BOSSIER CASINO VENTURE, L.L.C.
D/B/A MARGARITAVILLE
RESORT CASINO

vs. **B.T.A. DOCKET NO. L01710**

THE COLLECTOR FOR THE CITY
OF BOSSIER/PARISH OF BOSSIER;
BOSSIER CITY - PARISH SALES AND USE TAX DIVISION

Consolidated for purposes of trial only with:

PNK (BOSSIER CITY), LLC
D/B/A BOOMTOWN
CASINO & HOTEL

vs. **B.T.A. DOCKET NO. L01762**

THE COLLECTOR FOR THE CITY
OF BOSSIER/PARISH OF BOSSIER;
BOSSIER CITY - PARISH SALES AND USE TAX DIVISION

JUDGMENT WITH WRITTEN REASONS

On August 26, 2025, these matters came before the Board for consolidated hearing on the merits, with Local Tax Judge Francis J. "Jay" Lobrano presiding. Appearing before the Board were Greg Stevens and Kevin Walsh, attorneys for Bossier Casino Venture, L.L.C. D/B/A Margaritaville Resort Casino ("Margaritaville") and PNK (Bossier City), LLC D/B/A Boomtown Casino & Hotel ("Boomtown") (collectively, the "Casinos"), and Drew Talbot, attorney for The Collector for the City of Bossier/Parish of Bossier; Bossier City - Parish Sales and Use Tax Division ("Collector"). At the conclusion of the hearing, the Board took the matters under advisement. The Board now issues Judgment in accordance with the attached Written Reasons for Judgment.

IT IS ORDERED, ADJUDGED, AND DECREED that the Notice of Assessment dated January 31, 2023, to Margaritaville for sales tax, occupancy tax, interest, and penalties for the tax periods January 1, 2018, through December 31, 2021, BE AND IS HEREBY VACATED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Notice of Assessment dated April 5, 2023, to Boomtown for sales tax, occupancy tax, interest, and penalties for the tax periods January 1, 2019, through December 31, 2021, BE AND IS HEREBY VACATED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be final Judgment in favor of Bossier Casino Venture, L.L.C. D/B/A Margaritaville Resort Casino and PNK (Bossier City), LLC D/B/A Boomtown Casino & Hotel against the Collector.

JUDGMENT RENDERED AND SIGNED AT BATON ROUGE LOUISIANA, THIS DAY February 5**, 2026.**

FOR THE BOARD

CHAIRMAN FRANCIS J. "JAY" LOBRANO
LOCAL TAX JUDGE
LOUISIANA BOARD OF TAX APPEALS

BOSSIER CASINO VENTURE, L.L.C.
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Procedural Status and Legal/Factual Issues

This case results from an appeal filed by Margaritaville and Boomtown in response to (1) the Collector's Notice of Assessment dated January 31, 2023, assessing Margaritaville $1,715,044.92 in sales tax, $2,058,053.88 in occupancy tax, $987,865.57 in interest (calculated through April 1, 2023), and $943,274.82 in

penalties (calculated through April 1, 2023), for a total assessed amount of $5,704,239.19 ("Margaritaville Assessment"); and (2) the Collector's Notice of Assessment dated April 5, 2023, to Boomtown for $193,156.71 in sales tax, $463,576.08 in occupancy tax, $142,892.94 in interest (calculated through June 4, 2023), and $164,183.29 in penalties (calculated through June 4, 2023) for a total assessed amount of $963,809.02 ("Boomtown Assessment"). The tax periods at issue in the Margaritaville Assessment are January 1, 2018, through December 31, 2021[1] ("Margaritaville Tax Periods"), and the tax periods at issue in the Boomtown Assessment are January 1, 2019, through December 31, 2021 ("Boomtown Tax Periods") (collectively, the "Tax Periods at Issue"). The Casinos timely filed their Petitions for Redetermination of Assessment with this Board.

The single issue in this case is whether local sales and occupancy taxes are due on the Casino's complimentary hotel rooms ("Comps") furnished to selected Patrons and guests ("Patrons"). This is a case of first impression in Louisiana. The taxability of the Comps was previously presented to the Board via Cross-Motions for Summary Judgment filed by the Collector and the Casinos. The Board denied both motions. As stated in the Board's Reasons for Judgment issued February 6, 2025, a material dispute existed as whether the Patrons receiving the Comps paid or gave consideration for those rooms, and if so, did the consideration rise to a level to render the furnishing of the Comps a taxable event for purposes of the local sales and occupancy tax? Further, assuming that the Collector's position that the Comps are subject to local sales and occupancy taxes is correct, then the determination of the sales and occupancy tax base (i.e., the value of the Comps) was an additional material fact in dispute. The Board found that both questions should be resolved at trial on

[1] 2024 Acts 592, effective June 11, 2024, enacted La. R.S.47:337.11.4 and provides in part that ". . . . no local governing authority, including a local political subdivision or school board, shall levy any fee or tax on nongaming incentives or inducements granted by such licensee to a patron on a complimentary basis, or solely through the redemption of rewards from a loyalty rewards program. . . .". Section 2 of the Act further statues that the Act is interpretive and not substantive; it does not change the law or establish new rules, rights or duties to any person. As the Act did not expressly state that it is retroactive, its application is prospective only and thus does not apply to the Tax Periods at issue. Both the Casinos and the Collector agree that Act 592 is not retroactive.

the merits. Both parties applied to the Second Circuit for supervisory writs. However, the Second Circuit denied both applications. Thus, the material issues are now before the Board with the benefit of witness testimony and the record produced at trial.

