

5/18/07

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Revenue

(2) I.D. Number (Governor's Office Use)

15-436

IRRC Number:

2596

(3) Short Title

Pennsylvania Gaming Cash Flow Management

(4) PA Code Cite

61 Pa. Code §§ 1001.1 – 1001.11

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mary Sprunk (717) 783-7524
Secondary Contact: Douglas A. Berguson (717) 346-4633

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The Department of Revenue is proposing regulations to facilitate its responsibilities under the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. §§ 1101-1904). Under section 1501(c) of the act, the Department proposes that the temporary regulations added in Chapter 1001 as published at 36 Pa.B. 3450 (July 1, 2006); Correction published at 36 Pa.B. 3789 (July 15, 2006) become permanent regulations with amendments as required by Act 135 of 2006, as set forth in this rulemaking. This chapter established the procedures for the administration and distribution of all net slot machine revenue, collection of tax and collection of other assessments under the act. In addition, this chapter clarified the administrative procedures for transferring the statutorily established amounts of funding as prescribed in the act. The preamble explains the revisions that have been made to the regulations as required by Act 135 of 2006 which was effective November 1, 2006.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Pennsylvania Race Horse Development and Gaming Act, the act of July 5, 2004 (P.L. 572, No. 71) (Act 71) (4 Pa.C.S. §§ 1101 – 1904). On November 1, 2006, the act was amended by the act of November 1, 2006 (P.L. 1243, No. 135) (Act 135).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by any Federal law or court order.
See answer to (9) above for the citation to the Pennsylvania law.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation is necessary to clarify the Department of Revenue's responsibilities relating to the cash flow management for accurate accounting and collections of the different earmarked revenues due the Commonwealth from slot machine gaming operations.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There is no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Prospective licensed entities, as well as the general public, will benefit from having the Department's regulations consistent with the governing statute.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The Department, the Treasury Department, the Pennsylvania Gaming Control Board and entities licensed under the Pennsylvania Race Horse Development and Gaming Act will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A copy of the temporary regulation was forwarded to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, and the Pennsylvania Chamber of Business and Industry. The temporary regulations were published at 36 Pa.B. 3450 (July 1, 2006) and available on the Department's website. Immediately after the publication of the temporary regulations, the Department began the "proposed" rulemaking process for the permanent regulations. The proposed regulations were published at 37 Pa.B. 1028 (March 3, 2007). Public comments were received from two gaming industry representatives, Sands Bethworks Gaming LLC and Washington Trotting Association, Inc. Secretary Wolf received a letter from Representative Steven R. Nickol, Minority Chairman of the House Finance Committee. (See Comment & Response document for a summary of the comments and the Department's responses.)

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed rulemaking is designed to bring the Department's regulations into conformity with the Pennsylvania Race Horse Development and Gaming Act and will not have an impact on state revenues.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This permanent regulation does not increase costs or savings to local governments. No legal accounting or consultant procedures are required by this regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This permanent regulation does not increase costs or savings to state government by any significant amount.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

There are no savings from implementing this permanent regulation.
 There is no cost for implementing this permanent regulation.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
	NA	NA	NA	NA

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

This permanent regulation does not alter existing law. There is no cost for implementing this permanent regulation. The permanent regulation serves to clarify the Department's responsibilities in terms of slot machine gaming regulation. The Department has submitted a proposed budget of \$8.3 million for 2007-08. That amount includes all costs associated with the Department to administer this rulemaking. These expenses will be billed on a prorata basis to licensed gaming entities and deducted from each entity's Section 1401 account.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives associated with this permanent regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no nonregulatory alternatives associated with this permanent regulation.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

This regulation relates to gaming cash flow management. There is no comparative Federal statute.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulations will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Temporary regulations are currently in effect as published at 36 Pa.B. 3450 (July 1, 2006); Correction published at 36 Pa.B. 3789 (July 15, 2006). The temporary regulations will expire no later than 3 years following the effective date of the act (July 5, 2007) or upon promulgation of the regulations as generally provided by law.

This regulation does not affect any other existing or proposed regulation of any other state agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department has not scheduled any public hearings or informational meetings to discuss the regulation.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

This regulation does not change existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions were determined to be necessary.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Temporary regulations are currently in effect as published at 36 Pa.B. 3450 (July 1, 2006); Correction published at 36 Pa.B. 3789 (July 15, 2006). The temporary regulations will expire no later than 3 years following the effective date of the act (July 5, 2007) or upon promulgation of the regulations as generally provided by law.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

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REVIEW COMMISSION
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Copy below is hereby approved as to form and legality. Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

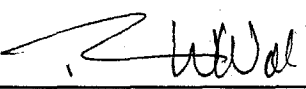
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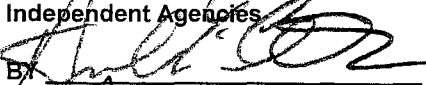
PA Department of Revenue
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-436

DATE OF ADOPTION _____

BY 
Thomas W. Wolf
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY 
Andrew C. Clark

MAY 25 2007

DATE OF APPROVAL

(Deputy General Counsel)
~~(Chief Counsel Independent Agency)~~
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§ 1001.1 - 1001.11

Pennsylvania Gaming Cash Flow Management

PREAMBLE

The Department of Revenue (Department) is proposing regulations to facilitate its responsibilities under the Pennsylvania Race Horse Development and Gaming Act (act) (4 Pa.C.S. §§ 1101 - 1904), as assisted by the Department's temporary regulations adopted at 36 Pa.B. 3450 (July 1, 2006); Correction published at 36 Pa.B. 3789 (July 15, 2006). Under section 1501(c) of the act (relating to responsibility and authority of department) the Department proposes that the temporary regulations added in Chapter 1001 (relating to Pennsylvania gaming cash flow management) become permanent regulations as set forth in Annex A.

The act went into effect July 5, 2004, requiring that the temporary regulations be adopted within 2 years (July 5, 2006). The temporary regulations will expire no later than 3 years following the effective date of the act (July 5, 2007) or upon promulgation of regulations as generally provided by law. On November 1, 2006, the act was amended by the act of November 1, 2006 (P.L. 1243, No. 135).

Purpose of this Final-Form Rulemaking

The act legalizes the operation of slot machines at a number of venues across this Commonwealth. The Pennsylvania Gaming Control Board (Board) will have primary responsibility for regulatory oversight of gaming activity in this Commonwealth and

is separately promulgating regulations in 58 Pa. Code (relating to recreation).

The act requires that the Department adopt temporary regulations by July 5, 2006, to facilitate prompt implementation of its responsibilities as defined by the act. The Department is proposing the adoption of the final-form regulations by July 5, 2007.

