

b). In the second to last paragraph on page 2 the release states:

"While they argue that the tax should never apply to them based on statutory and case law, the same case law should have indicated that the tax may have been applicable. The prudent taxpayer should have asked the government **if it felt** the tax was applicable." (emphasis added).

Apparently, Rev/Tax would rather apply the tax laws based upon "feelings" as opposed to statutory and case law. Query: Whose feelings would govern the determination? Would such determinations vary from Director to Director, from administration to administration? Would the "feeling" of application vary depending on who a particular taxpayer is? Apparently on January 17, 1993, the Deputy Tax Commissioner felt it applied to hotel rooms. (See PDN article of January 17, 1993). Apparently on January 21, 1993, the Deputy Tax Commissioner felt it did not apply to hotel rooms! What else may or may not be included?

As you can see from the above discussion there is uncertainty as to what and how the admissions tax applies. Rev/Tax in their press release admits that for over 30 years they applied the admissions tax one way and they now desire to apply it another way. Yet, there is no legal authority for such an expanded interpretation. In fact, statutory and case law are squarely against the interpretation Rev/Tax "feels" is appropriate.

CONCLUSION

The admissions tax is an excise tax of ten percent (10%) for obtaining tax revenues from activities enjoyed from what is generically referred to as "disposable income". Disposable income results, if at all, after a person has paid his rent or mortgage, put food on the table, paid property and income taxes, and taken care of the necessities of life for one's family.

Traditionally, governments have looked to this "disposable income" as a revenue base by taxing various types of entertainment activities, alcoholic beverages, cigarettes, perfumes, and a myriad of other such creature enjoyments and comforts. P.L. 6-44, creating the admissions tax law was passed in 1961, when there was still a requirement to obtain a Navy security clearance to come to Guam. Some 30 plus years have now passed and the economy of Guam has grown and

matured, now relying heavily on a visitor industry to provide our economic and political growth and freedom.

Accordingly, the application of the admissions tax as "felt" proper by Rev/Tax creates a more significant issue than how one's disposable income will be taxed. Rather, it is a question of policy of this government as to how the major economic asset of this territory will be taxed so as to allow it to remain competitive in the world market.

Fortunately, without suffering the consequences of experimenting with an across the board ten percent (10%) tax levied on an industry per se, we have the benefit of how disastrous such a policy can be. The U.S. Congress recently saw fit to impose a ten percent (10%) tax on the purchase of luxury yachts. Apparently, Congress felt that those who had disposable income to purchase such yachts would not be bothered by an additional ten percent (10%) cost. They were wrong--dead wrong! The yacht building industry in the United States was severely damaged to such an extent that Congress is now considering repeal of this tax.

The foundation of our economy is no different. As desired by Rev/Tax, there would be a ten percent tax on a bus ride from the airport to the hotel and back; from the hotel to our submarine ride and back; for the submarine ride as well as for any and all places for which one pays to be admitted into. Rather than a one time ten percent cost as applied in the luxury yacht industry, Rev/Tax is proposing an interpretation and application of the admissions tax law that would have a geometric effect, since each such activity would have a ten percent (10%) tax added.

We do not dispute that the desired application of the admissions tax law by Rev/Tax is done in good faith for what it feels is the betterment of the community. However, we feel that in taking an archaic law which is vague and capable of many interpretations, a law which was enacted in a different time and setting, and now attempting to have it applied to a totally different economic circumstance with consequences that would damage the major economic asset of our community at a time when this asset is suffering from many other negative influences, is short-sighted and not in the best interest of the community in the long run.

Atlantis Guam thanks you for the opportunity to present its views on this most important issue.

SENT BY

2-25-93 10:53AM ; ROBERT J TORRES, PC-

6716490666: # 3

2-25-93 : 8:22 :

REV & TAX- ROBERT J TORRES, PC: # 2/ 2

and pass over the tax, it need not be an onerous burden upon the business.

Does the Government of Guam need tax revenue? Of course it does! Revenue is required in both good times and bad. Of course we need to broaden our tax base by improving our economy. By increasing economic activity the government need not find new ways of generating revenues as the tax system already in place should provide sufficient funds for government programs. The Admissions Tax should not be repealed at a time when revenue projections have become pessimistic.

