

Original: 2438



# Senate Finance Committee

Senator Jane M. Earll  
Chairwoman

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November 5, 2004

Honorable John R. McGinley, Jr., Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: Report of Objection (Comments)  
Department of Revenue Notice of Proposed Rulemaking (Regulation #15-425)  
Local Option Small Games of Chance - 61 Pa.Code §§901.1-901.908

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Dear Chairman McGinley:

As the Chairwoman of the Senate Finance Committee, I received from the Pennsylvania Department of Revenue a copy of their proposed regulation (Regulation #15-425) with regard to Local Option Small Games of Chance. It is acknowledge that the proposed regulation represents changes to the Local Small Games of Chance Act by the act of December 19, 1990 (P.L. 812, No. 195); the act of October 18, 2000 (P.L. 602, No. 79); and to codify policy and administrative changes with regards to games of chance.

Upon review of the proposed regulation I would like to offer the following comments as presented in the attached document entitled, "Senate Finance Committee - Comments." Please contact Jason R. Brehouse if you should have any comments or questions.

Sincerely yours,

Senator Jane M. Earll, Chairwoman  
Senate Finance Committee

JME/jb

Cc: Honorable Gregory C. Fajt, Secretary, Department of Revenue  
Members of the Senate Finance Committee

Attachments

**Senate Finance Committee**

**"Comments"**

**Related to Department of Revenue's  
Notice of Proposed Rulemaking  
(Reg. No. #15-425)**

**61 Pa.Code §§901.1 – 901.908**

**Local Option Small Games of Chance**

The comments herein are related to the Department of Revenue's proposed changes (contained in "Annex A") to 61 Pa.Code §§901.1 – 901.908 to incorporate legislative changes made to the Local Option Small Games of Chance Act (10 P.S. §§311-327) pursuant to the act of December 19, 1990 (P.L. 812, No. 195) and the act of October 18, 2000 (P.L. 602, No. 79) and to codify policy and administrative changes.

*(See Annex A – Department of Revenue Document)*

[Page 25 - §901.41 (a)] – It is unclear what is meant by the following:

*An operating day or a non-operating day may not overlap with any other operating day or non-operating day.*

[Page 30 - §901.101 (c)] – Indication whether the following is a current practice by Revenue (good policy):

*If a registered manufacturer modifies an approved game of chance in any substantial way such that the nature or identity of the game is changed, the rules of the game change or the prizes or payouts change, the game of chance shall be considered a new game of chance and must be submitted for approval.*

[Page 31 - §901.103 (12)] – Indication whether the following is a current practice by Revenue as I question the need or value of a **notarized affidavit** for each dispensing machine sold or offered for sale. I would think that an affidavit would be sufficient and question the value of it being notarized.

*A notarized affidavit for each dispensing machine sold or offered for sale in the Commonwealth indicating that the dispensing machine complies with the provisions of the act and this part. A form affidavit shall be available from the Department.*

[Page 32 - §901.103a.] – How does one know or determine when a change has occurred. I would think that it should be within 15 days of when a manufacturer has knowledge of a change in information.

*A manufacturer shall report any changes to the information supplied in its application to the Department within 15 days of the change.*

[Page 36 - §901.117 (a)(9)] – Should reference the appropriate section or subsection instead of saying:

*in this part.*

[Page 36 - §901.117 (b)] – Should reference the appropriate section or subsection instead of saying:

*or this part.*

[Page 38 - §901.117 (d)(3)] – Lacks a definition of “Commonwealth resident designee”

*The Department will mail the notice to the manufacture's Commonwealth resident designee.*

[Page 42 - §901.144 (d)] – Should reference the appropriate section or subsection instead of saying on two occasions:

*or this part.*

[Page 45 - §901.151 (b)(5); see also, page 48 - §901.168 Stay of appeal. (deletes reference to suspend)] – Why is the right to appeal a suspension being stricken?

*There is no right to appeal a suspension.*

[Page 48 - §901.168 (b); see also, page 45 - §901.151 (b)(5)] – This involves an action to revoke a registration or license, and the proposed regulation would be amended to provide that such will be suspended during an appeal. What is the rational for this?

*During the pendency of the appeal, the certificate, game approval or license will be suspended.*

[Page 52 - §901.188 (b)] The phrase “historical basis” should be defined.

*A licensed eligible organization may conduct games of chance at a location off its premises when such games of chance are part of an annual carnival, fair, picnic or banquet held or participated in by that eligible organization on a historical basis.*

[Page 62 – old §901.192 (d)] As the entire old section 901.192 (page 56 – 62) is being deleted and being replaced with new section 901.192 (page 62 – 65), the brackets around “[for licensure]” under old section 901.192 (d) on page 62 are not needed.

[Page 63 – new §901.192 (c)(1)(ii)] The phrase “substantially harmed” lacks the ability to be measured and thus enforced.

*The violation has substantially harmed the public.*

[Page 66 - §901.196. (e)] This subsection (under section 901.196. Limited occasion license requirements, limits and restrictions) provides that a limited occasion license fee is \$10. However, the \$10 fee for a limited occasion license is already added and provided for in the proposed regulation in section 901.184. License fee. on page 51.

*§901.196 - The fee for a limited occasion license is \$10.*

*§901.184 - The annual license fee is \$100. The fee for a limited occasion license is \$10.*

[Page 84 - §901.501] - This section starts off by prohibiting eligible organizations or other persons from advertising prizes or dollar values, but then goes onto say that an eligible organization may advertise prizes and the values of such in periodic publications. The way such is currently worded, it appears to be contradictory. Need to add an except for clause to the paragraph.

*[A club] An eligible organization or other person may not advertise the prizes or their dollar value to be awarded in games of chance. [Prizes may be identified on a raffle ticket.] Raffle tickets may identify the raffle prizes. An eligible organization may advertise prizes and values thereof in periodic publications that are limited in their circulation to members of the eligible organization.*