Evidence Adduced at Trial

The Casinos provided testimony from Bryan Goslin, Senior Vice President and Chief Accounting Officer for Penn Entertainment, Inc. ("PENN").[2] PENN is the parent entity of both Casinos. PENN acquired Boomtown when it acquired Pinnacle Entertainment, Inc. on October 16, 2018. In a separate transaction, PENN acquired Margaritaville on January 2, 2019, from a private equity firm.[3]

Mr. Goslin's responsibilities include oversight of PENN's Shared Services function. Mr. Goslin described Penn's Shared Services as the corporate office's consolidated maintenance of accounts payable, receivable, general ledger, capital assets, and fixed assets. Centralizing these functions in the corporate office alleviates PENN's many properties, of which the Casinos in these matters are only two, from having to handle these responsibilities. Additionally, centralization allows for homogeneous recognition of transactions in PENN's accounting.

Mr. Goslin testified that all PENN properties follow Generally Accepted Accounting Principles ("GAAP"). He described GAAP as a standardization and set of policies that govern accounting rules and procedure for financial reporting purposes. Thus, GAAP governs the reports and financial statements that PENN submits to the SEC and other financial regulators.[4] Mr. Goslin stated that GAAP is specifically used for externally reported financial statements. However, he conceded that GAAP deals with tax to an extent.

Mr. Goslin characterized GAAP as generally applicable to all industries and companies that file or furnish financial statements. Thus, GAAP is not specific to the

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[2] Before he assumed his current position, Mr. Goslin was PENN's Vice President of Financial Reporting.

[3] As such, PENN did not own Margaritaville during the January 2018 through December 2018 portion of the Margaritaville Tax Periods. PENN owned Boomtown for the entirety of the Boomtown Tax Periods.

[4] Mr. Goslin stated that PENN makes reports to SEDAR, which he described as the Canadian counterpart to the SEC.

casino industry. Nevertheless, Mr. Goslin identified Financial Accounting Standards Board ("FASB")[5] Accounting Standards Codification ("ASC") 606 ("ASC 606"), as a provision of GAAP that is specifically applicable to PENN's reporting of revenue during the Tax Periods at Issue. However, ASC 606 is applicable to multiple industries and not exclusively applicable to casinos.

FASB first published the guidance that would eventually become ASC 606 in 2014. ASC 606 became effective on January 1, 2018. ASC 606 replaced an earlier GAAP provision entitled ASC 605. Under ASC 605, PENN reported Comps as "Promotional Allowances." ASC 605 created challenges for PENN after it acquired Boomtown and other properties from Pinnacle.[6] Mr. Goslin stated this was because Pinnacle's reporting under ASC 605 was inconsistent across similar properties. The adoption of ASC 606 helped PENN resolve these inconsistencies.

ASC 606 provides a five-step framework for reporting revenue on financial statements. Mr. Goslin described the five-step process[7] as:

- Step 1: Identify a contract. Mr. Goslin testified that the Casinos identified an implied contract when a customer redeemed a Comp offer,

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5 Mr. Goslin described the FASB as a task force which issues position papers for industry guidance in financial reporting, including position papers applicable to the Casinos.

6 The Board sustained the Collector's objection to Mr. Goslin giving expert testimony on the industry-level issues with ASC 606. Per the Board's Scheduling Order, the provisions of La. C.C.P. art. 1425 apply to expert witnesses in these matters. Under La. C.C.P. art. 1425(A), a "party may through interrogatories or by deposition require any other party to identify each person who **may** be used at trial to present evidence under Articles 702 through 705 of the Louisiana Code of Evidence." [emphasis added]. Counsel for the Collector undisputedly requested such disclosures from the Casinos through interrogatories. The Casinos did not identify Mr. Goslin as an expert witness or potential expert witness prior to trial.

Counsel for the Casinos argued that Mr. Goslin was qualified as an expert based on his accounting degrees, CPA licenses, participation in industry-related continuing education, and that he sits on boards in the industry. In addition, the testimony objected to was elicited on direct examination as part of the Casinos' case in chief. Under these circumstances, the Board finds that it was foreseeable to the Casinos that Mr. Goslin might be called to provide expert testimony and the Casinos were required to identify him as a potential expert witness under La. C.C.P. art. 1425(A). Nevertheless, as stated by the Board in ruling on the objection, Mr. Goslin's testimony describing issues with ASC 605 he encountered in his experience with the Casinos, as opposed to opinions on the application of these standards on an industry wide basis, is admissible.

7 The process described is applicable to "discretionary" Comps. Non-discretionary Comps are rewarded when customers redeem points accrued through loyalty programs. Mr. Goslin testified that on a monthly basis during the Tax Periods at Issue, less than one-half of one percent of customer loyalty points were used to redeem Comp rooms. Even then, it was very infrequent for loyalty points to be used to cover the entire cost of a Comp room. If a customer used points for part of a Comp room and tendered the remainder of the price in cash, then the Casinos paid tax on the cash payment. As such, non-discretionary Comps, *i.e.* Comps redeemed via loyalty points, account for an infinitesimal portion of the amount in controversy in these matters. In the fact, counsel for the Collector admitted during the trial that the issue of whether sales and occupancy taxes were remitted on non-discretionary comps was not an issue in these cases.

regardless of their membership or non-membership in PENN's loyalty program.

- Step 2: Identify performance obligations. According to Mr. Goslin, under the implied contract, the Casinos are obligated to furnish a room and related amenities when a customer accepts a Comp offer.
- Step 3: Determine the transaction price. Step 3 requires the entity to determine the amount of consideration in a contract to which an entity expects to be entitled in exchange for transferring promised goods or services to the customer. Mr. Goslin maintained that the Casinos view the monetary consideration for furnishing a Comp room to be $0.[8] Nevertheless, ASC 606 requires the Casinos to estimate a "standalone selling price" for the Comp rooms. To make this estimate, the Casinos take the amount of cash revenue for the month, divide it by the number of rooms provided to cash paying customers to determine an average cash price, then multiply that average cash price by the total number of Comp room nights furnished to determine gross implied Comp room revenue for the reporting month.
- Step 4: Allocate the transaction price. The Casinos add the gross implied Comp room revenue to the gross cash revenue from their hotels for the reporting month. The Casinos then make an equivalent reduction in the gross revenue from gaming for the reporting month. The result effectively shifts some reported revenue from gaming revenue to hotel revenue without making any net change to the cumulative gross revenue shown on the report.
- Step 5: Record the transaction: As stated above, the Casinos calculated and report implied Comp rooms revenue on a monthly basis in cumulative total that does not report individual transactions.