Explanation of Regulatory Requirements

The Department has several important responsibilities in connection with the implementation and control of slots gaming. The creation of Chapter 1001 during the temporary regulations process addressed these responsibilities and those regulations will be made permanent in this proposed rulemaking relating to cash flow management for accurate accounting and collection of revenues due the Commonwealth from slot machine gaming operations.

Changes to the temporary regulations include:

Section 1001.3 (relating to definitions) is amended to clarify the definition of "Credit against tax." In addition, a definition has been added for "Office of the Budget."

Section 1001.5 (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth) is amended in subsection (a) to add clarifying language and to delete the word "Treasury" in accordance with Act 135 of 2006. Subsection (b) is amended to add clarifying language and to

delete subparagraph (iii) under paragraph (5) regarding the delegation of payment authority. Act 135 of 2006 eliminated the need for the "delegation of authority" provision. In addition, paragraph (2) in subsection (b) is amended to delete the phrase "for each banking day." Paragraph (5) is amended under the re-lettered subparagraphs (iii) and (iv) to delete the word "banking" from the phrase banking days and to move subparagraphs (iii) and (iv) to a new subsection (c) (relating to distributions of local share assessments) which was created in the final rulemaking. Additionally, paragraph (1) under the new subsection (c) is amended to remove the language "or the respective municipality" that allowed for direct distributions to municipalities by licensed entities, as the Department and the licensed entities anticipate all distributions will be made by the Department. Revisions to section 1001.5 are being made for ease of administration in performing the Department's statutory obligations.

Section 1001.6 (relating to administration of amounts deposited by licensed gaming entities with Treasury to pay Commonwealth gaming related costs and expenses) is amended to delete subsection (d), at the recommendation of the Independent Regulatory Review Commission (IRRC). Subsection 1001.6(e) is re-lettered as subsection (d) and is amended by deleting language and by adding language addressing periodic assessments,

appropriations by the General Assembly and itemized budget requirements. These amendments are in accordance with Act 135 of 2006. In the final rulemaking, the phrase "any other Commonwealth entity charged with administrative duties under the act" has been deleted in paragraph (1), at the recommendation of IRRC. Another revision in the final rulemaking is the addition of clarifying language in paragraph (3) for the assessment/distribution of expenses on the prorata basis.

Section 1001.8 (relating to State Gaming Fund transfers) is amended to delete the entire subsection (b) regarding establishment of restricted receipt accounts, at the recommendation of IRRC. The subsections have been re-lettered accordingly. Subsection (c) regarding quarterly distributions is re-lettered as subsection (b) and amended to add a reference to section 1001.5 to clarify payments to municipalities. In order to avoid duplication, paragraph (1) under this subsection has been amended to delete detailed instructions that appear in the referenced Management Directive 305.4. In addition, paragraph (2) under this subsection has been amended to change the month for publication of the annual inflation adjustment from July 1 to January 1. Subsection (d) regarding tax and credit against tax has been re-lettered as subsection (c), re-named "tax, assessments and credit against tax," amended to remove the word "daily" and amended to remove the words "each

banking day" in paragraphs (2) and (3). In addition, clarifying language "and other assessments" has been added to paragraphs (1), (2), (5) and (6) under subsection (c). Revisions to Section 1001.8 are being made for ease of administration in performing the Department's statutory obligations. In the final rulemaking, subsection (e) regarding imposition of a penalty has been re-lettered as subsection (d) and amended to delete the language, "or any other fund of the Commonwealth," at the recommendation of IRRC.

Section 1001.10(d) (relating to Pennsylvania Race Horse Development Fund transfers) is amended with clarifying language for Category 1 licensee "conducting live racing" and "eligible" Category 1 licensee.

Section 1001.11 (relating to Property Tax Relief Fund transfers) is amended to add clarifying language "and other applicable laws."

In the final rulemaking, new language "collection of tax and other assessments" has been added to sections 1001.1, 1001.2, 1001.5 and 1001.8 to clarify that this regulation also pertains to the collection of tax and the collection of other assessments.

Affected Parties

Licensed gaming entities, the Treasury Department, the Pennsylvania Gaming Control Board, the Office of Attorney General,

the Pennsylvania State Police and other agencies that have been given statutory authority under the act will be affected by the regulation.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 1028 (March 3, 2007). This proposal is being adopted with changes to read as set forth in Annex A.

The Department has prepared a comment and response document that is available to interested parties by contacting Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 1061, Harrisburg, Pennsylvania 17128-1061.

In its evaluation of Annex A during the proposal stage, the Department received comments from the Independent Regulatory Review Commission (IRRC) and two comments from the gaming industry. No comments were received from the Senate Finance Committee. Secretary Wolf received a letter from Representative Steven R. Nickol, Minority Chairman, of the House Finance Committee, asking the Department questions on a few provisions. The majority of the comments focused on sections 1001.5 (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth) and 1001.6 (relating to administration of amounts deposited by licensed gaming entities with Treasury to pay Commonwealth gaming related costs and expenses (\$5 million)).

In the final rulemaking, the Department has responded to several key issues raised by the commentators by amending the definition of "Credit against tax" and adding a definition for "Office of the Budget." In addition, the Department has inserted clarifying language throughout the regulation for the methodology of the CCS calculations, the Department's assessment procedures, the assessment of general administrative costs incurred by the Commonwealth and the State Gaming Fund transfer procedures.

Fiscal Impact

There is no cost for implementing this permanent regulation. The permanent regulation serves to clarify the Department's responsibilities in terms of slot machine gaming regulation. The Department has submitted a proposed budget of \$8.3 million for 2007-08. That amount includes all costs associated with the Department to administer this rulemaking. These expenses will be billed on a prorata basis to licensed gaming entities and deducted from each entity's Section 1401 account.

Paperwork

The proposed amendments will require minimal paperwork for the public or the Commonwealth.

The Department will annually on or before January 1st publish notices in the Pennsylvania Bulletin to announce the annual inflation adjustment of the distributions to municipalities.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the amendments is Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P. O. Box 1061, Harrisburg, Pennsylvania 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 21, 2007 the Department submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1028 (March 3, 2007), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5 9(c)), the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public.

These final-form regulations were (deemed) approved by the Committees on _____ and were approved by IRRC on

_____, in accordance with section 5.1 (e) of the Regulatory Review Act (71 P.S. § 745.5(a)(e)).

Findings

The Department of Revenue finds that:

(1) Public notice of intention to amend the regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations under 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended at Chapter 1001 (relating to Pennsylvania gaming cash flow management) to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

THOMAS W. WOLF
SECRETARY OF REVENUE

05/18/07

CONTINUATION SHEET
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(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part IX. Pennsylvania Gaming Cash Flow Management, Chapter 1001. Pennsylvania Gaming Cash Flow Management.

