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September 5, 2003

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TO: ALL NONRESTRICTED LICENSEES, RESTRICTED LICENSEES AND INTERESTED PERSONS

SUBJECT: CLARIFICATION OF APPLICABILITY OF SB 8 TO PIANO PLAYERS AND SIMILAR FORMS OF ENTERTAINMENT

On August 7, 2003, I mailed and posted on the Board's website a letter that outlined the Board's interpretation of the live entertainment tax provisions of Senate Bill 8. In Attachment A to that letter, I included a then-current analysis of the applicability of entertainment tax to a variety of common forms of entertainment. I indicated that present interpretations were subject to revision and that the Board and the Department of Taxation would be working on a more detailed definition of "live entertainment" in order to ensure consistent taxation. In that continuing effort, one issue has emerged that requires clarification now.

Under the previous Casino Entertainment Tax statutes, "instrumental music alone" was exempted from taxation [NRS 463.4015(1)(j)]. As of September 1, 2003, all of NRS 463.4015 was repealed, hence removing any exemptions not otherwise specified in Senate Bill 8. Our initial interpretation was that since there was no longer an exemption provided for background instrumental music, sales of food, refreshments and merchandise made in facilities where such music is provided would be subject to the tax.

However, significant public comment has been received, and research into legislative intent has been conducted. Senate Bill 8 maintains the existing exemptions for strolling musicians and casual assemblages. The bill also grants the Department of Taxation and the Board authority to further define live entertainment and issue guidance in these areas. In consideration of these factors, I have determined that it was not the intent of Senate Bill 8 to tax incidental entertainment that is not the primary attraction of the facility but rather, serves only to enhance the ambience of the facility.

One example of this type of live entertainment is "ambient background music" provided by musicians such as pianists or harpists who do not sing but play instruments while people eat, drink and converse. To qualify as ambient background music, the volume of the music should be low enough to permit conversation to occur and should not be of a nature that would tend to cause people to watch as well as listen.

Not all instrumental-only performances will meet these criteria and qualify as ambient, incidental music. If you believe that the form of entertainment you offer qualifies

as ambient music but wish to verify this, please contact Chief Deputy Auditor Lynda Hartzell via email at lhartzell@gcb.state.nv.us or at (702) 486-2060. Group II and restricted licensees should direct questions to Tax and License Division Chief Steve Hixon at (775) 684-7770.

Sincerely,

Dennis Neilander
Board Chairman

DKN/GG

cc: Bobby L. Siller, Board Member
Scott Scherer, Board Member
Records and Research Services