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[8] FASB ASC 606-10-32.2 states "the transaction price is the amount of consideration to which the entity expects to be entitled."

PENN's treatment of Comp rooms under ASC 606 reflects the Casinos' view that Comp rooms are an inducement for customer visitation and, indirectly, increased gaming activity. Thus, as shown in Step 4, for purposes of GAAP, PENN effectively re-allocates a portion of gaming revenue to hotel revenue. Mr. Goslin stressed that this reallocation is done solely for purposes of financial reporting under ASC 606. For example, PENN does not re-allocate gaming revenue to hotels when calculating the tax it pays to the State of Louisiana on its gaming revenue, which tax is unrelated to the Louisiana sales and use tax. Thus, Mr. Goslin testified that the amount re-allocated does not reflect an actual valuation of what the Comp rooms are worth.

Additionally, Mr. Goslin stated that a small portion of Comp "revenue" is attributable to "administrative" Comps. Administrative Comps are not furnished to individuals as inducements to gamble. Rather, administrative Comps are provided to the Casinos' employees for the convenience of the Casinos. Examples of administrative Comps include rooms furnished to employees for purposes of employee appreciation or furnished to travelling employees during business trips. The Casinos treat administrative Comps in the same manner as discretionary Comps for financial reporting purposes. Mr. Goslin explained that this treatment is required by ASC 606.

The Casinos provided testimony from their Vice President of Finance, Sonja Raez. Ms. Raez stated that, from an accounting perspective, a Comp room has no value. Ms. Raez further described Comp rooms as amenities provided to guests. She acknowledged that Comp rooms have an expense associated with them. However, she maintained that Comps do not have value just because they have associated expenses.

Ms. Raez acknowledged that the Casinos recorded values for Comp rooms on their general ledgers. Ms. Raez testified that the values recorded for Comps were arbitrary. These figures were only recorded to keep track of the rooms. Ms. Raez further testified that the ledger entries for Comps have zero net impact on the Casinos' financial statements.

Ms. Raez explained the figures shown on the Casinos sales tax and occupancy tax returns.[9] Ms. Raez testified that PENN simply copied the reporting practices of the previous owners with respect to how Comp rooms were treated. As explained further below, this led to superficial differences as to whether Comp room implied revenue was included in the gross sales or rentals reported on the returns. Regardless, the Casinos never included Comp room "revenue" in the reported taxable amounts on its returns.

Margaritaville reported the cumulative revenue from their financial statements as gross sales on its sales and use tax returns and as gross rentals on its occupancy tax returns. Because the gross figures were taken from the financial statements, they included the implied revenue from Comp rooms. However, Margaritaville deducted the Comp room revenue from their taxable sales via a line item for "other deductions authorized by law" on sales tax returns. Margaritaville likewise deducted Comp room revenue as a line item for "Comp Rooms/LA Municipal Ee/Chargebacks" on its occupancy tax returns.[10]

Unlike Margaritaville, Boomtown did not include Comp room revenue in gross sales reported on its sales and use tax returns for the Boomtown Tax Periods. Thus, it was not necessary for Boomtown to deduct Comp room revenue from its taxable sales. However, Boomtown included implied Comp room revenue in the gross rentals reported on its occupancy tax returns. Like Margaritaville, Boomtown deducted the value attributed to Comp rooms via a line-item deduction for "Room-Comp."

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[9] On cross-examination, Ms. Raez admitted that she did not prepare the returns during the Tax Periods at Issue. The returns were jointly introduced and their authenticity is not in question. However, Ms. Raez was not able to explain apparent inconsistencies in the values reported for Comp rooms on the sales tax returns versus the occupancy tax returns. These inconsistencies appear in Margaritaville's returns for the Tax Periods January 2018 through May 2018. Additionally, the following returns appear to have been omitted from the Joint Exhibits: Margaritaville's August 2018 sales tax return (Joint Exhibit 8); Margaritaville's February 2019 occupational license tax return (Joint Exhibit 9). Nevertheless, Ms. Raez's assertion that the Casinos did not include implied Comp room revenue in their reported tax bases for either sales or occupancy taxes is clearly supported by the numbers and line items shown on the returns. Furthermore, there is no dispute as to the Collector's calculation of the number of Comp rooms furnished or the resulting mathematical calculation of the amount at issue, which are reflected on the Assessments and accompanying tables.

[10] Ms. Raez stated that "Chargebacks" are charges disputed by a customer and not collected. "LA Municipal Ee" means guests who stayed in a hotel who were tax exempt, *i.e.* government employees.

Regardless of whether in the preparation of the local sales tax returns Comp room revenue was not included in gross sales or included and later deducted from gross sales, the end result of both Boomtown's and Margaritaville's return methodology was that neither Casino ever included the implied Comp room revenue in their reported tax base for either sales tax returns or occupancy tax returns during the Tax Periods at Issue.

The Casinos provided testimony from their Finance Controller, Starla Bell. Ms. Bell provided data spreadsheets to the auditor showing the Casinos' Comp room, cash revenue, expenses, and Cost Per Occupied Room ("CPOR"). The spreadsheets reflect the Casinos' aggregate, monthly, internal bookkeeping numbers for the "prices" of Comp rooms. Ms. Bell testified that for this purpose, the Casinos multiplied the nights Comped per room Comped by certain pre-determined room rates.

For Margaritaville, the room rates used varied based on the day of the week and the type of room. Margaritaville offered standard rooms, suites[11], and presidential rooms. Room rates were lower on weekday nights for standard rooms and suites. The room rates for presidential rooms did not vary by the day of the week.