GENERAL PROVISIONS

(Editor's note: The Department is proposing to make permanent the temporary regulations published at 36 Pa.B. 3450 and the correction published at 36 Pa.B. 3789 with amendments as required by Act 135.)

§ 1001.1. Scope.

This chapter establishes procedures for the administration and distribution of all net slot machine revenue, COLLECTION OF TAX AND COLLECTION OF OTHER ASSESSMENTS under the act. In addition, this chapter clarifies the administrative procedures for transferring the statutorily established amounts of funding as prescribed in the act.

§ 1001.2. Purpose.

The purpose of this chapter is to notify prospective licensed entities, as well as the general public, of the procedures and requirements for distributing net slot machine revenue, COLLECTION OF TAX AND COLLECTION OF OTHER ASSESSMENTS.

§ 1001.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

Act--The Pennsylvania Race Horse Development and Gaming Act of 2004 (Act 71) (4 Pa.C.S. §§ 1101--1904).

Annual minimum distribution--Other than for a Category 3 licensee, 2% of the gross terminal revenue of the licensed gaming entity or \$10 million, whichever is greater.

Banking day--The part of any day that the Federal Reserve has established for a bank to be opened to the public for carrying on substantially all of its banking functions.

Board--The Pennsylvania Gaming Control Board of the Commonwealth.

CCS--The central control computer system controlled by the Department and accessible by the Board, to which all slot machines communicate for the purpose of recording, reviewing, reporting and auditing real-time information regarding the events that occur during the operation of a slot machine. This includes distinguishing between daily deposits made by licensed gaming entities of taxes due on play of slot machines and all other transfers of moneys to

Commonwealth accounts not considered a daily deposit under this chapter.

Collection Account--A Department bank account authorized by the Treasury for the collection of taxes and other payments received from licensed gaming entities and which is maintained and reconciled by the Department.

Concentration Account--A Treasury bank account used for the deposit and disbursement of all recognized Commonwealth moneys and which is maintained and reconciled by the Treasury Department.

Credit against tax--Credit AS SPECIFIED IN SECTION 1209(c) (RELATING TO SLOT MACHINE LICENSE FEE) AND established if the tax rate imposed by section 1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution) upon slot machine daily gross terminal revenue is increased at any time during the term of 10 years following the initial issuance of the slot machine license.

Department--The Department of Revenue of the Commonwealth.

EFT--Electronic funds transfer.

Fund--A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities

and residual equities or balances and the changes therein, that are segregated for the purpose of carrying on specific activities or attaining certain objectives established for the receipt of gross terminal revenue distributions under the act.

Gross terminal revenue--As defined in section 1103 of the act (relating to definitions).

Licensed gaming entity--As defined in section 1103 of the act.

Manufacturers--As defined in section 1103 of the act.

OFFICE OF THE BUDGET--AN ADMINISTRATIVE AGENCY AS AUTHORIZED BY THE ADMINISTRATIVE CODE OF 1929 (71 P.S. § 229) UNDER THE DIRECT SUPERVISION OF THE SECRETARY OF THE BUDGET.

Pennsylvania Gaming Economic Development and Tourism Fund--The fund established under section 1407 of the act (relating to Pennsylvania Gaming Economic Development and Tourism Fund).

Pennsylvania Race Horse Development Fund--The fund established under section 1405 of the act (relating to Pennsylvania Race Horse Development Fund).

Property Tax Relief Fund--The fund established under section 1409 of the act (relating to Property Tax Relief Fund).

Race Horse Improvement Daily Assessment--The amount each operating licensed gaming entity shall pay daily to the Department, according to Department calculations.

State Gaming Fund--The fund established under section 1403 of the act.

Suppliers--As defined in section 1103 of the act.

Treasury--The Treasury Department of the Commonwealth.

§ 1001.4. Calculations of credit against tax and Race Horse Improvement Daily Assessment.

(a) Credit against tax. The amount of the credit must be equal to the difference between the tax calculated at the rate in effect when a license was issued to the licensed gaming entity and the tax calculated at the increased rate. The credit shall be applied on a dollar-for-dollar basis but may not extend beyond the 10-year period following the initial issuance of the license.

(b) Race Horse Improvement Daily Assessment. The amount of this assessment shall be calculated in accordance with section 1405(b) of the act (relating to Pennsylvania Race Horse Development Fund). This assessment shall be multiplied by 18% of daily gross terminal revenue for all active and operating Category 1 licensed gaming entities that are conducting live racing. The amount may not exceed 12% of that day's gross terminal revenue for that licensed

gaming entity, and shall be subject to the daily assessment cap established under section 1405 (c) of the act.

§ 1001.5. Administration and distribution of moneys held by licensed gaming entities and the Commonwealth.

(a) Application of section. This section applies to THE COLLECTION OF TAX, THE COLLECTION OF OTHER ASSESSMENTS AND all transfers of moneys to and from the State Gaming Fund, Pennsylvania Gaming Economic Development and Tourism Fund, Pennsylvania Race Horse Development Fund[, Treasury] and any other fund as specified in this chapter.

(b) Deposits and transfers to Treasury by licensed gaming entities.

(1) The Department will notify each licensed gaming entity, Treasury and Office of the Budget of the actual amount each licensed gaming entity shall be required to deposit with Treasury as calculated by the CCS IN ACCORDANCE WITH SECTIONS 1323, 1403, AND 1405 - 1407 OF THE ACT. A licensed gaming entity shall make deposits with Treasury on the same banking day as the date of the Department's notice to the licensed gaming entity and by the times specified by the Department.

(2) Payments shall be electronically transferred by the licensed gaming entities and available to the Commonwealth by the deadline established by the Department

[for each banking day]. Moneys shall be deposited in the Department's Collection Account.

(3) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of any of these problems.

(4) The Department will maintain records of deposits to the Department's Collection Account under this chapter and will share information, as practicable, to assist Treasury in its reconciliation of deposits into its Concentration Account.

(5) The administration of assessments will be as follows:

(i) Proration of assessment. Upon imposition of the annual minimum distribution amount, as specified in section 1403(c)(3) of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution), regardless of whether the minimum is subject to the budgetary limitations of section 1403 of the act, the required minimum shall be prorated for that portion of the municipality's fiscal year that the Board

determines that the licensed gaming entity was actually in operation.

(ii) Limitation of assessment. Upon imposition of the minimum distribution upon the licensed gaming entity, the required minimum shall be paid in accordance with the administrative procedures of this section.

