

Frequently Asked Questions (FAQs) about the Live Entertainment Tax

Note: The guidance below applies to specific sets of facts and cannot necessarily be applied to another situation without further consideration. Licensees who desire a ruling as to whether the guidance herein or a specific section of the live entertainment tax statute or regulation applies to a specific tax situation should direct a written request for an advisory ruling to the Chairman of the State Gaming Control Board (“Board”).

Furthermore, although the Board believes this guidance is correct, licensees may petition the Nevada Gaming Commission (“Commission”) for a redetermination of any audit adjustments included in a Statement of Determination prepared by the Board, even if the adjustment is consistent with the advice given herein. The Commission has neither approved nor disapproved this guidance.

Admission Charges

A1. Is a fee collected to ride an elevator or escalator to a live entertainment facility an admission charge?

Typically, yes. Special consideration needs to be given to situations where the patron, by riding the escalator or elevator, may gain access to a live entertainment facility, or may choose to visit only facilities that do not offer live entertainment. For purposes of taxing the admission charge, no distinction shall be made as to whether the patron actually entered a facility with live entertainment or not. Therefore, all such elevator/escalator charges will be subject to the tax unless a separate admission charge must be paid in order to gain access to the live entertainment facility. (Posted 12/22/03)

A2. NAC 368A.420(1)(g)(1) provides that if an admission charge is collected, the licensee must pay taxes on any food, refreshments or merchandise sold in any part of the facility to which admission is granted based upon the payment of the admission charge. Does that mean that taxes must be paid on sales in restaurants without entertainment that are accessible only by the elevator or escalator for which a charge is required?

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No. Taxation of food and beverages offered in facilities accessible by the elevator or escalator requires additional analysis of what comprises the “facility”. Assume that a licensee has an elevator that takes patrons to floors 10 and 11 of the property and the licensee charges \$10 to ride the elevator to either of these floors. On floor 10 is a café that does not offer live entertainment at any time. On floor 11 is a nightclub that has an indoor area where live entertainment is provided, and also has a patio area that guests may visit and that this patio has a bar for the convenience of patrons.

The café on floor 10 is not part of the facility in which live entertainment is offered. It is physically separated from the nightclub by virtue of its being on a separate floor. There is no connection between the purchase of food and refreshment in this café to the viewing of the live entertainment. Similar distinctions may be made for facilities on the same floor if they can reasonably be deemed to constitute separate facilities by virtue of bearing separate names and having separate entrances. If the licensee can demonstrate that it has refunded the \$10 charge to patrons who dine in the café, the charge would not be subject to the tax.

The nightclub and patio, however, are considered to be one facility. The patio is not a separately named facility, and patrons could be expected to pass freely from the indoor area to the patio and vice-versa. All purchases of food or refreshment, whether occurring in the indoor area or the patio area, are subject to the tax. (Posted 12/22/03) (NAC reference added 5/20/05; Regulation 13 reference deleted 5/21/07)

A3. Does the existence of a cover charge automatically trigger the Live Entertainment Tax?

No. If there is no live entertainment being provided, then the tax does not apply. However, if the cover charge is merely imposed prior to the start of live entertainment, use the advice given for question B1. See also question A4. (Posted 5/20/05; Amended 5/21/07)

A4. How does Regulation 5.210(8) relate to the Live Entertainment Tax?

Regulation 5.210(8) imposes a unique type of tax to the admission charges for areas not otherwise subject to the live entertainment tax. This tax applies only to the admission fees collected for entrance into a gaming area that does not have any taxable form of live entertainment. If the area has live entertainment, then all the usual tax rules apply. Otherwise, only the admission charges are subject to the tax, while food, refreshments and merchandise sold within the area are not subject to the tax. (Posted 5/21/07)

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Live Entertainment Status

B1. NAC 368A.410 defines when live entertainment status commences in cases where an admission charge is collected. Does the facility start being in live entertainment status as soon as the first person pays an admission charge?

No. Many licensees allow patrons to purchase tickets well in advance of the actual performance. Furthermore, some licensees may allow patrons to pay an admission charge and get a “hand stamp” or similar indication of payment prior to the start of live entertainment and prior to the time they start requiring the payment of an admission charge in order to enter the facility.