Ms. Bell included room expenses on the spreadsheets provided to the auditor. The expenses reported included the costs of the front desk, housekeeping, valet, supplies, and any expenses that went along with the hotel. The Casinos further divided their total monthly expenses by the total number of rooms furnished (Comped and non-Comped) for a given month to determine their monthly CPOR.

Ms. Bell testified as to how the furnishing of a Comp room makes it onto the Casinos' ledgers. Comp room offers are redeemed by guests at the hotel front desk. The guest presents verification of their identity. Guests are not told the cash rate of the room being Comped. Guests must present a credit card which goes on file during their stay. Ms. Bell explained that the credit card is necessary in case the guest incurs any charges which are not Comped. Ms. Bell testified that typical non-Comped room

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11 Margaritaville's middle tier rooms were sometimes described as "suites" and sometimes described as "double" standard rooms.

charges included long-distance phone calls, room service,[12] meals charged to the room, and movie rentals. In addition, amenity and resort fees[13] were not Comped for members of lower tiers of the Casinos' loyalty program.

PENN's revenue audit department recorded an amount for Comps. The Casinos' witnesses described the amount recorded for this purpose as "arbitrary." Apparently, the arbitrary rates were devised by the Casinos' previous owners and simply inherited by PENN. Neither Ms. Bell nor Mr. Goslin knew how the previous owners of the Casinos had come up with these room rates. Furthermore, the arbitrary rates were not the same as the rates charged to cash paying customers. It appears that the actual cash rates were higher than the arbitrary rates.[14] Additionally, PENN recorded the expenses of preparing, cleaning, and stocking hotel rooms. These expenses were the same for both cash and Comp rooms.

The arbitrary rates for Margaritaville were: $50.01 per night for standard rooms Sunday through Thursday; $70.01 for standard rooms Friday and Saturday; $100.01 for suites Sunday through Thursday; $125.01 for suites Friday and Saturday; and $300.01 for presidential rooms any day of the week. The rates for Boomtown were: $50.00 for standard rooms Sunday through Thursday; $70.00 for standard rooms Friday and Saturday; $70.00 for suites Sunday through Thursday; $90.00 for suites Friday and Saturday; and $225.00 for PENN suites any day of the week.

The Casinos provided testimony from PENN's Vice-President of Marketing Strategy, William Zeralksy. Mr. Zeralsky explained the concept of the "marginal cost" to occupy a room. The marginal cost is the increment of additional expenses incurred in furnishing one additional room. These marginal costs include housekeeping, labor, and in-room amenities. Marginal costs do not include the baseline and overhead expenses associated with running the hotel, such as the front desk or other costs that do not increase when an additional room is occupied. According to Mr. Zeralsky, the

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12 This applied only to Margaritaville because Boomtown did not offer room service.

13 According to Ms. Bell's testimony, the Casinos began charging amenity and resort fees somewhere around the middle of the Tax Periods at Issue.

14 An example is provided in the deposition of Kate White, introduced under seal as Exhibit D1.

marginal cost for Comp rooms during the Tax Periods at Issue ranged from approximately eighteen to twenty dollars per room per night.

Mr. Zeralsky explained how the Casinos strategize when and to whom to offer Comps. The Casinos use a concept described as "theoretical win." Mr. Zeralsky defined "theoretical win" as an internal forecast term that measures gaming behavior and volume against the house's statistical advantage. Theoretical win is determined by the odds of the game played, a customer's average bet, and the length of time that the customer plays a particular game. The house's statistical advantage depends on the game played. Slot machines, for example, will have a manufacturer-warranted win rate. Table games, on the other hand, are less predictable. Accordingly, Theoretical win is not a perfect prediction of "actual win," *i.e.* the revenue that Casinos will actually earn from a particular customer over the course of a particular gaming session.

The Casinos' decision to extend a Comp to a Patron was often dependent on an individuals prior gambling history with each Casino. Mr. Zeralsky testified that the Casinos would review data recorded over an eighteen-month lookback period. Customers who gambled more received more hotel offers. Customers with lower rates of gaming might not receive hotel offers unless the Casinos anticipated that business would be slow on a particular night. If, over time, a Patron stopped or reduced their gaming activity, they were less likely to receive a hotel offer.

During the Tax Periods at Issue, the Casinos used specialized third-party software for yielding analysis of those who would receive Comps. Boomtown used a program called "Rainmaker" before switching to a program called "Duetto." Margaritaville only used Duetto. The yielding data, theoretical win data, and other various inputs aimed at gauging the potential gaming behavior of a particular customer are native to these databases. According to the Casinos, the data can be extracted from Duetto in an excel spreadsheet. However, the extracted data is voluminous, cumbersome to use, and contains proprietary information. As such, both

the Collector and the Casinos agreed that the raw data would not be introduced at trial, but rather summaries of the data were introduced under seal.

The Casinos also provided testimony from their current Director of Business Intelligence, Ryan Hendershot.[15] Mr. Hendershot explained the organization of the summarized data. He explained how the Casinos used the data Comps to identify customers, and that often times the Casinos extended Comps to Patrons where the data indicated that the potential revenue from those Patrons was less than the marginal cost of providing the room. The Casinos also furnished Comp rooms to customers with no prior gaming history with the Casinos. He also testified that in the case of Margaritaville, the potential revenue for most customers who received Comps was less than the marginal cost of providing the room.

The Casinos provided testimony from Justin Carter, PENN's Senior Vice President of Regional Operations. Mr. Carter testified that, statistically, over time, more gaming activity means more profit for PENN. However, the Casinos cannot and do not try to, compel anyone to engage in gaming. Instead, the Casinos use their assets to persuade or induce people to gamble. He testified that providing Comps is one way to do persuade Patrons to gamble. Comp rooms can incentivize a customer to visit the Casinos instead of their competitors that may be geographically closer to those potential customers. Comp rooms can also persuade a customer to spend their leisure time at the Casinos rather than on any other form of recreation. In addition, the Casinos need to incentivize gaming even though the customers will lose more often than win. As stated by Mr. Carter, sometimes the customer spends money during a night at the casino and comes away with nothing to show for it. Comp rooms, and other forms of Comps, provide the Casino with a way to give the customer the feeling that they got something out of their visit.