~~(iii)~~ [Delegation of payment authority. At the direction of the Board, the licensed gaming entity shall authorize the Department to remit payments previously collected from the licensed gaming entity, on behalf of the licensed gaming entity, under section 1403(c)(3) of the act, when the licensed gaming entity is charged with remitting payments to municipalities.

(iv)] ~~Distributions of local share assessments to municipalities. If a licensed gaming entity fails to reach the requisite annual minimum distribution as required under the act within 15 [banking] days following the end of the municipality's fiscal year, the Department will notify the licensed gaming entity of the shortfall and the amount to be remitted. A licensed gaming entity shall remit the difference required to meet the requisite annual minimum distribution as required under the act within 15 [banking] days following the end of the municipality's~~

~~fiscal year. The licensed gaming entity shall remit the required payment to the Department for distribution in accordance with the act. Distributions specified in this chapter shall be made by the licensed gaming entity to the Department or the respective municipality, no later than 15 [banking] days from the Department's notice of the shortfall.~~

~~[(v)] (iv) Distributions of local share assessments to counties. The Department will make distributions in accordance with section 1403(c)(2) of the act. If the minimum distribution exceeds the applicable annual municipal allocation cap set forth in section 1403(c)(3) of the act, the amount in excess of the municipal allocation cap shall be distributed by the Department in accordance with section 1403(c)(2) of the act.~~

(6) The Department reserves the right, upon notice served upon the licensed gaming entity and the Board, to temporarily disable the licensed gaming entity's slot machines through the CCS until the Department receives verification that the required deposit has been made.

EDITOR'S NOTE: Material in Subsection (c) previously appeared in Subsection (b) (iii) and (iv) above.

(c) DISTRIBUTIONS OF LOCAL SHARE ASSESSMENTS.

(1) DISTRIBUTIONS OF LOCAL SHARE ASSESSMENTS TO MUNICIPALITIES. IF A LICENSED GAMING ENTITY FAILS TO REACH THE REQUISITE ANNUAL MINIMUM DISTRIBUTION AS REQUIRED UNDER THE ACT WITHIN 15 DAYS FOLLOWING THE END OF THE MUNICIPALITY'S FISCAL YEAR, THE DEPARTMENT WILL NOTIFY THE LICENSED GAMING ENTITY OF THE SHORTFALL AND THE AMOUNT TO BE REMITTED. A LICENSED GAMING ENTITY SHALL REMIT THE DIFFERENCE REQUIRED TO MEET THE REQUISITE ANNUAL MINIMUM DISTRIBUTION AS REQUIRED UNDER THE ACT WITHIN 15 DAYS FOLLOWING THE END OF THE MUNICIPALITY'S FISCAL YEAR. THE LICENSED GAMING ENTITY SHALL REMIT THE REQUIRED PAYMENT TO THE DEPARTMENT FOR DISTRIBUTION IN ACCORDANCE WITH THE ACT. DISTRIBUTIONS SPECIFIED IN THIS CHAPTER SHALL BE MADE BY THE LICENSED GAMING ENTITY TO THE DEPARTMENT ~~OR THE RESPECTIVE MUNICIPALITY~~, NO LATER THAN 15 DAYS FROM THE DEPARTMENT'S NOTICE OF THE SHORTFALL.

(2) DISTRIBUTIONS OF LOCAL SHARE ASSESSMENTS TO COUNTIES. THE DEPARTMENT WILL MAKE DISTRIBUTIONS IN ACCORDANCE WITH SECTION 1403(c)(2) OF THE ACT. IF THE MINIMUM DISTRIBUTION EXCEEDS THE APPLICABLE ANNUAL MUNICIPAL ALLOCATION CAP SET FORTH IN SECTION 1403(c)(3) OF THE ACT, THE AMOUNT IN EXCESS OF THE MUNICIPAL ALLOCATION CAP SHALL BE DISTRIBUTED BY THE DEPARTMENT IN ACCORDANCE WITH SECTION 1403(c)(2) OF THE ACT.

§ 1001.6. Administration of amounts deposited by licensed gaming entities with Treasury to pay Commonwealth gaming related costs and expenses (\$5 million).

(a) No later than 2 business days prior to the commencement of slot machine operations, the licensed gaming entity shall deposit \$5 million in the Department's Collection Account. Upon transfer of the \$5 million deposit into Treasury's Concentration Account, the deposit shall be credited to an account established in Treasury for the licensed gaming entity. The account established shall also be used to recognize and account for all future deposits required from the licensed gaming entity by the Department for administrative costs and all future withdrawals made by the Department for reimbursement of administrative costs.

(b) Each licensed gaming entity shall maintain a minimum account balance with Treasury of \$5 million.

(c) Moneys related to this account shall be transferred to the Department's Collection Account and from Treasury by EFT or other methods of funds transfer in accordance with § 1001.5(b) (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth).

~~(d) If the account balance with Treasury of a licensed gaming entity falls below the \$5 million minimum deposit amount, as a result of the licensed gaming entity's~~

~~failure to make replenishments as directed by the Department, the Department will request that the Board utilize its reserved right to draw amounts from any other source of the licensed gaming entity and deposit the draw amount in the account specified by subsection (a) as necessary, to maintain the required minimum account balance. To fulfill the licensed gaming entity's obligations under this section, nothing prohibits the Board from drawing against any source of the licensed gaming entity, with the exception of any licensed gaming entity account that holds gross terminal revenue[,] to be deposited with Treasury in accordance with § 1001.5.~~

~~(e) Reimbursement of Commonwealth expenses will be as follows:~~

~~(1) The Department will issue to the licensed gaming entity, periodic assessments of expenses incurred by the Board, Department, Office of Attorney General, AND the Pennsylvania State Police and any other Commonwealth entity charged with administrative duties under the act, regarding expenses directly related to the licensed gaming entity, under budgets approved by the Board and upon appropriation by the General Assembly as required in section 1402.1 of the act (relating to itemized budget reporting). Expenses not included in budgets approved by the Board may not be~~

assessed against [the account of] the licensed entity under this section.

(2) Expenses incurred by the Commonwealth and assessed to the licensed gaming entity shall be charged back to the licensed gaming entity and deducted from the licensed gaming entity's account, as specified in section 1401 of the act (relating to slot machine licensee deposits) and this section.

(3) General administrative costs of the Commonwealth not specifically assessed to a licensed gaming entity under paragraph (1), shall be borne by each licensed gaming entity ~~for~~ on a prorata basis, [determined by dividing the amount of the individual licensed gaming entity's gross terminal revenue by the total amount of gross terminal revenue of all licensed gaming entities] at the discretion of the Secretary of Revenue UNTIL SUCH TIME AS ALL CATEGORY 1 AND CATEGORY 2 LICENSED GAMING ENTITIES ARE OPERATING AS PERMITTED UNDER THE ACT. [The allocation of expenses under this subsection, and not specifically allocated under paragraph (2) shall be subject to amendment by the Board].

