



July 24, 2014

Terry Johnson, Member  
Nevada State Gaming Control Board  
555 E. Washington Ave., #2600  
Las Vegas, Nevada 89101

Re: Workshop regarding the possible adoption, amendment, or repeal of regulations pertaining to Chapter 368A of the Nevada Administrative Code

Dear Board Member Terry Johnson,

MGM Resorts International would like to hereby submit our written suggestions/comments regarding the workshop held May 7, 2014. We have organized our thoughts to show the agenda item, the applicable NRS and NAC and our comments/suggestions in the outlined boxes below each item. These are the areas of discussion as outlined below.

- Workshop agenda items
  - Agenda 1 – “immediate area”, “occasional activity”
  - Agenda 2 – over-collection of entertainment tax
  - Agenda 4 – time periods of entertainment status
- Clarification of NAC or repeal of some of the requirements – package programs

### Workshop Agenda Items

*Agenda item 1 Whether to define the term “immediate area” as used in NRS 368A.090(2)(b)(4), to define the term “occasional activity” as used in NRS 368A.090(2)(b)(8).*

#### **“immediate area”**

**NRS 368A.090 “Live entertainment” defined.**

2. *The term:*

*(b) Excludes, without limitation, any one or more of the following activities:*

*4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;*

Our interpretation of this NRS is to identify party pits (a stage setup on the casino floor where dancers perform to people that are gambling). On several occasions we have been told that the immediate area also includes lounges and restaurants that have line of sight views of the dancers performing in the party pits. The party pits are surrounded by either tables or machines for gambling purposes. We feel that is the meaning of immediate area. If a lounge or restaurant is in close proximity and the party pit is considered non-entertainment taxable, how can it be applied to restaurants and lounges in close proximity? Clarification should be made as to how ‘immediate area’ is defined or further clarification for dancers with line of sight views for bars and restaurants in close proximity.

*Agenda item 2 – Whether to adopt regulations providing for the disposition of an over-collection of live entertainment tax.*

**NAC 368A.330** *“Live entertainment status” defined. (NRS 368A.140)* *“Live entertainment status” means that condition which renders the selling of food, refreshments or merchandise subject to the tax imposed by [chapter 368A](#) of NRS.*

**NAC 368A.450** *Computation of amount of tax due. (NRS 368A.140)* *For purposes of computing the amount of the tax due pursuant to [chapter 368A](#) of NRS:*

2. *The tax must be paid on all taxable sales of food, refreshments and merchandise while a facility is in live entertainment status and on all taxable admission charges, regardless of whether the taxable amounts are paid in cash or through an extension of credit.*

There are several reasons that entertainment tax would be collected when outside of the live entertainment status: a taxable event becomes non-taxable after the start of sales, the point-of-sale system is programmed incorrectly to charge entertainment tax or the parameters are not setup correctly for a venue that is not always in entertainment status. The NAC does not require the licensee to return these funds, it only requires the remittance of tax during times of entertainment. Additionally, there are some point-of-sales systems that show whether entertainment tax was charged to the customer in that the sales shows one amount and would include all applicable taxes. When the point-of-sale system is not programmed correctly or it is not turned on/off at the correct times this could potentially lead to both over and under collection of entertainment tax. Clarification to allow adjustments to be made to ensure that the correct net sales is reported and the applicable entertainment tax remitted should be the main focus. We feel that the current NAC allows us as the licensee to make these adjustments. If it is a clear mistake in charging the patron entertainment tax (not just a clerical type error), clarification of what to do with these fund should be made.

It was suggested during the workshop that if the licensee collects entertainment tax when there was no entertainment, which the monies should be returned to the patron. Based on the volume of transactions and the time it takes to identify such issues, it would be overly burdensome to return these funds to the patron. We would recommend that the over-collection of tax be remitted to the State if it was determined that the licensee willfully overcollected on tax and not just for some adjustments to revenue due to incorrect parameter settings.