For traditional showrooms, live entertainment status begins as soon as patrons are admitted to the showroom for the performance. For example, assume that the show is scheduled to begin at 10 pm. Patrons with tickets for this show are admitted beginning at 9 pm. The showroom is in entertainment status at 9 pm. Food, refreshments, and merchandise sold between 9 pm and the time the showroom is vacated by persons who attended the 10 pm show are subject to the tax, regardless of the time the actual performance begins and ends. The admission charge, regardless of the time paid, is always subject to the tax.

For lounges, bars and similar facilities where an admission charge applies only part of the day, but the facility is open at other times, the facility is in live entertainment status as of the time the patron is required to pay the admission charge. For example, assume that a licensee operates a facility that is open from noon until 1 am. The licensee imposes an admission charge beginning at 8:30 pm, and live entertainment begins at 9 pm. The facility enters live entertainment status at 8:30 pm and remains in that status until the licensee admits all persons without the payment of an admission charge. All sales of food, refreshments and merchandise within that facility are subject to the tax during this time period. The admission charge in this example, regardless of the time paid, is always subject to the tax. (Posted 12/22/03) (NAC reference added 5/20/05; Regulation 13 reference deleted, minor clarification added 5/21/07)

Note of clarification: For gaming licensees who have at least 51 slot machines or at least 6 tables, the imposition of an admission charge is not a required condition for the tax to apply. Live entertainment status begins at the earlier of when the live entertainment starts or when the admission charge is imposed. It would therefore be possible for some venues to be in live entertainment status even before the admission is charged, if live entertainment is provided prior to the collection of the admission charge.

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Since live entertainment status ceases at the later of the conclusion of the last performance or when the facility is vacated by admitted patrons, or patrons are admitted without charge, the venue may continue to be in live entertainment status after the admission charge no longer is being collected if live entertainment continues past that time. Licensees needing additional guidance should seek a written determination specific to a given situation. (Posted 5/20/05)

Bars and Restaurants in Close Proximity to Entertainment Facilities

C1. How will the Gaming Control Board apply the provisions of NAC 368A.420(1)(f)?

Although the language has been modified somewhat from the version of Regulation 13 that was in effect through December 31, 2003, this concept is not new. Historically, it has been applied to any situation where the entertainment is in a facility but patrons routinely purchased food or beverage outside the facility to be consumed within the facility where the entertainment is provided. Most often, this occurred with showrooms without cocktail service where there was a bar (either permanent or portable) that was right outside the showroom. If the Board had sufficient evidence to show that the **primary purpose** of this bar was to serve the patrons who were viewing the entertainment, then the sales from this bar were subject to the tax. The primary purpose tests included consideration of the hours of operation of the bar relative to the entertainment hours, and the frequency with which other patrons were likely to purchase refreshments from the bar. Determinations of the taxability of sales from such bars were, and will continue to be, made on a case-by-case basis. (Posted 12/22/03) (NAC reference added 5/20/05; Regulation 13 reference clarified 5/21/07)

C2. Could NAC 368A.420(1)(f) ever apply to a situation where the entertainment was offered by one licensee but the food was sold on the property of another licensee?

Such application would be infrequent, though not impossible. Generally, the Board will not presume that the primary purpose of the food venue set up on the premises of one licensee was to serve patrons viewing live entertainment on the premises of another licensee. The question was raised with respect to situations where a licensee provided entertainment outdoors, and another licensee had outdoor seating where food was sold, and patrons who were seated within that area could view the entertainment. Unless there was an arrangement between the two licensees whereby the entertainment was provided with the intent of entertaining those patrons, the tax would not generally apply.

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However, if the Board determines that such an arrangement does exist and that the licensee offering the entertainment receives consideration for providing entertainment to the other licensee's patrons (including reciprocal arrangements), then such sales may be deemed subject to the tax. (Posted 12/22/03) (NAC reference added 5/20/05; Regulation 13 reference deleted 5/21/07)

LET Statutes, Regulations, MICS

D1. What is the current statutory/regulatory structure governing taxation and compliance issues for LET?