§ 1001.7. Deposits of license, permit and other fees.

The fees for manufacturers' and suppliers' licenses, employment permits and other licenses and permits as the Board may require, excluding license fees paid for

Categories 1, 2 and 3 licenses under sections 1209 and 1305 of the act (relating to slot machine license fee; and Category 3 slot machine license), shall be deposited with Treasury into a restricted receipt account within the State Gaming Fund. The fees deposited will be transferred from a restricted receipt account into a restricted revenue account of the State Gaming Fund to be used by the Board to pay its operating expenses. License fees paid for Categories 1, 2 and 3 licenses under sections 1209 and 1305 of the act shall be paid into the State Gaming Fund in accordance with sections 1209(d) and 1305 of the act.

§ 1001.8. State Gaming Fund transfers.

(a) Application of section. This section applies to the transfers of moneys to and from the State Gaming Fund.

~~(b) Establish restricted receipt accounts. The Governor's Budget Office has the authority to establish restricted receipt accounts as required to facilitate transfers of moneys to and from the State Gaming Fund.~~

~~(c) Quarterly distributions. Quarterly distributions from the State Gaming Fund to counties or municipalities in which a licensed facility is located, as determined by the Board, and as specified in Chapter 14 of the act (relating to revenues), shall be performed in accordance with the Governor's Management Directive 305.4 (relating to payments~~

to counties), SECTION 1001.5 OF THIS REGULATION (RELATING TO ADMINISTRATION AND DISTRIBUTION OF MONEYS HELD BY LICENSED GAMING ENTITIES AND THE COMMONWEALTH) and the following provisions:

(1) The Department will submit payment requisitions, accompanied by documentation, to the Office of the Budget for payment through Treasury. ~~Payments shall be made payable to the board of county commissioners of the county, or in the case of home rule charter counties, to the chief executive officer of the county, or in the case of counties of the first class coterminous with cities of the first class, to the city treasurer, on behalf of the agency designated as recipient of the payment or disbursement to be credited to the account of the recipient agency for use as specified in the documentation.~~

(2) The Department will determine the annual inflation adjustment and will publish notice of the inflation adjustment in the *Pennsylvania Bulletin* by [July 1] January 1 of each year.

(3) The Department will make distributions quarterly, no later than 30 days following the end of each calendar quarter.

~~(d)~~(c) Tax, ASSESSMENTS and credit against tax.

(1) Determinations of gross terminal revenue and the calculations of taxes AND OTHER ASSESSMENTS due will be determined [daily] by the Department based on the actual calculations by the CCS.

(2) [Each banking day, the] The Department will notify each licensed gaming entity and Treasury of the amount of tax AND OTHER ASSESSMENTS due to the Commonwealth.

(3) [Each banking day, each] Each licensed gaming entity shall deposit the amount specified in paragraph (2) into the Department's Collection Account, in the manner prescribed by § 1001.5(b) (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth).

(4) The Department will enter into an agreement with each licensed gaming entity setting forth the terms and conditions of any credit against tax as claimed by the licensed gaming entity.

(5) Taxes AND OTHER ASSESSMENTS due as determined by the Department shall remain payable by the licensed gaming entity to the Department in accordance with section 1501(a) of the act (relating to responsibility and authority of department) regardless of any discrepancies between the licensed gaming entity's [daily] calculation

and that of the Department's or amounts contested by any party concerning the credit against taxes due. Resolution of disputed [daily] payments due will be addressed by the Department through adjustments it makes to its calculation of future [daily] payment due amounts DUE. The Department may make adjustments to its calculation of future [daily] payment due amounts DUE after resolution of any dispute regarding the amount of taxes due. The Department will provide notice to the Board of the final calculations of taxes due under this subsection.

(6) Any [daily] remittance due that is caused by the imposition of the tax OR OTHER ASSESSMENTS on nonbanking days as well as holidays shall be remitted by the licensed gaming entity on the next banking day. For example, any tax that has accrued on Independence Day shall be transferred on the following banking day.

~~(e)~~(d) Imposition of a penalty. Failure to comply with this section that results in the failure to transmit the requisite amounts to the Department's Collection Account ~~or to any other fund of the Commonwealth,~~ shall result in the imposition of a penalty of 5% per month up to a maximum of 25% of the amounts due and unpaid by the licensed gaming entity. Payments made by a licensed gaming entity toward delinquent amounts, including penalties,

shall be allocated to the licensed gaming entity's delinquency in accordance with the priority of payments as specified under section 209 of the Taxpayers' Bill of Rights (72 P. S. § 3310-209).

§ 1001.9. State Gaming Economic Development Tourism Fund transfers.

(a) Department personnel will notify the respective licensed gaming entity and Treasury of the amounts the licensed gaming entity shall be required to deposit in the Department's Collection Account. Deposits shall be made on the same banking day as the date of the notice by the Department.

(b) Moneys shall be transferred by the licensed gaming entity by EFT or other method the Department may require and shall be deposited in the Department's Collection Account prior to being transferred to Treasury's Concentration Account.

(c) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of the problems.

(d) The Department will maintain records of the Department's Collection Account under this chapter and will share information as practicable, to assist Treasury in its reconciliation of deposits into its Concentration Account.

§ 1001.10. Pennsylvania Race Horse Development Fund transfers.

(a) Prior to making each Race Horse Improvement Daily Assessment against a licensed gaming entity, the Department will determine the amount of each licensed gaming entity's gross terminal revenue.

(b) Eighteen percent of the gross terminal revenue of each Category 1 licensed gaming entity shall be returned to each active and operating Category 1 licensed gaming entity that conducts live racing subject to the assessment cap in section 1405(c) of the act (relating to Pennsylvania Race Horse Development Fund), and subject to the allocations specified in section 1406(a)(1)(i)--(iii) of the act (relating to distributions from Pennsylvania Race Horse Development Fund).

(c) Procedures concerning Pennsylvania Race Horse Development transfers are as follows:

(1) Department personnel will notify the respective licensed gaming entity and Treasury of the actual amount each licensed gaming entity shall be required

to deposit in the Department's Collection Account as determined by the CCS. Deposits shall be made on the same banking day as the date of the notice by the Department.

(2) Moneys shall be transferred by the licensed gaming entity by EFT or other method as the Department may require and shall be deposited in the Department's Collection Account prior to being transferred to Treasury's Concentration Account.

(3) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of any of these problems.

