



1 Case No. 16-15-RTR

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5 STATE OF NEVADA  
6 BEFORE THE NEVADA GAMING COMMISSION

7 In the Matter of:

8 MANDALAY BAY CORP., dba  
9 MANDALAY BAY RESORT & CASINO

STIPULATION FOR SETTLEMENT  
AND ORDER

10 Claim for Refund of Live Entertainment  
11 Tax for the period of September 2013  
through June 2016.

12 The Claimant, MANDALAY CORP., dba MANDALAY BAY RESORT & CASINO  
13 (hereinafter "MANDALAY BAY"), and the NEVADA GAMING CONTROL BOARD (here-  
14 inafter "BOARD") hereby stipulate and agree that the Claim for Refund filed in Nevada  
15 Gaming Commission (hereinafter "NGC" or "Commission") Case No. 16-15-RTR shall be  
16 settled on the following terms and conditions:

17 1. On or about October 12, 2016, MANDALAY BAY filed with the Commission a  
18 claim for a tax refund (hereinafter "Claim for Refund") of Live Entertainment Tax (here-  
19 inafter "LET") for the periods of September 2013 through June 2016, pursuant to Nevada  
20 Revised Statute (hereinafter "NRS") 368A.260 and 463.387, Nevada Administrative Code  
21 (hereinafter "NAC") 368A.520, and NGC Regulation 6.180.

22 2. The Claim for Refund complies with all of the statutory and regulatory re-  
23 quirements set forth in the Gaming Control Act, the regulations adopted thereunder, and  
24 the Nevada Administrative Code, including, but not limited to, Section 7 of LCB File No.  
25 R104-15.

26 3. The BOARD, through its Audit Division, performed an investigation of the  
27 Claim for Refund filed by MANDALAY BAY and verified an overstatement of live enter-  
28 tainment taxable revenue as follows:

1 a. House of Blues: For the period of September 2013 through September  
2 2015, LET revenue was over-reported by MANDALAY BAY in the amount of FORTY-  
3 NINE THOUSAND, FOUR HUNDRED FIFTY-FIVE and 45/100 DOLLARS (\$49,455.45),  
4 resulting in an over-payment of LET in the amount of FOUR THOUSAND, NINE HUN-  
5 DRED FORTY-FIVE and 55/100 DOLLARS (\$4,945.55). This over-reporting/over-  
6 payment was the result of the inclusion of exempt charitable contributions in reported  
7 LET revenue in contravention of NRS 368A.200(2)(a). These charitable contributions  
8 were included in the price of admission paid by customers to attend performances of Car-  
9 los Santana at the House of Blues, which is located on the premises of MANDALAY BAY.  
10 The LET relating to the charitable contributions was imputed in the cost of the admission  
11 and therefore is considered to have been paid by MANDALAY BAY. Because of this, the  
12 refund of LET is payable to MANDALAY BAY rather than to the patrons who purchased  
13 the admissions.

14 b. House of Blues Foundation Room: For the period of October 2015 through  
15 June 2016, LET revenue was over-reported by ONE HUNDRED FORTY-FIVE THOU-  
16 SAND, THREE HUNDRED SIXTY-FIVE and 55/100 DOLLARS (\$145,365.55), resulting  
17 in an over-payment of LET in the amount of THIRTEEN THOUSAND, EIGHTY-TWO  
18 and 90/100 DOLLARS (\$13,082.90). This over-reporting/over-payment was the result of  
19 the inclusion of exempt charitable contributions in reported LET revenue in contraven-  
20 tion of NRS 368A.200(2)(a). These charitable contributions were in addition to the price  
21 paid by patrons as membership fees to the House of Blues Foundation Room, which is lo-  
22 cated on the premises of MANDALAY BAY. These charitable contributions were add-ons  
23 to the base membership fee paid by patrons. As such, the LET that was erroneously paid  
24 on these charitable contributions was paid by the patrons, not MANDALAY BAY. As a  
25 result, pursuant to NRS 368A.320 and Section 7 of LCB File No. R104-15, the refund of  
26 the overpaid LET, and related interest, must be made to the patrons who paid the LET;  
27 MANDALAY BAY is not entitled to the refund or the related interest.