Taxation, reporting and control issues regarding live entertainment in gaming establishments are governed by NRS 368A, NAC 368A and LET Minimum Internal Control Standards. Nevada Gaming Commission Regulation 13 was repealed on March 22, 2007. Prior to its repeal, Regulation 13 contained provisions identical to those found in NAC 368A. No changes to taxation, reporting or control requirements result from the repeal of this regulation. (Completely updated 5/21/07)

D2. This question has been deleted as of 5/21/07.

D3. Will the MICS for entertainment be changed? What should licensees do until the changes are made?

~~Group I licensees should comply with the adopted entertainment MICS. As of January 21, 2004, licensees will need to comply with Version 5.4. (Typographical error corrected 5/21/07)~~

~~Revised LET MICS are being drafted. It is the Board's intent to include the revisions to LET MICS as part of a larger MICS revision process anticipated to be completed by the end of 2008. Revised LET MICS (V6) for Group I licensees have been adopted. The compliance date was January 1, 2009 (Posted 5/21/07; amended 7/1/09)~~

D4. What is the intent behind MICS #15? What are the consequences of not properly completing the observations?

The intent behind this requirement is to have the people who are responsible for preparing the entertainment tax reports evaluate whether or not the accounting records capture all of the taxable revenue. One objective is to ensure that the people completing the tax return are aware of all of the areas subject to the tax. The other is to ensure that the correct decisions have been

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made with regard to the areas already known to be subject to the tax. Some examples are provided below to clarify the intent.

Example 1: A licensee has a lounge. Ordinarily, the only entertainment offered is Karaoke. The Board has described the criteria for determining when it is appropriate to exclude the associated revenue (see FAQ H1). Observations should confirm that the Karaoke leader has not taken on the role of a performer. The person completing the Entertainment Area Evaluation Form should indicate that the type of entertainment is Karaoke, describe what the observations indicated and then state a conclusion as to the effect on taxability.

Example 2: A licensee knows that the type of entertainment offered is subject to the tax. Merchandise sales are being included in taxable sales. An observation should confirm whether, in accordance with NRS 368A.200(5)(f) and NAC 368A.430, such sales should be reported as taxable sales.

If a licensee fails to comply with this standard, this noncompliance will be treated as any noncompliance with standards is treated. Additionally, if an audit by the Gaming Control Board raises an issue about the proper application of the tax, the Board will attempt to resolve any questions about the conditions affecting taxability by an examination of the required Entertainment Area Evaluation Form. (Posted 7/1/09)

Facility Size

E1. A casino operates a very large facility that has been rated by the fire marshal as having a maximum seating capacity well over the 7,500-seat threshold that would result in admissions being taxed at 5% (with no tax on food, refreshments or merchandise). However, sometimes the seating capacity for a specific event is well below that number. In fact, sometimes the performer sets a maximum for ticket sales substantially below this threshold. What tax rate applies?

NRS 368A.200(6)(a) specifically states that the maximum seating capacity for purposes of the live entertainment tax is to be based upon the fire marshal's rating if one has been determined. Therefore, unless the fire marshal has re-rated the facility, the licensee should pay taxes on admissions only at the rate of 5%. Note: the terminology was amended during the 2005 legislative session to "maximum occupancy." (Posted 03/25/04; Amended 5/21/07)

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Nonprofit Organizations

F1. What special steps should a licensee take if it intends to consider an event exempt from the live entertainment tax because it is a nonprofit benefit?

NRS 368A.200(5)(b) and NAC 368A.470 provide guidance as to when an event is not subject to the tax because the proceeds go to a qualifying organization. Licensees are responsible to ensure that they are dealing with a qualifying organization. If it is subsequently determined that a licensee has failed to pay taxes on an event that was improperly treated as a nonprofit benefit, the taxes will be assessed on any admissions, and all sales of food, refreshments and merchandise made during this event, except as otherwise provided by regulation or statute.

NAC 368A.500(2) requires that licensees maintain records showing that they were entitled to exempt admission charges and sales from taxation. Although this requirement does not apply *solely* to this type of exemption, it is applicable. NAC 368A.480 contains further guidance as to the extent of records that may be requested by the Board for nonprofit organizations. Licensees are responsible for ensuring that the records described in that section of the regulation are available before concluding that an event is to be considered a nonprofit benefit.

