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via email

Ms. Marie Bell
Executive Secretary
Gaming Control Board
555 E. Washington Avenue, Suite 2600
Las Vegas, NV 89101
mbell@gcb.nv.gov

Re: 2015-56 Workshop Regarding NAC 368A

Dear Ms. Bell:

Our office represents AEG Live regarding the regulatory matter referenced above and respectfully submits this letter on behalf of our client.

Below is our analysis of the applicable statute. It is our understanding that LiveNation Entertainment has submitted proposed changes to be added to NAC 368A in a letter dated July 22, 2015. Those changes are consistent with our reading of the statute and AEG Live would support the adoption of the language proposed by LiveNation Entertainment.

It is the position of AEG Live LV, LLC that SB 266 has made no change in existing law that holds that services charges incurred for such optional convenient services as the ability to purchase admission tickets online, by telephone, or at locations other than the facility box office, or to obtain tickets by mail, are not admission charges. Because such charges are not admission charges, they are not subject to the Live Entertainment Tax (“LET”) imposed by NRS 368A.200.

As relevant here, the LET applies only to “admission charges.” NRS 368A.200. Until SB 266, the term “admission charge” was defined to mean:

the total amount, expressed in terms of money, of consideration *paid for the right or privilege to have access to a facility where live entertainment is provided.* The term includes, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.

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NRS 368A.020 (emphasis added). The language of the definition makes it clear the deciding factor in terms of triggering tax is whether the fee in question must be paid by a patron in return for “the right or privilege to have access to a facility where live entertainment is provided.” And, indeed, the Nevada Supreme Court has long interpreted this language to mean that only charges that *must* be paid by those who purchase admission to the facility are subject to the tax. See *Nevada Gaming Com'n v. Desert Palace, Inc.*, 101 Nev. 173, 174-175, 697 P.2d 477, 479 (1985) (sums paid to ticket brokers for convenience of buying tickets are not part of the admission price). As a result, sums paid for a *service* related to entertainment, but *not for admission to the entertainment itself*, are *not* subject to the entertainment tax.

SB 266 did not alter the statute’s emphasis on the necessity for the payment in order to gain admission. To the contrary, it actually strengthened that requirement. As a result of SB 266, the definition of admission charge now reads as follows:

1. Except as otherwise provided in this section, “admission charge” means the total amount, expressed in terms of money, of consideration paid for the right or privilege to enter or have access to a facility where live entertainment is provided.
2. Except as otherwise provided in this section or NRS 368A.200 or any other specific statute, the term includes, without limitation, an entertainment fee, a cover charge, a required minimum purchase of food, beverages or merchandise, a membership fee and a service charge or any other fee or charge ***that is required to be paid in exchange for admission to a facility where live entertainment is provided.***
3. The term does not include:
 - (a) The value of an admission to a facility provided to a patron on a complimentary basis, unless the complimentary admission is associated with a separate purchase that is required for the patron to enter or have access to the facility; or
 - (b) A charge for the right or privilege of entering, or having access to, a particular portion within a facility, that is in addition to a charge described in subsection 1 or 2, including, without limitation, a charge for:
 - (1) Food, beverages or merchandise that is in addition to a required minimum purchase of food, beverages or merchandise as described in subsection 2; or

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(2) Access to tables, seats, lounge chairs or particular areas near a swimming pool.

4. Except as otherwise provided in this subsection, the term does not include license or rental fees for luxury suites, boxes or similar products at facilities with a maximum occupancy of at least 7,500 persons. If the license or rental fee includes the admission of a certain number of patrons to a facility where a live entertainment event is provided, the admission charge is an amount equal to the lowest priced admission charge for the live entertainment event multiplied by the number of admissions to the live entertainment event included in the license or rental fee.

SB 266, § 1.4 (emphasis added). As can be seen while SB 266 has altered the definition of an admission charge by including within the example other labels that might be placed on an admission charge, the definition continues to make the applicability of the LET turn on whether the fee in question is a mandatory charge in return for the right to have access to the facility. In fact, the legislature has now expressly adopted the Supreme Court's holding that a particular fee must be one that is required in order to gain admission.

Because the LET applies only to fees that must be paid in order to obtain access, fees paid in return for a service, such as the convenience of paying for tickets with a credit card or the convenience of buying a ticket at a location other than the box office, continue to be nontaxable under Chapter 368A.

Thank you for your consideration of the above information.

Very truly yours,

/s/ Mark Ferrario
Mark Ferrario
Shareholder

cc: Madeline Schilder, AEG Live
John Nelson, AEG Live
John Leleu, Esq.