Lora K. Picini
Chief Counsel,
Regional Operations*
Email: lpicini@caesars.com

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Via Email Transmission and Regular Mail

Board Member Terry Johnson
Nevada Gaming Control Board
555 East Washington Avenue
Suite 2600
Las Vegas, Nevada 89101

Chief Shirley Springer
Chief, Audit Division
Nevada Gaming Control Board
555 East Washington Avenue
Suite 2600
Las Vegas, Nevada 89101

Re: Written Comments to Proposed Amendments to Nevada Administrative Code (NAC) Chapter 368A

Dear Board Member Johnson and Chief Springer:

Caesars Entertainment Corporation and its affiliated non-restricted gaming licensees operating in the State of Nevada (collectively, "***Caesars***") support the recent changes to the Nevada Live Entertainment Tax ("***LET***") statutory framework as enacted through Nevada Senate Bill 266. Caesars also appreciates the efforts of the Nevada Gaming Control Board ("***Board***") to propose changes to NAC Chapter 368A consistent with the statutory changes and respectfully submits the following comments on the Proposed Amendments to NAC 368A.

Section 2 - Definition of "Ambient Activity". Caesars requests that the phrase "in the background" be removed from the definition of "ambient activity" as the phrase is ambiguous and may create confusion regarding what activity is considered to occur in the background, and whether this language is tied to a particular physical location within a facility. We further suggest that the Board add language to the definition clarifying that ambient activity is not the primary focus or reason for patrons to enter a facility or attend an event.

Section 9 – Definition of "Patron". Caesars requests that the phrase "being present in the facility or for" be removed from the definition of "patron." The definition of "Live Entertainment" in NRS 368A.090(1) requires person(s) to be "physically present," and therefore the language "being present in the facility" appears to create unnecessary redundancy. Further, the use of the conjunction "or" as part of this phrase implies that a facility could be considered to be in LET status simply because there is a celebrity or other person present, who is being compensated for some purpose, even if they do not perform. It is our position that the determination of LET status of a facility should be tied to actual live entertainment that is performed at the facility, rather than simply an appearance of a person (including a celebrity) at a facility.

Section 10(7) – Definition of "Marketing or promotional activity". Caesars requests that the word "service" be added to the definition of "marketing or promotional activity" as follows (added language is underlined): "a live entertainment activity provided for the purpose of drawing attention to a particular product, service or brand."

Section 10(8) – Definition of "Membership fee". Caesars request that the phrase "or other similar item" be removed from the definition of "membership fee" because the phrase is ambiguous and may lead to confusion. We believe more precise terminology should be used to convey the intent of this section.

Section 10(11) – Definition of "Recorded music". Caesars requests that the reference to "live television" be removed from the definition of "recorded music." Live television is specifically excluded from the definition of Live Entertainment by NRS Section 368A.090(2)(b)(5), and therefore, we believe the inclusion of this language in Section 10(11) is not appropriate in this context and may lead to future confusion.

Section 10(12) - Definition of "Service charge or any other fee or charge". Caesars believes that the new definition of "service charge or any other fee or charge" places new and onerous burdens on licensees to report and remit tax on admission charges and fees charged by third parties. This definition specifically expands the scope of what is considered to be a service charge or fee to include "any fee or charge that is included in the total sales price at the completion of the purchase transaction." We believe this language is overly broad, and would make licensees responsible for taxes on any admission charges and fees collected by third parties for services performed by such third parties, over which licensees have limited to no control. Third parties often charge a mark-up on tickets that they retain as a commission for their services, and they charge other service charges for additional services such as delivery of tickets. However, licensees do not currently have access to detailed information regarding every additional fee or charge collected by a third party in connection with selling admission to a live entertainment event; rather, the licensee only controls and maintains records for the amount of the admission charge and fees that the licensee charges the third party for the initial sale of a ticket to the

third party. Although NRS Section 368A.240(1) provides a method for licensees to later seek a tax credit if they are unable to collect the full charges from a third party, rather than placing such an untenable burden on licensees to collect taxes from a third party for charges and fees that the licensee never receives, Caesars requests that the definition of "service charge or any other fee or charge" be modified to delete the phrase "any fee or charge that is included in the total sales price at the completion of the purchase transaction." LET should only be paid by a licensee on fees that the licensee actually charges and retains for admission to the facility where live entertainment is occurring.

