Bd. of Prison Comm'rs, 628 F. Supp. 108, at 111 (D. Nev. 1986), AGO 90-18 (12-7-1990), State, Dep't of Taxation v. Visual Communications, Inc., 108 Nev. 721, at 725, 836 P.2d 1245 (1992), AGO 95-15 (8-11-1995), see also AGO 99-18 (5-25-1999), distinguished, Hughes Properties, Inc. v. Nevada Gaming Comm'n, 100 Nev. 295, at 298, 680 P.2d 970 (1984)

Amounts paid to brokers for services received by patrons and not as a benefit to a casino are not taxable under the statute. Amounts paid by patrons of gaming establishments to brokers who provide advance tickets for shows and other related services for commissions and as reimbursement for money advanced by those brokers to labor organizations as mandatory gratuities were not "amounts paid for admission, food, refreshments and merchandise" within the meaning of NRS 463.401 and, therefore, were not subject to the casino entertainment tax levied by that section, because those amounts were paid for services received by patrons and not as a benefit to the gaming establishments. Nevada Gaming Comm'n v. Desert Palace, Inc., 101 Nev. 173, 697 P.2d 477 (1985)

ATTORNEY GENERAL'S OPINIONS.
Drinks served before entertainment are taxable under statute. Drinks served prior to entertainment are subject to the tax imposed by NRS 463.401. AGO 240 (6-21-1965)

Exemptions in statute are conjunctive. The exemption provisions of NRS 463.401 are conjunctive and must all be met together. The provision relating to music refers to an instrumental group paid by customer contribution or to a mechanical device played by depositing coins. AGO 240 (6-21-1965)

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