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[15] The Collector introduced the deposition of Kate White into the record. Ms. White is the Casino's former Vice President of Business Intelligence and Product Management. She prepared the data provided to the auditor for the Tax Periods at Issue. Mr. Hendershot succeeded her in that role when she left PENN in April of 2014. Mr. Hendershot conceded that Ms. White's testimony should prevail over his in the event of a conflict.

Most importantly, Mr. Carter's testimony established that the Patrons were required not required to gamble or otherwise do anything else to obtain a Comp. Mr. Carter's testimony included the following specific questions and answers:

Question: When you're trying to use these comp rooms as incentives, or as a marketing tool as you said, in your view as a decision-maker in operations, do you have any expectation of getting any value back from an individual that you give a Comp Room to?

Answer: No. No, and the reason is, just because I give you a comp room – you could put your cousin in that room. I don't know what you're going to do with that room. You might bring your kids to the room. You – and in often cases – we give you the room, and you don't want to go to it. You might have a great night in the casino, never touch the room. So, there's really no expectation. It's a tool. Like a ton of the other tools we have in our businesses. That's the way we see it.

Question: Setting accrued points aside, is your company ever under an obligation to provide a complimentary hotel to anyone?

Answer: No, no we're not.

Question: When you make the marketing decision to provide a complimentary hotel room to someone, is that person obligated to do anything in return, other than show up and check in?

Answer: No, no they're not.

Mr. Carter testified that discretionary Comps are not offered solely based on the Casinos' proprietary method for calculating estimated gaming revenue from a potential customer. Managers at the Casinos are expected to monitor customers and may decide that it is in the best interest of customer loyalty to offer someone a Comp room. Examples of such scenarios provided by Mr. Carter included: offering a Comp room to guests who are evidently celebrating a birthday; offering a Comp room to a Patron as a way to clean up after a drink is spilled on them; offering a Comp room to a visibly intoxicated Patron to keep that person from driving; offering a Comp room to an unknown Patron who spends a lot of money on their first visit; or offering a Comp room to a regular Patron who has a bad night.

Mr. Carter also testified that PENN practices "player development." Player development is a method of developing a new Patron into a regular player at the Casinos. Managers can offer Comps to Patrons who are not members of the loyalty program and for whom PENN has not collected any data. Mr. Carter gave the

example of a manager noticing a new customer having a good night, or an especially bad night, at the blackjack table. The manager had the discretion to offer that customer a Comp, and as part of that offer, could enroll them in the loyalty program, though there was no testimony that the manager was required to enroll them in the loyalty program in order to issue the Comp.

In addition, Mr. Carter testified that factors unrelated to individual customers may reduce the importance of a Patron's prior gaming history data. Such factors would be known to human managers but not to software calculating potential revenue from a Patron. For example, a human manager might know that road construction would deter customers from visiting the Casinos. That manager could offer Comps and provide Patrons with a map of the backroads to take to get to the premises. Mr. Carter also stated that a human manager might offer Comps to individuals with no history with the Casinos to offset the draw of a concert held at a competing casino.

Finally, the testimony of several of the Casinos' witnesses established that there was never a situation where a Patron had to agree to do anything in order to receive a Comp room. There was not even evidence to suggest that once a Patron receiving a Comp checked in and obtained a room key, that the Patron had to actually sleep or otherwise physically enter the Comp room. Further, there was no testimony that a manager was required to obtain enrollment in the loyalty program or secure anything of value from a Patron before he or she could use their discretion in extending a Comp room to that Patron.

Casinos' Motion in Limine

Prior to the trial, on August 6, 2025, the Casinos filed Motions in Limine, seeking an order barring the Collector from offering expert witness testimony and evidence. The Collector responded to the Motion by pointing out that neither party had identified any expert witness in discovery and that the Collector did not intend to present expert testimony. The Motion in Limine was heard on August 19, 2025, and taken under advisement.

The Collector made no attempt to offer expert witness testimony during the trial. As such, the Motion is moot.

Discussion

The two taxes at issue in this case are the local sales tax and the local hotel occupancy tax. The applicability of the local sales tax turns on whether the furnishing of complimentary rooms results is a transaction that is "for a consideration or the amount paid or charged" as defined in La. R.S. 47:301(14)(a) and Bossier City Ordinance No. 55, Section 2.1[16]. Likewise, the applicability of the local occupancy tax turns on whether the furnishing of complimentary rooms constitutes the occupancy of a room "for a rent or fee charged"[17]. For the reasons set forth below, the Board finds that the Casinos' furnishing of complimentary rooms does not result in the imposition of either the local sales tax or occupancy tax.

Local Sales Tax – Ordinance 55, La. R.S. 47:301(14)(a).

The issue of whether a Comp is subject to the local sales and use tax turns on statutory construction and whether the imposition of the local sales tax under the local ordinances applies to the furnishing of a Comp by the Casino to a Patron. It is undisputed that in the instant case, the Casinos did not receive from a Patron "an amount paid or charged" for any Comp. Therefore, the only question to be resolved is whether the Patron received a Comp "for a consideration" as set forth in La. R.S. 47:301(14)(a).

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[16] The Bossier Parish and City of Bossier sales tax ordinances contain substantially identical language to the state sales tax statute imposing the sales tax on the furnishing of hotel rooms. See footnote 5 of the Collector's Memorandum in Support of Motion for Summary Judgment filed in these proceedings. La. R.S. 47:301(14) (a) provides that the "[s]ales of services" means the furnishing, receiving, or sale of one or more of the services provided for in this Chapter for a consideration or the amount paid or charged. La. R.S. 47:301(6) defines "hotel". La. R.S. 47:301.3(a) includes as a taxable service the rental or furnishing of sleeping rooms, cottages, cabins, rooms, suites, condominiums, townhouses, rental houses, or other accommodations by **hotels**, apartment hotels . . . [emphasis added].