In addition to the appropriate records (IRS ruling or other documentation) that demonstrate that the organization receiving the proceeds is a qualifying organization, the licensee must also keep records showing the amounts collected, the amounts remitted to the qualifying organization, and the direct, supportable costs associated with the event (if the licensee is to be reimbursed for these costs or is to retain a portion of the proceeds to cover the costs). A copy of the agreement between the licensee and the qualifying organization should also be maintained. (Posted 12/22/03) (NAC references added 5/20/05; NRS/NAC references updated and Regulation 13 references removed 5/21/07)

F2. Ticket sales are being kept by the licensee, but drink and merchandise sale proceeds are going to the nonprofit organization. Can these drink and merchandise sales be excluded from reported revenue?

No. NRS 368A.200(5)(b) and NAC 368A.150 establish that if all ticket proceeds become the property of a qualifying organization, then no part of the proceeds (admission, food, refreshment, or merchandise) will be subject to the tax. However, a similar exemption is not available when the ticket proceeds are retained but the proceeds from the sale of other items

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are donated. If tickets are sold and all proceeds from the ticket sales [less the direct costs, supportable costs discussed in NAC 368A.150 (1)] do not go to the qualifying organization, the event shall be subject to the live entertainment tax and all sales, including ticket sales, will be taxable. For events that do not have an admission charge, see the answer to F3. (Posted 5/20/05)

F3. What if an event with no admission charge is held, and the proceeds, or a portion of the proceeds, go to a qualifying organization?

There is no specific reference to this situation in law or regulation that provides for the exclusion of food, beverage or merchandise revenue for this type of event. However, there may be other possible exemptions that should be considered. If a licensee is planning an event where this is the situation, a written determination should be sought from the Gaming Control Board. (Posted 5/20/05)

Tickets Sold by Wholesalers and Other Parties

G1. How is the tax to be applied to tickets sold by someone other than the person (or entity) that operates the live entertainment facility?

Assume that ABC Casino Company (ABC), the gaming licensee, has a show on its property. The facility is actually operated by The Entertainers, Inc. (TEI). Although both ABC and TEI sell tickets to this show, other parties do as well. These other parties charge a fee of \$5 and remit to TEI only the proceeds net of the \$5 fee. None of these other sellers are related to either ABC or TEI. In this case, the net proceeds are subject to the tax. The \$5 fee is excluded from the taxable sale. This is consistent with historical practices for taxation under the Casino Entertainment Tax and the version of Regulation 13 that was in effect through December 31, 2003. Further information on computing the actual taxable amount under this scenario can be found in the Board's GAP manual (http://gaming.nv.gov/documents/pdf/gap_entertain.pdf) under "Discount Show Ticket Accounting Procedures."

However, assume that XYZ Sub, Inc., an affiliate (as that term is defined in NRS 463) of ABC, sells the tickets and remits only \$10 from each sale to ABC. Because the company selling the ticket is affiliated with the gaming licensee, the amount paid by the patron should be used to determine the taxable sale amount (with the appropriate consideration being given to sales taxes and gratuities). The same answer would apply to sales made by an affiliate of TEI.

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Note that fees paid by TEI to ABC for selling tickets would never reduce the taxable amount of the sale. Furthermore, the amount collected by TEI is the amount on which the taxable sale is computed, regardless of any arrangement between TEI and ABC. (Posted 12/22/03)

G2. May a licensee who sells show tickets for an unaffiliated casino deduct the credit card fees associated with these sales?

No. Licensees may only deduct credit card fees that are associated with entertainment taxable sales it reports. The only exception to this rule would be sales among affiliated casinos that share a common box office system.

The records supporting credit card fee deductions must be sufficient to substantiate that all credit card fee deductions were related to entertainment taxable sales reported either by the property selling the ticket or by an affiliated casino. (Posted 5/21/07)

Types of Live Entertainment

H1. Is Karaoke ever “live entertainment”?