There are two facilities this island needs right now that the Admissions Tax can be used to fund. We need a sports complex and a civic center. While a civic center and sports complex would serve our people well another advantage of these projects would be that they would serve as possible tourist attractions. These two attractions may very well expand our tax base. There can be no doubt that the Admissions Tax would be a very viable source of funding for both.

The Admissions Tax as presently applied by the Department of Revenue and Taxation would generate an estimated three to four million dollars annually. If we were to rid ourselves of the exemptions for live performances, actual revenues would even be more. Both a civic center and sports complex could be funded in a very short period of time. Both could very well become a reality in a few short years.

The controversy over the tax stems from disgruntled taxpayers who created the problem of potential back taxes for themselves. While they argue that the tax should never apply to them based on statutory and case law, the same case law should have indicated that the tax may have been applicable. The prudent taxpayer should have asked the government if it felt the tax was applicable. By ignoring the possible implication of the Admissions Tax to their operations, these taxpayers have created a problem for themselves which prudent taxpayers have long since solved without any detriment to their commercial operations.

Let us not be shortsighted in our vision of the Admissions Tax. Given our desire for both a Sports Complex and a Civic Center and our need to fund both, perhaps the Admissions Tax's time has truly come. Its application at this time may prove to be in the best interests of the People of Guam.

Ex. "B" 212

File
ATLANTIS Guam
Cons.
SEP 18 1992

MEMORANDUM

To: Joseph Bamba, Administrator, Taxpayer Services Division
Via: Tony Aguon, Deputy Tax Commissioner
From: Pablo M. Aglubat, Revenue Agent
Re: Applicability of Admissions Tax to Atlantis Guam, Inc.

You requested a legal opinion on whether the admission tax applies to Atlantis Guam, Inc. ("Atlantis"), under the following facts:

Facts

Atlantis operates a submarine and charges the public a price for admission into the submarine. The submarine's interior contains seats and windows with a view to the outside of the submarine. The seats are situated in front of these windows. When it submerges, the submarine allows persons occupying these seats an underwater view of marine life.

Law and Analysis

Section 22301, Article 3, Chapter 22, Title 11, Guam Code Annotated, provides in relevant part:

Commencing on the effective date of this chapter, there is hereby imposed a tax of one cent for each ten cents or major fraction thereof of the amount paid for admission to any place. The tax imposed by this Section shall be paid by the person paying for such admission.

Section 22302, Article 3, Chapter 22, Title 11, Guam Code Annotated, provides:

As used in this article: "Amount paid for admission to any place" includes charges made for seats and tables, reserved or otherwise, and other similar accommodations, but shall not include charges made for participating in any activity, other than as a spectator, using recreational facilities taxed under Article 4 of this chapter.

As a matter of statutory construction, a section of a statute must be construed in pari materia with other sections of the statute. Also, absent any ambiguity, the plain meaning of the statute must be followed.

Memorandum
Page 2

As used in Section 22303, "amount paid for admission to any place" is broad and encompassing language. Section 22303, however defines this phrase as including charges for seats and tables, and other similar accommodations, and charges for participating as a spectator in any activity using recreational facilities taxed under Article 4, Chapter 22, Title 11, Guam Code Annotated.

The definition is not exhaustive. The common characteristic of these two situations, however, is that they involve the availability of some amusement, entertainment, or spectatorship to the person gaining admission to the place. The presence of this characteristic is clear in the latter situation. It is not as clear in the former situation, but it is implied, to the extent that it is highly unusual for a person to pay for seats and tables exclusively for sedentary purposes.

The statute squarely applies to Atlantis under the facts presented above. The placement of the seats in relation to the windows of the submarine is an intentional configuration to allow persons to enjoy the view of sub-marine life, while being in a sedentary position.