*Agenda item 4 – Whether to amend provisions related to the time periods in which live entertainment status is in effect.*

**NAC 368A.330** and **NAC 368A.450**, as shown above in Agenda Item 2 and

**NAC 368A.410** **Applicability of tax: Live entertainment status; dinner show.** ([NRS 368A.140](#))

1. Live entertainment status:
  - (a) Commences at the earlier of:
    - (1) The time when taxable live entertainment commences; or
    - (2) The time when any patron is required to pay an admission charge before the patron is allowed to enter a facility; and
  - (b) Ceases at the later of:
    - (1) The conclusion of the last performance of the taxable live entertainment; or
    - (2) The time when a facility for which an admission charge was required is completely vacated by admitted patrons or is opened to the general public free of any admission charge.

2. For the purposes of this section, there is no distinction between any period of dining and any period of entertainment at a restaurant of a licensed gaming establishment which is not open on a continual time schedule and where live entertainment is provided and advertised as a dinner show.

NAC 368A.330 and NAC 368A.450 clearly state what the entertainment status is. The only thing missing is the application of entertainment tax when there is an admission charge. NAC 368A.410 defines how to apply the tax for a dinner show; however, it does not detail the applicability for night clubs, pools or other venues that have door charges and partial entertainment periods. We would like clarification written in the NAC for these venues and would suggest at the time that entertainment ends that entertainment status ceases, even if a door charge is in affect.

### **Clarification of NAC or repeal of some of the requirements – package programs**

This was not part of the agenda nor was it discussed during the workshop, but package programs are a key driver in our marketing for licensee for the show and the resort.

**NAC 368A.360** *“Package” defined. (NRS 368A.140) “Package” means any aggregation of rights to rooms, food, refreshments, merchandise, entertainment, services or other items which is advertised to the public as a single unit and sold for a single price.*

**NAC 368A.450 5.** *Subject to the provisions of subsection 4 of [NRS 368A.200](#), the tax on any taxable ticket for live entertainment or ticket redeemable for taxable food or refreshments sold as a component of a package must be computed in accordance with the following provisions:*

*(a) Except as otherwise provided in paragraphs (b) and (c):*

*(1) The average retail value of the ticket must be prorated against the average retail value of all the components of the package, and the tax must be paid on the sum obtained by multiplying the resulting prorated fraction by the actual price paid for the package.*

*(2) Any value advertised to the public as the retail value of a component of a package is rebuttably presumed to constitute the actual retail value of that component.*

*(3) If no average retail value can be established for a component of a package, the cost of the component to the taxpayer must be used to carry out subparagraph (1).*

*(b) The tax on any ticket redeemable for taxable food or refreshments with an average retail value of less than \$5 must be computed on the full retail value of the ticket and not as a component of a package.*

*(c) This subsection does not prohibit a taxpayer from paying, at the option of the taxpayer, the tax on the full retail value of the taxable components of a package.*

Most of our packages are not always part of a program that is specifically advertised to the general public. We allow the packaging of entertainment and non-entertainment items, which falls under the package program criteria, however, most of these packages just offer a reduced rate on the room, food and beverage, and entertainment component. These types of packages are simply a discounted ticket with another component that is not entertainment taxable, so why can't the ticket sales be done similarly to other discounts offered? What is the true value of the entertainment? If we do not receive monies for a comp ticket, why should this be taxable? Each revenue center within the licensee's operations would need to recognize this revenue, why can't we base the value or taxability on this amount?

We have found that the amount of time of tracking potential packages that may or may not have a discounted entertainment component and updating and changing pricing is very time consuming. If there was an easier way, we would appreciate it.

If there is not an easier way, the valuation of the retail components should be addressed to be the true value or revenue to the venue. Currently the expectation is to use the retail value of the full face price of the ticket, whereas, most patrons do not pay full price.

Should you require additional information or wish to meet and discuss this matter further, please do not hesitate to contact me at (702)692-2629.

Respectfully,

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