~~Yes, in some circumstances. Although the definition of live entertainment adopted by the Nevada Tax Commission [NAC 368A.100(5)] specifically excludes patrons entertaining other patrons, it is important to take into consideration two important factors:~~

~~First, a patron is defined in Regulation 13, Section 9 [NAC 368A.080] as a “...person who gains access to a facility where live entertainment is provided and who neither solicits nor receives, from any source, any payment, reimbursement, remuneration or other form of consideration for providing live entertainment at the facility.” Accordingly, if the facility operator provides prizes for contests, the patrons are no longer acting as patrons, but instead are amateur performers.~~

~~Second, the person operating the Karaoke equipment and organizing patron involvement may take on the role of a performer. As with disc jockeys, if the operator of the Karaoke equipment limits his or her activities to the following, they will not be considered performers:~~

- ~~1. Introducing the music;~~
- ~~2. Making announcements of general interest to patrons; and~~
- ~~3. Explaining, encouraging or directing participatory activities between patrons.~~

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~~If, however, the person sings or performs other types of live entertainment, then he or she has become a performer. Licensees are encouraged to specify, by contract, the range of activities to be performed by the Karaoke operator. Entertainment MICS #15 requires monthly observations of the licensed gaming establishment to ensure that areas subject to entertainment tax are identified. As part of these observations, licensee personnel should be ensuring that forms of entertainment that have been deemed not to be live entertainment are properly categorized. (Posted 3/05/04) (NAC references added 5/20/05)~~

The Board is substantially amending its advice on the subject of Karaoke. Karaoke will be subject to the tax only if the Karaoke leader takes on the role of a performer or if other forms of entertainment are provided. The payment of a prize to some patrons does not change patrons into compensated performers. However, if a paid Karaoke leader does sing songs in the manner of other performers, this will be viewed as a form of musical entertainment subject to the tax. (Amended 5/21/07) See also H4.

H2. What kinds of activities by bartenders could constitute “live entertainment”?

Most bartender activities would not qualify as live entertainment even if bottles are juggled or fancy serving techniques designed to entertain the patrons are utilized. However, if the bartenders engage in singing, dancing or acrobatics, these activities are likely to be considered live entertainment, just as if any other performer were to be involved.

There is a specific exclusion in the definition of live entertainment for “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.” [See NRS 368A.090(2)(b)(2)]. Note that two criteria must be met. First, the performances must be occasional, not performed frequently. Second, the activities of the bartenders must not be advertised as entertainment. In a few facilities in Nevada, these criteria would not be met, as the activities of the bartenders constitute the primary draw to the facility. The advertising for these facilities focuses on the activities of the bartenders. (Posted 03/25/04; statute reference added 5/21/07)

H3. Are fashion shows live entertainment?

Yes, in most cases. The only exception would be if the models move continuously through the audience and there is no one on stage orchestrating the presentation of the models. For example, if there are

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models who simply walk around in clothes and tell people who are dining where they can buy the clothes, this would not generally be considered a fashion show for purposes of live entertainment. However, if, for example, a local radio personality were to go into a casino and emcee a fashion show and make the announcements regarding what each model is wearing, then this would be a fashion show and would be considered live entertainment.

Because the exclusion in ~~NAC 368A.100(5)~~ NRS 368A.090(2)(b)(3) for non-musical performers who stroll continuously throughout the facility applies only to facilities in gaming establishments licensed for at least 51 machines or at least 6 games, gaming establishments with fewer machines and games should ask for a ruling specific to their establishment. (Posted 03/25/04; NAC reference added 5/20/05; NRS reference replaced NAC reference 5/21/07)

H4. Referring back to Question H1, would awarding complimentary drinks as prizes cause the patrons to be considered amateur performers?

~~No. Providing patrons with complimentary drinks is a practice that exists in situations other than the awarding of prizes. Therefore, the Board takes the position that complimentaries should not be considered prizes, provided that the items given away are of nominal value and are restricted to items offered in-house by the licensee. More expensive items, or free tickets to an off-property event, for example, should be considered prizes for purposes of determining whether the patrons have been compensated. (Posted 5/20/05)~~

Consistent with the change in the advice at H1, this is now a moot point. The existence of prizes does not render Karaoke taxable. (Amended 5/21/07)

H5. Are speeches by motivational, informational or political speakers considered live entertainment?