PABLO M. AGLUBAT

PA/ejd
MEMO4
09/18/92



GUAM HOTEL & RESTAURANT ASSOCIATION

4 March 1993

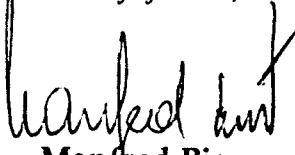
Senator Carl Gutierrez
Chairman, Committee on Ways and Means
21st Guam Legislature
155 Hesler Place
Agana, Guam 96910

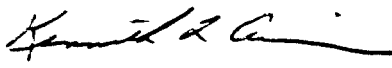
Dear Mr. Chairman:

Thank you for extending an opportunity to the Guam Hotel & Restaurant Association to testify on Bill No. 302. We strongly support the intent of the amendment. We believe that the imposition of an admissions tax on tourist attractions would have an adverse effect on the tourism industry at a time when it is struggling to maintain acceptable profit margins. Tourist attractions on Guam already have a reputation of being expensive due to the high cost of doing business on Guam. The levying of an admissions tax on such enterprises would increase the cost to customers and thereby exacerbate the problem. Guam needs to not only encourage existing businesses to stay in business but also entice more tourist attractions to set up shop. Additional facilities are needed to bolster the sagging economy through increased numbers of visitors. We suggest that the current law has to be changed along the lines outlined in Bill No. 302, lest the wrong message be sent to current and potential investors.

However, we do recommend one change in the bill's wording for clarity, i.e., §22302 (a)(1) should read "any theater, amphitheater, stadium, arena, or similar fixed and stationary building...". The words "any fixed and stationary building" without modifiers could lead to multiple interpretations.

Sincerely yours,


Manfred Pieper
Chairman of the Board


Kenneth L. Carriveau
President



**GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS**

102 ADA PLAZA CENTER, P.O. BOX 283, AGANA, GUAM 96910. TEL: 472-6311/8001. FAX: 472-6202.

LETTER FORWARDED TO ALL SENATORS OF THE 22ND GUAM LEGISLATURE.

February 10, 1993

The Admission Tax has been the subject of considerable concern within the business community these past few weeks. To address this concern, we are providing you with the Guam Chamber of Commerce's perspective based upon the response of over 75 member businesses to our Admission Tax survey.

The economic repercussions of the recent events surrounding the Admission Tax are significant. Specifically, it appears that the tourism industry is being singularly charged with supporting government revenues, which creates a most detrimental aura for Guam in the visitor industry marketplace. We, therefore, believe it is essential that this tax be examined very carefully, giving foremost consideration to its impact on our presently wavering economy.

Senator, we question the merits of the continued existence of the Admission Tax. With ambiguity still surrounding its creation, it has been haphazardly applied, and seemingly generates an inconsequential level of revenues. Obviously, this is an archaic tax with little relevance to Guam's tourism-driven economy. Finally, the retroactive application of any such tax signals the death of a favorable business climate for investors, and generates unfavorable results in terms of continued revenues.

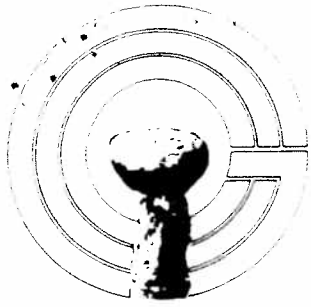
For these reasons, the Guam Chamber of Commerce is seeking your support to introduce legislation repealing the Admission Tax in its entirety.

Once again, thank you for your time and attention to our concerns. We would certainly appreciate your expeditious response to this request for support.

Sincerely,

**ANTOINETTE D. SANFORD
Chairwoman, Board of Directors**

cc: Acting Governor Frank F. Blas



**GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS**

**GUAM CHAMBER OF COMMERCE TESTIMONY
ON BILL NO. 302**

**PRESENTED BEFORE THE COMMITTEE ON WAYS AND MEANS
22ND GUAM LEGISLATURE**

BY

**ANTOINETTE D. SANFORD
CHAIRWOMAN, BOARD OF DIRECTORS
MARCH 4, 1993**

**SI YUUS MAASE, FOR THE INVITATION EXTENDED TO THE GUAM
CHAMBER OF COMMERCE TO SUBMIT TESTIMONY ON BILL NO.
302 WHICH SEEKS TO CLARIFY THE ORIGINAL INTENT OF THE
IMPOSITION OF THE ADMISSION TAX.**

**THE GUAM CHAMBER OF COMMERCE IS PLEASED TO SUPPORT
BILL NO. 302 AS AN IMMEDIATE ALTERNATIVE TO THE
OUTRIGHT REPEAL OF THE ADMISSION TAX. THIS BILL IS
CERTAINLY A POSITIVE STEP TOWARDS ALLEVIATING THE
CONCERNS OF OUR LOCAL BUSINESS COMMUNITY. WE
WOULD, HOWEVER, LIKE TO POSE THE FOLLOWING POINTS FOR
FURTHER DISCUSSION AND RESOLUTION:**