(4) The Department will maintain records of the Department's Collection Account under this chapter and will share information as practicable, to assist Treasury in its reconciliation of deposits to its Concentration Account.

(d) The Department will notify each active and operating Category 1 licensee conducting live racing, Treasury and Office of the Budget of the amounts each active and operating Category 1 licensee conducting live racing will receive. [A] An eligible Category 1 licensee will receive from Treasury a weekly payment from the

Pennsylvania Race Horse Development Fund in accordance with the act. The deposits required under section 1406(a)(1)(ii) will be deducted by the Department before making the payment to each active and operating licensee and transferred to the appropriate [state] State fund, under section 1406 of the act.

(1) Payments shall be electronically transferred by the Commonwealth and shall be available to the licensee by the deadline established by the Department.

(2) Both Treasury and the Department will maintain records of distributions under this chapter and will share information, as practicable, to assist each agency in its reconciliation process.

(e) For purposes of the calculations and distributions of section 1406(a) of the act, live racing will be determined annually, and as a Category 1 licensed gaming entity commences live racing in accordance with section 1303(b) of the act (relating to additional Category 1 slot machine license requirements).

§ 1001.11. Property Tax Relief Fund transfers.

The Department will determine the appropriate amount of moneys to be transferred into the Property Tax Relief Fund. The moneys will be transferred only after all amounts of funding have been met concerning the transfers of money to

the other Funds specified in section 1408 of the act
(relating to transfers from State Gaming Fund) and other
applicable laws.

05/18/07

HIGHLIGHTED VERSION
(revisions to proposed version)

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part IX. Pennsylvania Gaming Cash Flow Management, Chapter 1001. Pennsylvania Gaming Cash Flow Management.

GENERAL PROVISIONS

(Editor's note: The Department is proposing to make permanent the temporary regulations published at 36 Pa.B. 3450 and the correction published at 36 Pa.B. 3789 with amendments as required by Act 135.)

§ 1001.1. Scope.

This chapter establishes procedures for the administration and distribution of all net slot machine revenue, COLLECTION OF TAX AND COLLECTION OF OTHER ASSESSMENTS under the act. In addition, this chapter clarifies the administrative procedures for transferring the statutorily established amounts of funding as prescribed in the act.

§ 1001.2. Purpose.

The purpose of this chapter is to notify prospective licensed entities, as well as the general public, of the procedures and requirements for distributing net slot machine revenue, COLLECTION OF TAX AND COLLECTION OF OTHER ASSESSMENTS.

§ 1001.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

Act--The Pennsylvania Race Horse Development and Gaming Act of 2004 (Act 71) (4 Pa.C.S. §§ 1101--1904).

Annual minimum distribution--Other than for a Category 3 licensee, 2% of the gross terminal revenue of the licensed gaming entity or \$10 million, whichever is greater.

Banking day--The part of any day that the Federal Reserve has established for a bank to be opened to the public for carrying on substantially all of its banking functions.

Board--The Pennsylvania Gaming Control Board of the Commonwealth.

CCS--The central control computer system controlled by the Department and accessible by the Board, to which all slot machines communicate for the purpose of recording, reviewing, reporting and auditing real-time information regarding the events that occur during the operation of a slot machine. This includes distinguishing between daily deposits made by licensed gaming entities of taxes due on play of slot machines and all other transfers of moneys to

Commonwealth accounts not considered a daily deposit under this chapter.

Collection Account--A Department bank account authorized by the Treasury for the collection of taxes and other payments received from licensed gaming entities and which is maintained and reconciled by the Department.

Concentration Account--A Treasury bank account used for the deposit and disbursement of all recognized Commonwealth moneys and which is maintained and reconciled by the Treasury Department.

Credit against tax--Credit AS SPECIFIED IN SECTION 1209(c) (RELATING TO SLOT MACHINE LICENSE FEE) AND established if the tax rate imposed by section 1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution) upon slot machine daily gross terminal revenue is increased at any time during the term of 10 years following the initial issuance of the slot machine license.

Department--The Department of Revenue of the Commonwealth.

EFT--Electronic funds transfer.

Fund--A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities

and residual equities or balances and the changes therein, that are segregated for the purpose of carrying on specific activities or attaining certain objectives established for the receipt of gross terminal revenue distributions under the act.

Gross terminal revenue--As defined in section 1103 of the act (relating to definitions).

Licensed gaming entity--As defined in section 1103 of the act.

Manufacturers--As defined in section 1103 of the act.

OFFICE OF THE BUDGET--AN ADMINISTRATIVE AGENCY AS AUTHORIZED BY THE ADMINISTRATIVE CODE OF 1929 (71 P.S. § 229) UNDER THE DIRECT SUPERVISION OF THE SECRETARY OF THE BUDGET.

Pennsylvania Gaming Economic Development and Tourism Fund--The fund established under section 1407 of the act (relating to Pennsylvania Gaming Economic Development and Tourism Fund).

Pennsylvania Race Horse Development Fund--The fund established under section 1405 of the act (relating to Pennsylvania Race Horse Development Fund).

Property Tax Relief Fund--The fund established under section 1409 of the act (relating to Property Tax Relief Fund).

Race Horse Improvement Daily Assessment--The amount each operating licensed gaming entity shall pay daily to the Department, according to Department calculations.

State Gaming Fund--The fund established under section 1403 of the act.

Suppliers--As defined in section 1103 of the act.

Treasury--The Treasury Department of the Commonwealth.

§ 1001.4. Calculations of credit against tax and Race Horse Improvement Daily Assessment.

(a) Credit against tax. The amount of the credit must be equal to the difference between the tax calculated at the rate in effect when a license was issued to the licensed gaming entity and the tax calculated at the increased rate. The credit shall be applied on a dollar-for-dollar basis but may not extend beyond the 10-year period following the initial issuance of the license.

(b) Race Horse Improvement Daily Assessment. The amount of this assessment shall be calculated in accordance with section 1405(b) of the act (relating to Pennsylvania Race Horse Development Fund). This assessment shall be multiplied by 18% of daily gross terminal revenue for all active and operating Category 1 licensed gaming entities that are conducting live racing. The amount may not exceed 12% of that day's gross terminal revenue for that licensed

gaming entity, and shall be subject to the daily assessment cap established under section 1405 (c) of the act.

§ 1001.5. Administration and distribution of moneys held by licensed gaming entities and the Commonwealth.

(a) Application of section. This section applies to ~~THE COLLECTION OF TAX, THE COLLECTION OF OTHER ASSESSMENTS~~ AND all transfers of moneys to and from the State Gaming Fund, Pennsylvania Gaming Economic Development and Tourism Fund, Pennsylvania Race Horse Development Fund[, Treasury] and any other fund as specified in this chapter.