No, unless the speaker engages in other activities considered live entertainment. (Posted 5/20/05)

H6. Are sound checks and practice sessions subject to the live entertainment tax as musical performances?

If the lounge or other area where the practice session or sound check session is being conducted is open to the public and the session is indistinguishable from a normal performance, the facility would be in live entertainment status during that session. If, however, a sound check is

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conducted in the manner of a sound check (that is, it is announced as a sound check, and the band stops frequently to make adjustments and then restarts), the facility will not be in live entertainment status. Practice sessions would generally be treated as performances. (Posted 5/21/07)

H7. Are circuses live entertainment?

Yes. A circus typically combines a number of activities specifically defined as live entertainment in NRS 368A.090(2)(a). (Posted 5/21/07)

H8. Are contests live entertainment?

Yes. Any type of organized contest conducted in front an audience is considered live entertainment. Examples include beauty pageants, bikini contests, and fitness contests. Unless some specific exemption applies (e.g., exemption for non-profit events), the event is subject to the live entertainment tax, and the tax would apply to admission charges, food, refreshment and merchandise. However, a contest that is strictly between patrons with no advance sign-up or pre-qualifying required (e.g., a drinking contest) would be viewed as an activity among patrons excluded from the definition of live entertainment per NRS 368A.090(2)(b)(6). (Posted 7/1/09)

Incidental entertainment

I1. A licensee holds an event that has been determined to have entertainment that is not considered “live entertainment” under the definition found in ~~NAC 368A.100~~ NRS 368A.090. What if someone sings a song such as the National Anthem as part of the event? Is the event now taxable?

No, in most cases. While it is true that singing is a form of live entertainment, in most cases the singing of the National Anthem, or similar presentation, is entirely incidental to the event itself. While this specific issue is not addressed in the law or regulation, the informal policy stated herein conforms to the concept incorporated in NRS 368A.090(2)(b) regarding performances that are not considered live entertainment.

This guidance applies only to the case where any singing remains incidental to the event. Generally, singing will be deemed incidental to the event if only one song is sung during an event that otherwise included no other live entertainment. (Posted 5/20/05; Amended 5/21/07)

Leased Facilities

J1. What requirements must an operator of a leased entertainment venue within a gaming establishment comply with?

The entertainment facility operator must comply with virtually all requirements imposed by NRS 368A, NAC 368A and the Entertainment MICS. Regardless of the arrangements between the gaming licensee and the entertainment operator, the taxpayer is always the gaming licensee and the gaming licensee is responsible for ensuring compliance. The Internal Audit Minimum Internal Control Standards apply to leased facilities, so the licensee's internal auditors must examine compliance in leased facilities even though those control procedures are not under the control of the licensee. Gaming licensees are urged to include in their lease agreements provisions for compliance with all applicable laws and regulations, including internal controls and record retention requirements. (Posted 5/20/05)

Special Arrangements

K1. An event is offered on the property of one licensee, but the entertainment is arranged by and paid for by more than one licensee. In exchange for its contribution to the event, the non-host licensee receives performance tickets it may give away or sell. What is the proper tax treatment of those tickets?

The non-host licensee has essentially received its share of the tickets in exchange for the portion of the event costs it has covered. If the non-host licensee contributes \$10,000 toward the cost of the event and receives 500 tickets, then the taxable value of those tickets to the host licensee is \$20 each. (Posted 5/20/05)

K2. How are tickets given to corporate sponsors of events to be treated?

If a corporation receives tickets in exchange for corporate monetary sponsorship of events subject to LET, these tickets are not being given away by the licensee as complimentaries. They are provided to the corporate sponsor in exchange for compensation. Tax is due on the retail value of the tickets provided to the sponsor, whether or not those tickets were redeemed. (Posted 5/20/05)

Outdoor Activities

L1. What outdoor events qualify for the exemption found in NRS 368A.200(5)(m)?

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If an outdoor event is offered to the general public, there is no admission charge and no purchase of food, refreshment or merchandise is required, then the event qualifies under this exclusion.

However, the event must in fact be open to the general public. A common issue is with poolside entertainment. If the pool area is accessible to anyone visiting the property without having to pay an admission or purchase anything, then the event qualifies for the exemption. If access to the pool area is generally restricted to hotel guests (even if there may be some exceptions whereby others might be admitted), then the entertainment is not deemed to be "offered to the public."