1. STRENGTHENING OF THE INTENT OF BILL NO. 302 TO

EXPLICITLY PROVIDE FOR THE RETROACTIVE APPLICATION OF THE DEFINITION OF THE WORD "PLACE", WHICH WOULD ELIMINATE THE EXTREMELY DAMAGING EFFECTS OF THE DEPARTMENT OF REVENUE AND TAXATION'S INTERPRETATION AND RETROACTIVE APPLICATION TO THE MAINSTAY OF OUR LOCAL ECONOMY - NAMELY - THE VISITOR INDUSTRY; AND

2. AUGMENTING SECTION 1. (b) (a) (2) "REAL PROPERTY" IN THE DEFINITION OF "PLACE" WITH EXAMPLES TO PRECLUDE FUTURE INTERPRETATIONS NOT IN KEEPING WITH THE LEGISLATIVE INTENT OF ITS INCLUSION.

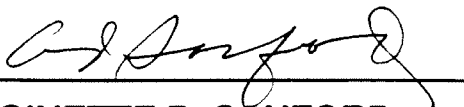
SENATORS, THE GUAM CHAMBER OF COMMERCE CONTINUES TO FAVOR THE OUTRIGHT REPEAL OF THE ADMISSION TAX FOR THE REASONS CITED IN OUR LETTER TO EACH OF YOU DATED FEBRUARY 10, 1993, A TRUE COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED BY REFERENCE INTO OUR TESTIMONY. THOUGH THIS BILL NO. 302 ADDRESSES THE ISSUE OF AMBIGUITY, OUR CONCERNS SURROUNDING THE EFFECTIVENESS, EFFICIENCY AND VIABILITY OF THIS TAX STILL REMAIN.

WE THEREFORE URGE YOU TO CONSIDER INCLUDING AN ADDITIONAL PROVISION IN BILL NO. 302 REQUIRING THE

Chamber Testimony on Bill No. 302
March 4, 1993
page 3

EVALUATION OF NET REVENUES GENERATED FROM THIS TAX IN LIGHT OF ITS ASSOCIATED COSTS AND THE IMPACT OF THE NEGATIVE PERCEPTIONS GENERATED FOR GUAM'S IMAGE IN THE INTERNATIONAL TOURISM MARKETPLACE. WE MAY, PERHAPS, ULTIMATELY DERIVE A MUCH MORE POSITIVE BENEFIT FROM THE PUBLICITY OF ITS REPEAL THAN WE COULD EVER HOPE TO COLLECT IN REAL DOLLAR TERMS OVER THE FORESEEABLE FUTURE.

SENATORS, BARRING OUTRIGHT REPEAL OF THIS ADMISSION TAX, WE CERTAINLY SUPPORT THE INTENTIONS OF BILL NO. 302. THANK YOU FOR YOUR TIME AND ATTENTION TO OUR CONCERNS. WE SINCERELY APPRECIATE THIS OPPORTUNITY TO PRESENT OUR VIEWS ON THIS ISSUE.



ANTOINETTE D. SANFORD
Chairwoman, Board of Directors



**GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS**

102 ADA PLAZA CENTER, P.O.BOX 283, AGANA, GUAM 96910. TEL: 472-6311/8001. FAX: 472-6202.

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Sincerely,

ANTOINETTE D. SANFORD
Chairwoman, Board of Directors

cc: Acting Governor Frank F. Blas



Guam Visitors Bureau
Setbision Bisitan Guahan



March 3, 1993

Senator Carl T. C. Guterrez
Chairman, Committee on Ways & Means
22nd Guam Legislature
155 Hesler Place
Agana, Guam 96910

Dear Mr. Chairman:

On behalf of the Board of Directors, Management, staff and membership of the Guam Visitors Bureau (GVB), the following testimony is submitted in general support of the intent of Bill No. 302, "AN ACT TO REPEAL AND REENACT SECTIONS 22301 AND 22302 OF TITLE 11 GUAM CODE ANNOTATED, TO CLARIFY THE ORIGINAL INTENT OF THE IMPOSITION OF THE ADMISSIONS TAX, FIRST ENACTED IN SECTION 19201 OF THE GOVERNMENT CODE."