(b) Deposits and transfers to Treasury by licensed gaming entities.

(1) The Department will notify each licensed gaming entity, Treasury and Office of the Budget of the actual amount each licensed gaming entity shall be required to deposit with Treasury as calculated by the CCS ~~IN ACCORDANCE WITH SECTIONS 1323, 1403, AND 1405 - 1407 OF THE ACT.~~ A licensed gaming entity shall make deposits with Treasury on the same banking day as the date of the Department's notice to the licensed gaming entity and by the times specified by the Department.

(2) Payments shall be electronically transferred by the licensed gaming entities and available to the Commonwealth by the deadline established by the Department

[for each banking day]. Moneys shall be deposited in the Department's Collection Account.

(3) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of any of these problems.

(4) The Department will maintain records of deposits to the Department's Collection Account under this chapter and will share information, as practicable, to assist Treasury in its reconciliation of deposits into its Concentration Account.

(5) The administration of assessments will be as follows:

(i) Proration of assessment. Upon imposition of the annual minimum distribution amount, as specified in section 1403(c)(3) of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution), regardless of whether the minimum is subject to the budgetary limitations of section 1403 of the act, the required minimum shall be prorated for that portion of the municipality's fiscal year that the Board

determines that the licensed gaming entity was actually in operation.

(ii) Limitation of assessment. Upon imposition of the minimum distribution upon the licensed gaming entity, the required minimum shall be paid in accordance with the administrative procedures of this section.

~~(iii)~~ [Delegation of payment authority. At the direction of the Board, the licensed gaming entity shall authorize the Department to remit payments previously collected from the licensed gaming entity, on behalf of the licensed gaming entity, under section 1403(c)(3) of the act, when the licensed gaming entity is charged with remitting payments to municipalities.

(iv)] ~~Distributions of local share assessments to municipalities. If a licensed gaming entity fails to reach the requisite annual minimum distribution as required under the act within 15 [banking] days following the end of the municipality's fiscal year, the Department will notify the licensed gaming entity of the shortfall and the amount to be remitted. A licensed gaming entity shall remit the difference required to meet the requisite annual minimum distribution as required under the act within 15 [banking] days following the end of the municipality's~~

fiscal year. The licensed gaming entity shall remit the required payment to the Department for distribution in accordance with the act. Distributions specified in this chapter shall be made by the licensed gaming entity to the Department or the respective municipality, no later than 15 [banking] days from the Department's notice of the shortfall.

[(v)] (iv) Distributions of local share assessments to counties. The Department will make distributions in accordance with section 1403(c)(2) of the act. If the minimum distribution exceeds the applicable annual municipal allocation cap set forth in section 1403(c)(3) of the act, the amount in excess of the municipal allocation cap shall be distributed by the Department in accordance with section 1403(c)(2) of the act.

(6) The Department reserves the right, upon notice served upon the licensed gaming entity and the Board, to temporarily disable the licensed gaming entity's slot machines through the CCS until the Department receives verification that the required deposit has been made.

EDITOR'S NOTE: Material in Subsection (c) previously appeared in Subsection (b) (iii) and (iv) above.

(c) DISTRIBUTIONS OF LOCAL SHARE ASSESSMENTS.

(1) DISTRIBUTIONS OF LOCAL SHARE ASSESSMENTS TO MUNICIPALITIES. IF A LICENSED GAMING ENTITY FAILS TO REACH THE REQUISITE ANNUAL MINIMUM DISTRIBUTION AS REQUIRED UNDER THE ACT WITHIN 15 DAYS FOLLOWING THE END OF THE MUNICIPALITY'S FISCAL YEAR, THE DEPARTMENT WILL NOTIFY THE LICENSED GAMING ENTITY OF THE SHORTFALL AND THE AMOUNT TO BE REMITTED. A LICENSED GAMING ENTITY SHALL REMIT THE DIFFERENCE REQUIRED TO MEET THE REQUISITE ANNUAL MINIMUM DISTRIBUTION AS REQUIRED UNDER THE ACT WITHIN 15 DAYS FOLLOWING THE END OF THE MUNICIPALITY'S FISCAL YEAR. THE LICENSED GAMING ENTITY SHALL REMIT THE REQUIRED PAYMENT TO THE DEPARTMENT FOR DISTRIBUTION IN ACCORDANCE WITH THE ACT. DISTRIBUTIONS SPECIFIED IN THIS CHAPTER SHALL BE MADE BY THE LICENSED GAMING ENTITY TO THE DEPARTMENT OR THE RESPECTIVE MUNICIPALITY, NO LATER THAN 15 DAYS FROM THE DEPARTMENT'S NOTICE OF THE SHORTFALL.

(2) DISTRIBUTIONS OF LOCAL SHARE ASSESSMENTS TO COUNTIES. THE DEPARTMENT WILL MAKE DISTRIBUTIONS IN ACCORDANCE WITH SECTION 1403(c)(2) OF THE ACT. IF THE MINIMUM DISTRIBUTION EXCEEDS THE APPLICABLE ANNUAL MUNICIPAL ALLOCATION CAP SET FORTH IN SECTION 1403(c)(3) OF THE ACT, THE AMOUNT IN EXCESS OF THE MUNICIPAL ALLOCATION CAP SHALL BE DISTRIBUTED BY THE DEPARTMENT IN ACCORDANCE WITH SECTION 1403(c)(2) OF THE ACT.

§ 1001.6. Administration of amounts deposited by licensed gaming entities with Treasury to pay Commonwealth gaming related costs and expenses (\$5 million).

(a) No later than 2 business days prior to the commencement of slot machine operations, the licensed gaming entity shall deposit \$5 million in the Department's Collection Account. Upon transfer of the \$5 million deposit into Treasury's Concentration Account, the deposit shall be credited to an account established in Treasury for the licensed gaming entity. The account established shall also be used to recognize and account for all future deposits required from the licensed gaming entity by the Department for administrative costs and all future withdrawals made by the Department for reimbursement of administrative costs.

(b) Each licensed gaming entity shall maintain a minimum account balance with Treasury of \$5 million.

(c) Moneys related to this account shall be transferred to the Department's Collection Account and from Treasury by EFT or other methods of funds transfer in accordance with § 1001.5(b) (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth).