[17] Shreveport-Bossier Convent and Tourist Commission Ordinance 99-1 imposes an occupancy tax separate and apart from the sales tax, which provides in pertinent part (Section 1.02) that "there is hereby levied and posed a tax of four and one-half percent upon the rent or fee charged upon the occupancy of hotel rooms, motel rooms and overnight camping facilities within the jurisdiction of the Commission."

Neither the state sales and use tax statutes nor the local ordinances define "consideration" as used in the context of La. R.S. 47:301(14)(a). The 12th Edition of Black's law dictionary defines consideration as "something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act." As previously explained, it is undisputed that the Patron neither paid an amount or was charged an amount for the Comp. Therefore, the question is whether the Casinos bargained for and received something; e.g., an act, a forbearance, or a return promise, from the Patron in return for the Comp. The Board finds that they did not.

The testimony and other evidence adduced at trial established that a Patron was under no obligation to gamble during the period of the Comp stay. Further, there was no evidence that a Patron had to enroll in the loyalty program, agree to physically occupy the Comp room for any period during the Comp stay, or agree to do anything in exchange for the Comp. The Collector argues that the Comp room was not purely gratuitous on the part of the Casinos, and that the Casinos had developed a sophisticated and proprietary program to identify those potential Patrons who had a high likelihood of gambling during the Comp stay; and therefore urges the Board to use a broader definition of the term "consideration" when considering the application of La. R.S. 47:301(14) to the furnishing of Comps. However, the Board finds that the definition of "consideration" as used in the statute requires that the Patron be obligated to act, or promise to act, in exchange for the Comp. The mere hope or expectation that a Patron will gamble during the Comp stay does not rise to the level of a "consideration" by the Patron. In other words, there is no quid pro quo in the Comp transaction. The mere agreement of a Patron to accept the Comp does not rise to the level of a that Patron giving the Casina a consideration as required by La. R.S. 47:301(a)(14).[18] The Board agrees with the Casinos that the Comps are more properly

[18] While not directly on point, at least two jurisdictions have recognized that "free" or "complimentary" tickets furnished for athletic events or other entertainment or amusement event are

described as a promotional or marketing expense as opposed to the furnishing of a room for a "consideration".

The Collector relies on the only decision considering the taxability of a casino's Comped hotel rooms, *Jazz Casino Co., L.L.C. v. Bridges*, 2019-1530 (La. App. 1 Cir. 7/29/20), 309 So. 3d 741, *writ granted in part, judgment rev'd in part*, 2020-01145 (La. 2/9/21), 309 So. 3d 729. However, the issue in *Jazz Casino* was the interpretation of a state statute which was limited to Harrah's casino in New Orleans, and thus does not serve as precedent for the instant matter. In *Jazz Casino*, the taxpayer operated what was then known as Harrah's casino in New Orleans. Harrah's was, at one time, the only land-based casino in Louisiana. During that time, La. R.S. 47:243 provided requirements for a land-based casino operating contract, which necessarily applied only to Harrah's. That statute specifically provided for the taxation of Harrah's Comped rooms.

La. R.S. 47:243 was enacted as Harrah's emerged from bankruptcy. The statute represented a compromise that allowed the casino operator to begin operating hotels in New Orleans that were not adjacent to the casino. In addition, the legislation significantly reduced Harrah's statutory payments to the state. In exchange, Harrah's was obligated to pay room taxes on all discounted and complimentary rooms based on a specific, statutorily-prescribed formula. Under that formula, Comp rooms were subject to room taxes at the average seasonal rate for hotel rooms from the preceding year under La. R.S. 27:243(C)(1)(i)(2).

After the enactment of La. R.S. 27:243, the casino operator built an offsite hotel which it used to offer Comp rooms to its customers. In addition to its own stock of hotel rooms, the operator reserved blocks of rooms at third-party hotels, which it also used to offer Comp rooms. The operator did not pay Louisiana sales tax on the

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not subject to sales tax because no consideration was given by the recipient of those tickets. *See* New York State Department of Taxation and Finance, Taxpayer Services Division, Technical Services Bureau, TSB-M-78(16)S ("Free" or "Complimentary" tickets furnished for athletic events are not subject to the tax imposed under section 1105(f)(1) of the Tax Law, since no additional consideration for the tickets was given") and City and County of Denver, Colorado, Tax Guide, Topic No. 26 ("Complimentary tickets used for an event at a City facility are not subject to [tax] since there is no consideration that would constitute a purchase price").

complimentary rooms provided from its own hotel. However, the operator did pay Louisiana sales tax on the third-party hotel rooms when it reserved them based on a contractually negotiated rate. *Jazz Casino*, 2019-1530, at p. 5-6, 10, 309 So.3d at 746, 748.

In 2018, the Department filed a declaratory judgment action asserting that Harrah's owed State room taxes on all complimentary rooms based on the average seasonal rate as set forth in La. R.S. 27:243. The First Circuit agreed, finding that the statute unambiguously required Harrah's to pay state sales tax on all Comp rooms. The Louisiana Supreme Court upheld the First Circuit's ruling, except as concerned rooms supplied by third-party hotels. The Court reversed that portion of the First Circuit's decision because La. R.S. 27:243 did not apply to hotel rooms that the casino did not "own" or "operate." *Jazz Casino Co., L.L.C. v. Bridges*, 2020-01145 (La. 2/9/21), 309 So.3d 729. Harrah's neither owned nor operated the third-party hotel rooms.

As stated above, La. R.S. 27:243(C)(2)(e) applied only to Harrah's since it was the state's only land-based casino. The statute does not apply to the Casinos in these matters. Furthermore, it is evident from the First Circuit's reasoning that the Court did not establish a general principle of sales tax law. Both the First Circuit and the Louisiana Supreme Court determined that the financial obligations applicable to Harrah's under La. R.S. 27:243(C)(2)(e) was not a tax.

