



This Week in State Tax (TWIST)

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Louisiana: No Jackpot for Taxpayer in Challenge to Taxability of Casino Room Comps

The Louisiana Board of Tax Appeals (BTA) recently denied a taxpayer's Peremptory Exception of No Cause of Action in a case in which the Louisiana Department of Revenue alleged that the taxpayer owed sales tax on complimentary hotel rooms and poolside cabanas provided to patrons of the taxpayer's casino. Under Louisiana law, sales tax is imposed on the furnishing of sleeping rooms by hotels, as well as on the sale of admissions or access to amusement, entertainment, athletic, or recreational facilities. In its petition against the taxpayer, the Department alleged that the complimentary rooms and cabanas were taxable transactions rather than gratuitous donations.

In its exception, the taxpayer raised several arguments. First, the taxpayer argued that the Department had not alleged sufficient facts to show that any taxable sale for the complimentary items had occurred. The taxpayer also argued that there was no showing by the Department of a separate and identifiable price paid as consideration for the complimentary rooms. The taxpayer further argued that the Department had already treated consideration received by the patrons as gaming revenue subject to gaming franchise fees; therefore, the Department could not now recharacterize the gaming transactions and subject them to additional tax.

The Department alleged in its petition that the underlying consideration received by the taxpayer for the complimentary rooms and cabanas was the patrons' gaming activities at the taxpayer's casino. The Department further alleged that the rooms and cabanas could be monetarily valued in two ways: first, the rooms could be valued as what the taxpayer deemed "theoretical wins." A theoretical win is a figure derived from the taxpayer's proprietary formulas using data based on a patron's past activities. Second, the consideration could be valued based on an average seasonal rate for the rooms.

In its decision, the BTA explained that an exception of no cause of action tests the legal sufficiency of a petition, and that an exception will be granted only if a plaintiff cannot prove any set of facts which would entitle it to relief. With regard to the taxpayer's argument that a taxable transaction must have a "separate and identifiable" price, the BTA determined that the Department does not need to allege a "set price" to state a cause of action. Instead, the consideration exchanged in a transaction must simply be susceptible to valuation in money. Here, the Department sufficiently alleged two alternative methods of valuing the consideration: the "theoretical win," or the "average seasonal rates" for the rooms.

The BTA also rejected the taxpayer's argument that the taxpayer's payment of gaming franchise fees precluded the Department from seeking to impose tax on the complimentary rooms. The BTA noted that the Department did not allege that gaming franchise fees had been paid by the taxpayer, and that the BTA's analysis was confined to the four corners of the Department's petition. Therefore, this argument would need to be addressed on summary judgment or at trial.

Finally, the BTA rejected that the Department had failed to cite any authority for the imposition of sales tax in this matter. The BTA analyzed a prior case raised by the taxpayer, *Jazz Casino Co., LLC v. Bridges*, but found that it was legally and factually distinguishable from the present case. That case involved the first land-based casino in Louisiana, for which a statute had been enacted requiring the casino to pay room taxes on all discounted and complimentary rooms based on the average seasonal rates for the rooms. Here, the BTA noted that *Jazz Casino* had only been cited by the Department as authority to put forth one method of valuing the complimentary rooms provided by the taxpayer, and not as authority for the imposition of tax. The authority for the imposition of sales tax came from the state's definition of taxable sales of services found in the Louisiana sales tax statutes. Therefore, the BTA held that the Department had satisfied its burden to sufficiently allege a cause of action in this matter, and the taxpayer's exception was denied. Please contact [Randy Serpas](#) with questions on *Louisiana Department of Revenue v. Golden Nugget Lake Charles, LLC*.

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