

Comped meals pits casinos against Nevada

By David McGrath Schwartz, Las Vegas Sun

CARSON CITY – For decades, Nevada casinos paid a tax on the meals they “comped” patrons and employees – the iconic Las Vegas tradition of pit bosses doling out steak dinners to blackjack players, or more recently, slot jockeys cashing in their reward points.

But gaming, Nevada’s largest and most influential industry, is pushing for an agreement with Gov. Brian Sandoval and lawmakers to exempt complimentary casino meals from taxes in future years, according to gaming lobbyists, state officials and lawmakers.

The stakes of the negotiations are big, representing a potential budget-busting hole of as much as \$350 million in the state’s spending plan.



A lawsuit on the matter, Boyd Gaming Corp. v. the State of Nevada, is pending before the Nevada Supreme Court. If the court rules for casinos, the state could be forced to pay back to casinos an estimated \$230 million to \$350 million for taxes it collected on the meals in the 2000s.

To settle that lawsuit before the court issues an opinion, the industry is offering to forgive the potential \$350 million rebate in back taxes in exchange for the state agreeing not to tax future meals. Not taxing future meals would mean forgoing

millions of dollars that otherwise could go to education, public safety and social services.

Agreeing to the settlement is a huge gamble for the state. If the court decides against the state, Nevada would be out the \$350 million as well as any future revenue. If the court decides against the casinos, Nevada would be off the hook for the rebate and could continue collecting tax revenue.

So far, though, Sandoval and his administration have remained firm that the meals are subject to taxes.

Sources said there was a tense meeting at the governor's office last summer in an effort to settle the issue.

"Both sides think they have strong legal cases," said one source with knowledge of the case, not authorized to speak on the record because it's part of ongoing litigation. "It comes down to whether the state and industry want to do a \$350 million coin flip."

Currently, no casino is paying the tax on comped meals, a state tax official said this month in a legislative committee meeting. The casinos point to a 2008 Nevada Supreme Court ruling that the state owed a rebate to the Sparks Nugget, which spurred the rest of the state's casinos, big and small, to seek tax rebates.

The gaming industry wants the situation to be resolved soon.

"We're hopeful we can find a solution that is amenable to both the state and the industry," said Pete Ernaut, president of R&R Partners, whose clients include the Nevada Resort Association.

One lobbyist for gaming, speaking on the condition of anonymity, said there is likely to be a bill before the 2013 Legislature.

Meanwhile, the Sandoval administration is pressing forward on

rules that would allow the state to once again collect the tax.

Sandoval's chief of staff, Gerald Gardner, declined to comment for this story, citing ongoing litigation. So did Christopher Nielsen, director of the state Department of Taxation.

Advocates for education and state services say Nevada can't afford to exempt those meals from taxation.

"That would dig a deeper hole," said Lynn Warne, president of the Nevada State Education Association. "It leaves Nevada that much further behind being able to support kids and schools."

The dispute and potential hole have been hanging over the state since 2008.

That's when the Nevada Supreme Court first ruled in the industry's favor, saying the "use tax" the state had been charging casinos since at least the 1960s for comped meals didn't apply. Although the case dealt only with the relatively small Sparks Nugget, it set off a feeding frenzy of claims for tax rebates.

But the Supreme Court decision, in a footnote, said the state could argue that it could impose the alternative "sales tax" on comped meals when it could prove "consideration" was given for the meals. Consideration means the state could prove casinos received something of value in return for the meals.

The sales tax would be higher because it would be calculated on the retail price of the meal instead of on the cost of ingredients to prepare the food, as it had been calculated previously.

Clarifying what that footnote meant is at the heart of the pending Nevada Supreme Court case.

Representatives for the Nevada Resort Association first approached former Gov. Jim Gibbons, Sandoval's predecessor, to

reach a settlement, according to former administration officials and lawmakers. But his administration, which had an often frosty relationship with the political establishment, resisted overtures from the industry.

In a 2008 special session, soon after the Nevada Supreme Court decision in favor of the casinos, Gibbons tried to clarify the law in the state's favor.

The Assembly passed the bill unanimously, but lobbyists with the Nevada Resort Association helped to quietly kill it in the Senate, where it never received a vote.

Since Sandoval came into office in 2011, industry lobbyists, some with longtime relationships with the former federal judge, have tried again to reach a settlement.

And that's where the tax debate gets political.

Gaming companies are the most influential industry in Nevada.

Gambling and casinos in 2012 gave twice as much in political contributions to Nevada state candidates as the next highest group, lawyers and lobbyists, according to the National Institute on Money in State Politics, a nonpartisan, nonprofit organization that tracks state spending.

Gaming companies and executives donated \$410,000 to Sandoval's political action committee last year, about half of the total he raised, largely to help Senate Republican candidates last year.

But gaming companies also gave prodigiously to Democratic candidates and organizations. MGM Resorts International, Boyd, Station Casinos and Caesars Entertainment all gave tens of thousands of dollars to the Nevada Democratic Party in 2012, according to campaign finance records.

On top of that, gaming companies have their left flank covered by the Culinary Union, a key constituency for Democratic

lawmakers.

In the case pending before the Nevada Supreme Court, in which Boyd is suing the state for its rebate, the Culinary Union filed an amicus brief in support of Boyd. When gaming companies and the Culinary Union are together, they present a mighty political front.

Any settlement on comped meals with the governor would also require legislation, gaming lobbyists said.

Sen. Tick Segerblom, D-Las Vegas and chairman of the Senate Judiciary Committee, said the Legislature should have a say before any agreement is reached.

The gaming industry "is very powerful – and rightly so," he said, pointing to its tax contributions to the state and the fact that it's the state's biggest employer. "We should look upon them favorably. But we can't give them a free ride."

Assembly Speaker Marilyn Kirkpatrick, D-North Las Vegas, said that typically, the state has declined to weigh in on matters pending before the courts. But she added that lawmakers are aware it is a potential liability for the state's budget.