During the past twenty-four (24) month period, Guam's visitor industry has had more than its share of setbacks. First came the Persian Gulf Conflict, during which the citizens of Guam's main market of Japan demonstrated their solidarity by staying home while the rest of the world sought to contain the Iraqi forces of Saddam Hussein. Next came the ravages of Typhoon Omar, quickly followed by another five (5) of its siblings which gave Guam the image of a "typhoon-prone" destination. If all of you recall the news following these events, all was doom and gloom for the engine that drives our territory's economy.

In 1991, GVB worked long days and spent millions of dollars to convince the Japanese traveller that their staying home would more adversely impact Guam than taking that trip. The cornerstone of GVB's strategy was the wooing of the Yomiuri Giants to spring camp as in past years. News of their continuation of spring camp on Guam ushered in renewed hope that the visitor arrivals would rebound from their lows of January and February.

Less than six (6) months ago, GVB again spent millions of dollars and many manhours seeking to offset the image of a typhoon-ravaged tropical island destination. Some of you in this room were in the delegation which travelled throughout Japan touting "Guam is open for business!" And once again, as visitor arrivals continue to increase, the confidence grew that Guam would once more persevere in the face of adversity.

But, now a new problem has to be dealt with which comes from within rather than from outside of our shores. And, it is quite possible that this new problem may be just as

difficult to rebound from as were the Persian Gulf Conflict and Typhoon Omar and Company. The problem is not that there exists an admissions tax, but rather that its applicability to certain elements of Guam's visitor industry may cause those same elements to cease operations.

When the admissions tax was first implemented, it was meant to be applied to traditional business activities which charged an admission upon entering the place of business. Places such as movie theaters, nightclubs, cockfights, boxing and wrestling matches, and music concerts were the targets. By definition, any place which charges an amount for admission to any recreational facility having seats and tables and similar accommodations. But a recent interpretation of the Code now appears to have taken on a new and different meaning. Its "possible" application to other business activities, not previously liable for payment of this tax, has created an atmosphere of confusion. It is this confusion which is the problem to be dealt with and prompts our testimony today.

One of the greatest selling points of Guam for investment purposes is its stable system of government and pro-business approach. This approach is now in jeopardy with the flipflop positions over who should and shouldn't pay this tax. Others will most certainly go into greater detail than will GVB on this point. But let it be noted that this confusion does not make selling Guam any easier.

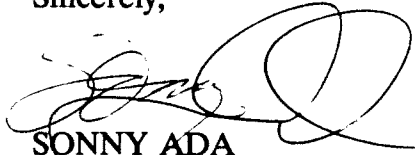
It is no secret that the government of Guam will not meet its revenue projections for FY1993. It is also no secret that the government is seeking out new sources of revenue to make up for the estimated shortfall. Yet, there is more to lose than to be gained if such a broad application of the admissions tax definition is allowed.

Tourism worldwide is a price-sensitive industry. Every destination attempts to gain an advantage over its competitors so that it may receive the benefits it desires from increased visitor expenditures. Guam has greatly profited from this philosophy as reflected in the annual government budget, the increased opportunities in its private sector and other benefits of a robust economy such as new roads, more reliable utilities and improving other government services. Definitely, a plus to our island!

Should the tax be applied across the board, consider these possible scenarios. If Guam were to become a more expensive destination as a result of the increase in costs, and it were to record fewer visitor arrivals than recorded for CY1992, what could be the consequences? GVB's Research Department has estimated that a 10% reduction in arrivals from CY1992's levels would result in an \$11 million loss of tax revenues. A 20% loss would result in losses in excess of \$21 million. Admittedly, these figures are based upon "best guesses" given available data, but I believe that the committee members are now more keenly aware of the possible revenue impacts upon a cost-sensitive industry such as Guam's visitor industry. A copy of the method used to produce these calculations is provided for your review.

It is the Bureau's hope that a fair and amicable settlement of this situation can be reached, and that the business of making Guam a place to be enjoyed by visitors and residents alike can continue to the mutual benefit of all.

Sincerely,

A handwritten signature in black ink, appearing to read 'SONNY ADA', written over a large, stylized circular flourish.