28 . . . .

1 4. As full and final settlement of the Claim for Refund in NGC Case No.  
2 16-15-RTR, the BOARD and MANDALAY BAY hereby agree to the following:

3 a. House of Blues: For the over-payment of LET relating to the purchase of  
4 admissions to the House of Blues (*see* paragraph 2(a) above), the BOARD agrees to re-  
5 fund, and MANDALAY BAY agrees to accept, FOUR THOUSAND, NINE HUNDRED  
6 FORTY-FIVE and 55/100 DOLLARS (\$4,945.55), plus THREE HUNDRED TWENTY-  
7 EIGHT and 33/100 DOLLARS (\$328.33) in accrued interest through March 23, 2017, with  
8 additional daily interest of THIRTY-NINE CENTS (\$.39) commencing on ~~February~~<sup>March</sup> 24,  
9 2017, until the refund is paid in full.

10 b. House of Blues Foundation Room: For the over-payment of LET relating to  
11 the purchase of memberships to the House of Blues Foundation Room (*see* paragraph 2(b)  
12 above), the BOARD and MANDALAY BAY agree to the following terms and conditions:

13 i. The BOARD and MANDALAY BAY acknowledge and agree that the  
14 patrons who paid the LET to which the Foundation Room Refund applies are the persons  
15 entitled to receive the refund, including accrued interest through March 23, 2017 (herein-  
16 after "FR Refund").

17 ii. As such, MANDALAY BAY agrees to take every reasonable measure  
18 to identify the patrons to whom the FR Refund is due and to remit to each of them the  
19 amount of the FR Refund to which each is entitled.

20 iii. MANDALAY BAY shall keep records of all amounts of the FR Refund  
21 remitted to the patrons. Such records shall include the name of each patron, the total  
22 amount of each remittance broken out by principle and interest, and the date of each re-  
23 mittance. MANDALAY BAY shall main such records in accordance with the record keep-  
24 ing requirements of the Gaming Control Act, Chapter 368A of the Nevada Revised Stat-  
25 utes, and Chapter 368A of the Nevada Administrative Code, and shall provide the  
26 BOARD with copies of such records upon request.

27 iv. When a portion of the FR Refund is remitted to a patron to whom it is  
28 due, MANDALAY BAY may make a deduction from its reported "Taxable Sales" (Line 1)

1 on its NGC-11 LET Tax Report for the month in which the remittance is made, using the  
2 following calculation: *Remitted FR Refund ÷ .09 = Deduction from Taxable Sales.*

3 v. The BOARD and MANDALAY BAY agree that the total FR Refund is  
4 limited to THIRTEEN THOUSAND, EIGHTY-TWO and 90/100 DOLLARS (\$13,082.90),  
5 plus THREE HUNDRED FORTY-FOUR and 06/100 DOLLARS (\$344.06) in accrued in-  
6 terest through March 23, 2017. This is the total amount of overpaid LET and the accrued  
7 interest on the overpayment.

8 vi. The BOARD and MANDALAY BAY agree that the BOARD has the  
9 right to pursue an assessment of LET on any portion of the FR Refund for which MAN-  
10 DALAY BAY has taken the deduction described in paragraph 3(b)(iv) but has failed to  
11 prepare or maintain the documentation required by paragraph 3(b)(iii).

12 vii. Failure to comply with these terms shall constitute an unsuitable  
13 method of operation and may result in formal disciplinary action.

14 5. Each party will bear its own attorney fees and costs.

15 6. This settlement is made for the purposes of avoiding litigation and economizing  
16 resources and does not constitute an admission of liability on the part of MANDALAY  
17 BAY or the BOARD, nor shall it operate or be construed as any precedent for the validity  
18 or invalidity of any legal position taken in this matter by either party. This settlement is  
19 made exclusively between the BOARD and MANDALAY BAY, and no other licensee may  
20 rely upon it for any purpose.