As stated by the First Circuit:

> It is well settled generally, and specifically in Louisiana, that not every imposition of a charge or fee by the government constitutes a demand for money under its power to tax. If the imposition has not for its principal object the raising of revenue, but is merely incidental to the making of rules and regulations to promote public order, individual liberty, and general welfare, it is an exercise of the police power. In similar fashion, the police power may be exercised to charge fees to persons that have received grants or benefits not shared by other members of society.[19]

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[19] *Jazz Casino*, 2019-1530 at p. 14, 309 So.3d at 750-51 (*citing Audubon Ins. Co. v. Bernard*, 434 So.2d 1072, 1074 (La. 1983).

La. R.S. 27:243(C)(2)(e) was specifically enacted for Harrah's benefit. The room taxes Harrah's paid on Comp rooms were fees levied in exchange for the right to operate a hotel and to reduce other payments to the state. The room "taxes" at issue in *Jazz Casino* were not upheld as an exercise of the power to tax. Furthermore, if the average nightly rate formula were meant to be generally applicable to Comp rooms, then it would not have been necessary for the legislature to spell it out in the statute specially tailored for Harrah's.

Generally, a vendor who provides "complimentary" items of tangible personal property to customers as a marketing incentive is treated as having used or consumed those items, rather than having sold those items to the customer. This treatment generally favors the Casinos in this particular case. This principle is explained in *Mercury Cellular Telephone Co. v. Calcasieu Parish of Louisiana.*, 2000-0318 (La. App. 3 Cir. 12/13/00), 773 So.2d 914, 916, *writ denied sub nom. Mercury Cellular Tel. Co. v. Calcasieu Parish*, 2001-0126 (La. 3/16/01), 787 So.2d 314. *Mercury Cellular* involved a telecommunications service provider that sold cellphone plans and cellphones.

The taxpayer in *Mercury Cellular Telephone Co.* purchased cellphones from wholesalers under a resale certificate. However, the taxpayer offered the cellphones as incentives bundled with cellphone plans. In some instances, the taxpayer offered them to subscribers without additional charge. In other instances, the taxpayer offered them for a nominal fee or at a discounted price. Despite having purchased the cellphones under a resale certificate, the taxpayer did not treat the bundled cellphones that were given to customers as retail sales for purposes of collecting and remitting sales tax.

The collector sought to impose use tax on the taxpayer's use of the cellphones as promotional items. The taxpayer denied that it had used the cellphones, and claimed to have resold them to customers. Further, the taxpayer maintained that it included the cost of the cellphones in the monthly fees for the plans, on which the provider had collected and remitted tax.

The taxpayer relied upon the Second Circuit's decision in *S & R Hotels v. Fitch*, 25,690 (La. App. 2 Cir. 3/30/94), 634 So.2d 922. In *S&R Hotels*, the Court held that for purposes of the local sales tax, "complimentary" meals provided by a hotel with premium lodging were sold by the hotel to customers as the price paid for the hotel rooms included the meals. Thus, the hotel's purchases of food items were purchases for resale and thus excluded from the definition of a sale at retail and not taxable. As noted by the Second Circuit, "[w]here goods are not furnished as a normal incident to furnishing professional services and the price of the goods is separable and can be established, the initial sale is not a retail sale but is a sale for resale." *Id.* at 927.

Returning to *Mercury Cellular Telephone Co.*, the Third Circuit disagreed. The Court found that the taxpayer had not "sold," the phones by giving them away for "free," stating: "free is the antithesis of sale: one cannot 'sell' an item that is provided free of charge." *Mercury Cellular*, 2000-0318 at p. 6, 773 So.2d at 918. The Court further distinguished *S&R Hotels*, because in that case, the taxpayer was able to prove that customers who purchased premium lodging paid extra for the "complimentary" meals, whereas the taxpayer in *Mercury Cellular* charged customers the same price for cellphone plans regardless of whether they also received a "free" cellphone. The Court ultimately agreed with the collector that that the provider "used" the discounted cellphones as "an incentive invariably provided . . . as a conduit for marketing its cellular service." *Mercury Cellular*, 2000-0318 at p. 8, 773 So.2d at 919. Thus, it was the taxpayer's purchase and use of the cellphones that served as the basis for the imposition of the local sales tax, not the transaction in which the taxpayer gave the free cellphone to the customer.

Unlike the cellphones in *Mercury Cellular*, the furnishing of a hotel room is the sale of a service and not the sale of tangible personal property. Nevertheless, under *Mercury Cellular*, a business can use its assets as a marketing tool. As established by the uncontroverted testimony at the trial of this matter, it is clear that is what occurred here. The Casinos marketed their facility as a whole, including the casino, in offering Patrons the Comps. Even though the Comps were likely to result in an

increase in gaming revenue to the Casinos, which clearly was the business purpose for the Comps, the evidence at trial clearly established that the Patron did not transfer or give any consideration to the Casinos in exchange for the Comp. Had the Casinos instead purchased rooms from an unrelated third party hotel for use as Comps for its Patrons, for whatever reason, under the rationale in *Mercury Cellular*, the sales tax would be due by the Casino on its purchase of the rooms..

The Collector also relies heavily on the case of *Columbia Gulf Transmission Co. v. Bridges*, 2008-1006 (La. App. 1 Cir. 6/25/09), 28 So.3d 1032 in support of its position. In that case, taxpayer provided natural gas transmission services to its customers via interstate pipeline. The taxpayer charged each customer a price based on the volume of gas passing through the pipeline multiplied by an agreed upon rate. The volume was adjusted downward for gas "lost" during its travel through the pipeline. Included in this "gas lost" figure was an amount of gas used by the taxpayer to fuel its compressor stations at various points along the pipeline. Thus, the effect of this agreement was that the taxpayer paid the customer for the gas used in its compressors by charging a reduced rate for its services. The result would be economically identical to the situation where the customer paid the taxpayer full charge for the pipeline services and then billed the taxpayer for the gas used by taxpayer to fuel its compressors. The latter transaction – the sale of the gas by the customer to the taxpayer to fuel the taxpayer's compressor stations – would clearly be a taxable sale of gas, and this was basically the analysis underlying the court's ruling that the taxpayer's use of the gas, although no stated price or fee was charged by the customer to the taxpayer, was subject to Louisiana sales tax. The court rejected the taxpayer's argument that it did not owe sales tax on Compressor Gas because its "cost price" was zero.