The use of temporary structures like tents or canopies does not change the event to an indoor event for purposes of this exemption. (Posted 5/21/07)

Private Meetings/Casual Assemblage

M1. What kinds of events other than those specifically mentioned in NRS 368A.053 might qualify for exemption under NRS 368A.200(5)(i)?

The exemption applies to events that are offered for purposes other than entertainment to members of a particular group but are not available to the general public. For example, a corporation wishes to reward its employees by hosting an evening at a nightclub. The nightclub is closed to the general public. This event would qualify for exemption.

Another example of an event that would qualify for exemption is the use of a banquet room or other facility to host a party or other event to reward customers. Attendance must be strictly limited to invited customers and no advertising is permitted. This exemption is applicable whether it is sponsored by the casino for its customers or by another company for customers of that company. The exemption will apply even if the customers must pay to attend.

The licensee has the burden of retaining records to demonstrate that the event qualifies for the exemption. See NAC 368A.500(2). (Posted 5/21/07)

M2. A licensee leases out convention space to specific groups. Are the events held in the convention space exempt from the Live Entertainment Tax?

No. Unless the advice in the answer to question M1 applies, the event is subject to the tax, and the licensee is responsible for ensuring full

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compliance with all relevant statutes, regulations and minimum internal control standards. An event where admission is available to persons outside a specific group is never a “private event.” As stated in the answer to M1, a group may charge an admission fee to its own members, but must not advertise the event, nor sell tickets to anyone outside the group.

For example, assume a company wishes to sponsor an event primarily for its employees and customers. The company contracts with XYZ casino for use of its convention space. The company also hires a band to provide entertainment during a portion of the event. To help offset the cost of hosting the event, the company sells tickets to the general public to watch the band perform. A sign is posted in the casino area specifying the price of admission. It also offers the tickets through other distribution means. This event is not a private event. All admission charges are subject to the tax, as would be the sale of any food, refreshment or merchandise. Furthermore, the licensee is responsible for ensuring the proper recordation of **all** taxable sales.

Any licensee permitting the use of convention space or similar areas within its establishment is responsible for the tax and for compliance. It is therefore imperative that use of the facility be carefully controlled and monitored. See also the answer to question J1. (Posted 7/1/09)

Processing Fees

N1. What is the proper tax treatment of fees charged by licensees for processing the sale of tickets subject to the live entertainment tax?

Any fee collected and retained by a licensee in connection with the sale of tickets to events subject to the live entertainment tax increases the taxable amount of the sale. The exact computation of taxable revenue depends upon a number of factors, but the licensee must account for the additional fees collected when computing revenue.

Note that processing fees can be assessed on either a per-ticket or a per-order basis. Both types of processing fees increase the taxable amount of the sale. When a licensee imposes a per-order charge on orders that consist of tickets that are subject to the tax and tickets that are not subject to the tax, the per-order charge may be allocated on a pro-rata basis. Alternatively, the licensee may elect to pay taxes on the full amount of the per-order charge to simplify its accounting procedures. (Posted 5/21/07)

Merchandise

O1. Are photographs merchandise or a service?

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Generally, any existing photographs available for sale are merchandise. This would include posters or other merchandise featuring the pictures of performers, etc. Merchandise sales are generally subject to the live entertainment tax if sold within a facility offering live entertainment (all rules for merchandise sales found in NRS 368A and NAC 368A apply).

However, some taxpayers offer patrons the option of getting their pictures taken with the performers for a fee or for tips. Activities of this nature are considered a service, not merchandise. Therefore, the amounts paid by patrons for this service are not taxable. Any actual merchandise sold with the picture imprinted would be taxable. For example, a performer will pose for a picture with a patron. If all the patron wants is a print of the picture, the taxpayer or the performer charges \$10. If the patron wants that picture printed on a coffee mug, the coffee mug with the picture is \$25. The \$10 fee is considered a service not subject to the tax. However, the \$25 price of the coffee cup is merchandise and the entire price of the mug is subject to the tax. (Posted 7/1/09)