

Settlement in casino comped meals lawsuit

By Anjeanette Damon, Las Vegas Sun

CARSON CITY – The Nevada Tax Commission signed off on a \$233 million settlement with the state's largest casino resorts to free them from paying sales taxes on the comped meals they provide their patrons and employees in exchange for the resorts dropping their lawsuit seeking a refund on back taxes they've already paid.

In agreeing to the settlement, which will also require the Legislature to pass a new law in the last seven days of session, the commission is essentially reversing its long held position that such free meals given to customers are subject to sales tax in order to free the state from a quarter billion dollar potential liability.

The issue has been winding its way through the court system since 2003, when a Sparks casino sued, arguing it shouldn't be required to pay the tax on comped meals. The courts have issued conflicting opinions on the issue, which is worth millions to casinos and state government. The case is now pending before the Nevada Supreme Court.

Gov. Brian Sandoval's staff helped broker the deal, which involves more than 150 casinos that will be giving up their refund requests in exchange for a law guaranteeing they no longer have to pay the tax through 2019. If a future Legislature were to try to implement the tax before then, the casinos could resume their lawsuits and the state would be liable for the refunds.

"I can tell you from the governor's perspective, and from my discussions with him, the real piece is that \$233 million in liability," said his general counsel Michon Martin. "The

governor indicated, and these are his words, it's almost a quarter of a billion in liability this state is exposed to. The governor wants to make sure we resolve that liability."

Martin said it is uncertain how the Nevada Supreme Court will rule in the case brought by Boyd Gaming and Harrah's Casino. If the state lost, it would have to pay \$233 million in refunds. If it won, it would be able to continue collecting sales tax amounting to as much as \$4 million a month, or \$48 million a year.

"I can tell you as a litigator for a very long time, we just can't predict the outcome of these cases with any certainty," Martin said. "If we lost, we just can't tell what will happen. It would require a special session. It would require a whole host of things. It would put the state in a position that would be exceedingly difficult to recover from."

For perspective, the refunds are almost twice what Sandoval has proposed spending on new education programs over the next two years.

The commission voted 7-1 to ratify the settlement, after minor adjustments to the language in the agreement is made.

Commissioner Craig Witt, a former dairy farmer from Minden, voted against the settlement, arguing it's been the commission's intent, and, he believes the court's intent, that the sales tax be applied to free meals given to casino patrons. He said he may have voted in favor of a deal that exempted employee meals.

"Our intent, as far as the gaming card patrons, that is a taxable issue," Witt said. "I don't get a choice to tax ourselves in agriculture because we are not an entity or a business like gaming. We can't afford the attorneys."

"In this case we start to look at both sides and it's give and take and there's no end to the gaming card abuse."

The settlement doesn't take effect unless the Legislature passes a law affirmatively stating that comped meals are not subject to the sales tax. No such bill has been introduced yet, with seven days left in the session. Since the issue began working its way through the court system, the Legislature has refused to clarify the law one way or the other.

Under the agreement, a handful of smaller casinos and companies that have gone out of business would be eligible for refunds of up to \$5 million. The Nevada Board of Examiners would have to approve the refunds.