Although on its face the court's decision in *Columbia Gas* seems to support the Collector's position in this case, the facts are markedly different and the rationale underlying the court's decision simply does not apply here. In *Columbia Gas*, there was clearly a *quid pro quo* between the taxpayer and each and every customer using

the taxpayer's pipeline to transport the customer's gas. The agreement – or "consideration" underlying the agreement – can be very simply stated in the following manner: "If you [the customer] give me [the taxpayer] natural gas to fuel my compressors, I will charge you a reduced rate to transport your gas". The quid pro quo was clear, unambiguous, and applied the same across all of the taxpayer's customers. However, in the instant matter, there is no quid pro quo; i.e., the Patron gives no consideration for the Comp. The Casinos furnished complimentary rooms on the hope that the Patrons – in the aggregate – would gamble enough money on the casino floor to justify the expense of furnishing complimentary rooms to such Patrons. As established by the uncontroverted testimony of the Casinos' witnesses, there was no requirement on the part of a Patron who received a Comp to gamble a minimum amount on the casino floor, enroll in the loyalty program or to do anything else. A Patron could simply use the room and never set foot on the casino floor.

The Casinos use of Comps sounds more of a marketing effort by the Casinos than the furnishing of a hotel room for a fixed and determinable consideration. No money changed hands between the Patrons and the Casinos in exchange for the furnishing of Comp rooms. The Patrons were not obligated to gamble any amount of money at the Casinos. The Patrons were not required to sign up for the Casinos' loyalty programs. Further, the Casinos collected and remitted tax on any amounts actually paid or charged to the Patron. And while it is obvious that the business purpose for the Casinos to offer Comp rooms was the hope (and maybe even the expectation) that a Patron would gamble in an amount sufficient to offset the cost of the Comp, the Board finds that the lack of any obligation on the part of the Patron to do anything in exchange for the Comp renders the transaction not in exchange for a payment, charge or a consideration as set forth in La. R.S. 47:201(14)(a) and therefore not subject to the sales tax.

Finally, the Collector argues that the Casinos' compliance with GAAP accounting and the recasting of gaming revenue as hotel revenue from Comps results in the furnishing of the Comps to be subject to the local sales tax. However, nothing

in the state or local sales tax law or regulations requires that a taxpayer be bound for sales tax purposes of its treatment of an item under GAAP. There is no testimony that the Casinos' compliance with GAAP was elective, and even if it was, there is simply no authority for the proposition that a taxpayer is bound by its GAAP treatment of an item of revenue for Louisiana and local sales tax purposes. And it should be noted that if the Board were to accept the Collector's argument, the result would be the imposition of a double tax on the Casinos. In other words, the Casinos would be paying the local gaming revenue tax[20] to the Collector on 100% of its gaming revenue including the amounts recast as hotel revenue, and the local sales tax on that portion of that same gaming revenue recast as hotel revenue.

Occupancy Tax

Shreveport-Bossier Convention and Tourist Bureau Ordinance 15-1, Section 1.02, imposes occupancy tax on the "rent or fee charged upon the occupancy of hotel rooms." Unlike the sales tax statute, the ordinance does not include the term "consideration" in its list of items given by a room occupant in exchange for a room. As mentioned above, it is undisputed that no money was exchanged or charged for the occupancy of a Comp. Furthermore, the value of the estimating gaming profit to be derived from furnishing Comp rooms was frequently less than the expenses incurred in operating the hotel and stocking room supplies. In accordance with the above discussion on amounts "paid" or "charged" in the context of the local sales tax, the Board finds that there was no "rent or fee" charged by the Casinos to the Patrons for furnishing Comp rooms, and therefore such rooms are not subject to the occupancy tax.

Conclusion

For the foregoing reasons, the Board holds that the Casinos are not liable for either the Bossier sales tax or the local Bossier occupancy taxes, interest, or penalties

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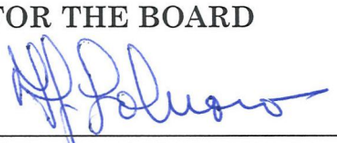
[20] La. R.S. 27:93(A)(1) permits the local governing authority of the parish or municipality in which the licensed berth of a riverboat is located to levy an admission fee for each passenger boarding a riverboat, and further authorizes Bossier City to levy an assessment in the amount of 4.5% of the monthly net gaming proceeds as defined in La. R.S. 27:44.

on furnishing Comp rooms. The Casinos used Comp rooms as a marketing tool and a means to incentivize gaming. The Casinos did not charge an amount to customers for furnishing Comp rooms, nor did Customers pay any amount to the Casinos for receiving Comp rooms. Further, the Board finds that the Patrons gave no "consideration" to the Casinos as the term "consideration" is defined in its legal sense and in the applicable statute. The expected or "hoped for" aggregate increase in gaming profits resulting from Comp rooms were not rents paid by the Patron, fees charged to the Patron, or consideration given by the Patron in exchange for the Comps for purposes of either the local sales tax or the occupancy tax. Accordingly, the Board has rendered Judgment in favor of the Casinos and vacates the Assessments.

BATON ROUGE LOUISIANA, THIS DAY FEBRUARY 5, 2026.

FOR THE BOARD



CHAIRMAN FRANCIS J. "JAY" LOBRANO
LOCAL TAX JUDGE
LOUISIANA BOARD OF TAX APPEALS