If the Board wishes to tax the additional charges and fees collected by third party ticket brokers and similar entities for their additional services provided (such as courier delivery of tickets or printing of souvenir tickets), Caesars asks that the Board regulate these brokers directly and require them to submit statements and pay taxes on the charges and fees they collect and retain.

In addition, as currently drafted, the definition of "service charge or any other fee or charge" could include additional items purchased by a patron at the same time as they are purchasing a taxable admission to the live entertainment facility. Therefore, Caesars requests that the Board further update the definition to clarify that add-on items that are purchased voluntarily by the patron and not directly required for admission to the facility, are not included in the definition of "service charge or another fee or charge." Examples of such add-on items include souvenir tickets, merchandise, or separate meet and greet opportunities with an entertainer.

<u>Section 11 –"Applicability of tax"</u>. Caesars requests that the definition of "applicability of tax" be amended by replacing the phrase (in the first sentence) "where live entertainment is provided" with the phrase "for a particular live entertainment event," so that it is clear that the tax applies to the entertainment event held in the facility, not just to the facility itself. We further request the removal of the phrase "regardless of when the live entertainment actually commences" from the definition. This language allows for more than one interpretation, including one which could imply that the facility stays in live entertainment status between the time an LET applicable admission is purchased and the date of the event. As Chief Springer indicated in the Board's workshop on July 23, 2015, this language was not intended to apply to advance ticket sales to a facility that is not always in live entertainment status.

Caesars further suggests the addition of language setting forth a specific period of time prior to the start of live entertainment activity when the tax should be applied to an admission charge to a facility, for facilities that offer live entertainment along with other amenities that might separately draw a patron to visit the facility. We suggest adopting a standard of two hours prior to the commencement of the live entertainment activity. The intent of setting such a time period is to ensure that LET is charged to patrons that come for the entertainment and not patrons that come to enjoy other amenities and leave prior to the entertainment commencing. Licensees could track the admission charges collected from the two categories of patrons (i.e., those staying for the entertainment and those leaving before the entertainment commences) by issuing different tickets or wristbands or directing patrons to different areas within the facility. Those patrons who came to enjoy other amenities, such as a pool, would be required to leave before the entertainment commences. If they do not, they would be charged a new admission charge which would be subject to LET.

Clarification of Reporting related to NAC 368.410. After reviewing Member Johnson's Memorandum dated August 4, 2015 regarding Advanced Ticket Sales, it appears that licensees will be required to report any advanced ticket sales made prior to the October 1, 2015 implementation date, on a cash basis. Caesars requests that the Board confirm that, for sales occurring after September 30, 2015, licensees can return to an accrual basis of reporting LET taxable revenue.

Section 19 - "Maintenance and availability of records of taxpayers". As also discussed above in our comments regarding Section 10(12), Caesars believes that the new requirements set forth in NAC Sections 368A.500(1)(a) through (c) relating to maintenance of taxpayer records impose new and additional burdens on licensees related to collection of admission charges and fees by third parties. While licensees can record and track admission charges for tickets that are sold directly to third parties and can maintain records received from third parties of the number of tickets sold to patrons by the third party, licensees do not have the resources to fully track all third party sales and records, including admissions charge mark-ups (or commissions), and service fees once title to a ticket is transferred to a third party. Moreover, it does not seem practical to require licensees to track and report on admissions revenue that it neither charges nor retains. Thus, we request that language be added to this section to exclude any ticket sales by third parties that operate independently of the licensee, such as ticket broker outlets and ticket websites. As discussed above, licensees exercise limited to no control over third party services and related charges, and the third parties themselves should be held responsible for reporting and paying tax any charges or fees they collect and retain.

We thank you for the opportunity to share our comments and concerns, and look forward to further discussions as the draft regulations continue to be updated and modified.

Sincerely,

Lora K. Picini

cc: Ed Magaw, Deputy Attorney General

** certified to practice in Nevada as in-house counsel*