21 7. MANDALAY BAY fully understands and voluntarily waives any right it may  
22 have to a public hearing on the Claim for Refund in NGC Case No. 16-15-RTR, and its  
23 right to pursue judicial review in state district court or otherwise contest this matter in  
24 any court of competent jurisdiction.

25 8. MANDALAY BAY, for itself, its heirs, executors, administrators, successors,  
26 and assigns, hereby releases, dismisses, and forever discharges the State of Nevada, the  
27 Commission, the BOARD, the Nevada Attorney General and each of their members,  
28 agents, and employees in their individual and representative capacities from any and all



1 manner of actions, causes of action, suits, debts, judgments, executions, claims, and de-  
2 mands whatsoever known or unknown, in law and equity, that MANDALAY BAY ever  
3 had, now has, may have, or claims to have against any and all of the persons or entities  
4 named in this paragraph arising out of, or by reason of, this Claim for Refund, NGC Case  
5 No. 16-15-RTR, or any other matter relating thereto.

6 9. MANDALAY BAY, for itself, its heirs, executors, administrators, successors,  
7 and assigns, hereby indemnifies and holds harmless the State of Nevada, the Commis-  
8 sion, the BOARD, the Nevada Attorney General, and each of their members, agents, and  
9 employees, in their individual and representative capacities, against any and all claims,  
10 suits, actions, debts, damages, costs, charges, and expenses, including court costs and at-  
11 torney's fees, and against all liability, losses, and damages of any nature whatsoever that  
12 the persons and entities named in this paragraph shall or may have at any time sustain  
13 or be put to by reason of this Claim for Refund, NGC Case No. 16-15-RTR, or any other  
14 matter relating thereto.

15 10. MANDALAY BAY enters into this Stipulation freely and voluntarily. MANDA-  
16 LAY BAY confirms that this settlement is not a result of force, threats, or any other type  
17 of coercion or duress, but is the product of negotiations between representatives of MAN-  
18 DALAY BAY and the BOARD.

19 11. MANDALAY BAY and the BOARD recognize and agree that the Commission  
20 has the sole and absolute discretion to determine whether to accept this Stipulation for  
21 Settlement. MANDALAY BAY and the BOARD hereby waive any right they may have to  
22 challenge the impartiality of the Commission to hear and consider the facts and matters  
23 embraced in the Claim for Refund, NGC Case No. 16-15-RTR, in the event the Commis-  
24 sion does not accept this Stipulation for Settlement.

25 12. This Stipulation for Settlement shall not become effective until such time as the  
26 Commission approves it. Such approval shall not constitute an admission of liability on  
27 the part of the Commission.

28 . . . .

1 13. MANDALAY BAY fully understands and voluntarily waives the 21-day and the  
2 five-day notice requirements found under NRS 241.033 and 241.034, including the con-  
3 tent requirements of such notices, in relation to any hearing before the Nevada Gaming  
4 Commission on this Stipulation for Settlement, Case No. 16-15-RTR, that may be held.

5 Dated this 28 day of February, 2017.

Dated this 7<sup>th</sup> day of March, 2017.

6 MANDALAY CORP., dba  
7 MANDALAY BAY  
8 RESORT & CASINO

NEVADA GAMING CONTROL BOARD

9 By:   
10 CHUCK BOWLING  
11 President and Chief Operating Officer

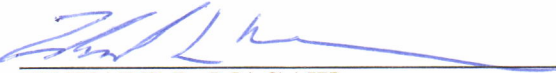
  
A.G. BURNETT, Chairman

  
SHAWN R. REID, Member

  
TERRY JOHNSON, Member

14 Submitted by:

15 ADAM PAUL LAXALT  
16 Attorney General

17 By:   
18 EDWARD L. MAGAW  
19 Deputy Attorney General  
20 Gaming Division, (702) 486-3082  
21 Attorneys for Nevada Gaming Control Board

**ORDER**

22 IT IS SO ORDERED IN NGC CASE NO. 16-15-RTR.

23 DATED this 23<sup>RD</sup> day of March, 2017

24 NEVADA GAMING COMMISSION

  
25 TONY ALAMO, M.D., Chairman  
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