SONNY ADA
Chairman of the Board

VISITOR AND TAX LOSSES @ 10% & 20%

1992 ARRIVALS	% LOSS	REVISED ESTIMATES	VISITOR LOSS	ISLAND SPENDING LOSS @ \$1,100/VISITOR	GRT LOSS	OCC TAX LOSS @ \$21/VISITOR *	OCC TAX + GRT LOSS
876,742	10%	789,068	87,674	\$96,441,620	\$3,857,665	\$1,841,156	\$5,698,823
	20%	701,394	175,348	\$192,883,240	\$7,715,330	\$3,682,316	\$11,397,646

* NOTES: OCC TAX / VIS. (1991=\$21.70) (1992=\$20.82); ISLAND SPENDING FROM GVB EXIT SURVEYS

EMPLOYMENT & TAX LOSSES @ 10% & 20%

SECTOR	EMPLOYMENT	% TOURISM	TOURISM EMPLOY.	WEEKLY SALARY	ANNUAL INCOME	INCOME TAX @ 15%
AGRICULTURE	380	10%	38	\$351.00	\$693,576	\$104,036
CONSTRUCTION	10,320	14%	1,445	\$444.45	\$33,391,351	\$5,006,703
MANUFACTURING	1,870	25%	468	\$360.59	\$8,765,943	\$1,314,891
TRANS/PUB UTIL	4,320	51%	2,203	\$409.50	\$46,914,941	\$7,037,241
WHOLESALE	1,980	34%	673	\$366.77	\$12,839,297	\$1,925,895
RETAIL	12,630	48%	6,062	\$263.72	\$63,136,359	\$9,470,454
FIN/INS/RE	2,700	13%	351	\$335.36	\$6,120,991	\$918,149
SERVICES	13,250	50%	6,625	\$263.98	\$90,941,110	\$13,641,166
GOV GUAM	13,700	15%	2,055	\$629.27	\$67,243,792	\$10,086,569
TOTAL	61,150		19,920		\$350,047,359	\$52,507,104

10% LOSS	1,982	\$35,004,736	\$5,250,710
20% LOSS	3,964	\$70,009,472	\$10,501,421
TOTAL		\$105,014,208	\$15,752,131

TOTAL EMP & WEEKLY SAL FROM DEPT. OF LABOR DEC.92 RPT
 % TOURISM FROM DEPT. OF LABOR ANNUAL CENSUS 3.89
 INC. TAX FROM GVB ESTIMATE
 GOV GUAM TOURISM ESTIMATE FROM SRI 1986 STUDY

SOURCES:

TOTAL TAX LOSS
\$10,940,533
\$11,397,646
\$21,999,057

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

FEB 26 '93

Bill No. 302 (LS)

Introduced by:

C.T.C. Gutierrez
J.P. Aquino

AN ACT TO REPEAL AND REENACT §§22301 AND 22302 OF TITLE 11, GUAM CODE ANNOTATED, TO CLARIFY THE ORIGINAL INTENT OF THE IMPOSITION OF THE ADMISSION TAX, FIRST ENACTED IN SECTION 19201 OF THE GOVERNMENT CODE.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. (a) The first sentence of §22301 of Title 11, Guam Code
3 Annotated, is deleted and rendered of no further effect, and the following
4 new first sentence is §22301 of Title 11 substituted therefor:

5 "Commencing on the effective date of this Chapter, there is hereby
6 imposed a tax of one cent (\$.01) for each ten cents (\$.10) or major
7 fraction thereof of the amount paid for admission to a place where
8 amusement or entertainment is provided, including admission by
9 season ticket or subscription."

10 (b) §22302 of Title 11, Guam Code Annotated, is deleted and rendered of
11 no further effect, and the following new §22302 of Title 11 substituted
12 therefor:

13 "§22302. Definitions. As used in this Article:

14 (a) 'place' is defined as:

15 (1) any fixed and stationary building, amphitheater, stadium,
16 arena, or similar structure, whether permanent or temporary,

17 or

18 (2) real property.

1 (b) 'An amount paid for admission to a place where amusement or
2 entertainment is provided' includes charges incurred for the right or
3 privilege to have access to a place to observe

4 (1) either an event or a performance within the premises, or

5 (2) scenic beauty located within the premises.

6 'An amount paid for admission to a place where amusement or
7 entertainment is provided" does not include any charges incurred for
8 the experience of participating in or actively engaging in any form of
9 amusement or recreation."

10