(d) ~~If the account balance with Treasury of a licensed gaming entity falls below the \$5 million minimum deposit amount, as a result of the licensed gaming entity's~~

~~failure to make replenishments as directed by the Department, the Department will request that the Board utilize its reserved right to draw amounts from any other source of the licensed gaming entity and deposit the draw amount in the account specified by subsection (a) as necessary, to maintain the required minimum account balance. To fulfill the licensed gaming entity's obligations under this section, nothing prohibits the Board from drawing against any source of the licensed gaming entity, with the exception of any licensed gaming entity account that holds gross terminal revenue[,] to be deposited with Treasury in accordance with § 1001.5.~~

~~(e) Reimbursement of Commonwealth expenses will be as follows:~~

~~(1) The Department will issue to the licensed gaming entity, periodic assessments of expenses incurred by the Board, Department, Office of Attorney General, AND the Pennsylvania State Police and any other Commonwealth entity charged with administrative duties under the act, regarding expenses directly related to the licensed gaming entity, under budgets approved by the Board and upon appropriation by the General Assembly as required in section 1402.1 of the act (relating to itemized budget reporting). Expenses not included in budgets approved by the Board may not be~~

assessed against [the account of] the licensed entity under this section.

(2) Expenses incurred by the Commonwealth and assessed to the licensed gaming entity shall be charged back to the licensed gaming entity and deducted from the licensed gaming entity's account, as specified in section 1401 of the act (relating to slot machine licensee deposits) and this section.

(3) General administrative costs of the Commonwealth not specifically assessed to a licensed gaming entity under paragraph (1), shall be borne by each licensed gaming entity ~~for~~ on a prorata basis, ~~[determined by dividing the amount of the individual licensed gaming entity's gross terminal revenue by the total amount of gross terminal revenue of all licensed gaming entities]~~ at the discretion of the Secretary of Revenue UNTIL SUCH TIME AS ALL CATEGORY 1 AND CATEGORY 2 LICENSED GAMING ENTITIES ARE OPERATING AS PERMITTED UNDER THE ACT. [The allocation of expenses under this subsection, and not specifically allocated under paragraph (2) shall be subject to amendment by the Board].

§ 1001.7. Deposits of license, permit and other fees.

The fees for manufacturers' and suppliers' licenses, employment permits and other licenses and permits as the Board may require, excluding license fees paid for

Categories 1, 2 and 3 licenses under sections 1209 and 1305 of the act (relating to slot machine license fee; and Category 3 slot machine license), shall be deposited with Treasury into a restricted receipt account within the State Gaming Fund. The fees deposited will be transferred from a restricted receipt account into a restricted revenue account of the State Gaming Fund to be used by the Board to pay its operating expenses. License fees paid for Categories 1, 2 and 3 licenses under sections 1209 and 1305 of the act shall be paid into the State Gaming Fund in accordance with sections 1209(d) and 1305 of the act.

§ 1001.8. State Gaming Fund transfers.

(a) Application of section. This section applies to the transfers of moneys to and from the State Gaming Fund.

~~(b) Establish restricted receipt accounts. The Governor's Budget Office has the authority to establish restricted receipt accounts as required to facilitate transfers of moneys to and from the State Gaming Fund.~~

~~(c)~~ Quarterly distributions. Quarterly distributions from the State Gaming Fund to counties or municipalities in which a licensed facility is located, as determined by the Board, and as specified in Chapter 14 of the act (relating to revenues), shall be performed in accordance with the Governor's Management Directive 305.4 (relating to payments

to counties), SECTION 1001.5 OF THIS REGULATION (RELATING TO ADMINISTRATION AND DISTRIBUTION OF MONEYS HELD BY LICENSED GAMING ENTITIES AND THE COMMONWEALTH) and the following provisions:

(1) The Department will submit payment requisitions, accompanied by documentation, to the Office of the Budget for payment through Treasury. ~~Payments shall be made payable to the board of county commissioners of the county, or in the case of home rule charter counties, to the chief executive officer of the county, or in the case of counties of the first class coterminous with cities of the first class, to the city treasurer, on behalf of the agency designated as recipient of the payment or disbursement to be credited to the account of the recipient agency for use as specified in the documentation.~~

(2) The Department will determine the annual inflation adjustment and will publish notice of the inflation adjustment in the *Pennsylvania Bulletin* by [July 1] January 1 of each year.

(3) The Department will make distributions quarterly, no later than 30 days following the end of each calendar quarter.

~~(d)(c)~~ Tax, ASSESSMENTS and credit against tax.

(1) Determinations of gross terminal revenue and the calculations of taxes AND OTHER ASSESSMENTS due will be determined [daily] by the Department based on the actual calculations by the CCS.

(2) [Each banking day, the] The Department will notify each licensed gaming entity and Treasury of the amount of tax AND OTHER ASSESSMENTS due to the Commonwealth.

(3) [Each banking day, each] Each licensed gaming entity shall deposit the amount specified in paragraph (2) into the Department's Collection Account, in the manner prescribed by § 1001.5(b) (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth).

(4) The Department will enter into an agreement with each licensed gaming entity setting forth the terms and conditions of any credit against tax as claimed by the licensed gaming entity.

(5) Taxes AND OTHER ASSESSMENTS due as determined by the Department shall remain payable by the licensed gaming entity to the Department in accordance with section 1501(a) of the act (relating to responsibility and authority of department) regardless of any discrepancies between the licensed gaming entity's [daily] calculation

and that of the Department's or amounts contested by any party concerning the credit against taxes due. Resolution of disputed [daily] payments due will be addressed by the Department through adjustments it makes to its calculation of future [daily] payment ~~due~~ amounts ~~DUE~~. The Department may make adjustments to its calculation of future [daily] payment ~~due~~ amounts ~~DUE~~ after resolution of any dispute regarding the amount of taxes due. The Department will provide notice to the Board of the final calculations of taxes due under this subsection.

(6) Any [daily] remittance due that is caused by the imposition of the tax ~~OR OTHER ASSESSMENTS~~ on nonbanking days as well as holidays shall be remitted by the licensed gaming entity on the next banking day. For example, any tax that has accrued on Independence Day shall be transferred on the following banking day.

~~(e)~~(d) Imposition of a penalty. Failure to comply with this section that results in the failure to transmit the requisite amounts to the Department's Collection Account ~~or to any other fund of the Commonwealth,~~ shall result in the imposition of a penalty of 5% per month up to a maximum of 25% of the amounts due and unpaid by the licensed gaming entity. Payments made by a licensed gaming entity toward delinquent amounts, including penalties,

shall be allocated to the licensed gaming entity's delinquency in accordance with the priority of payments as specified under section 209 of the Taxpayers' Bill of Rights (72 P. S. § 3310-209).

§ 1001.9. State Gaming Economic Development Tourism Fund transfers.

(a) Department personnel will notify the respective licensed gaming entity and Treasury of the amounts the licensed gaming entity shall be required to deposit in the Department's Collection Account. Deposits shall be made on the same banking day as the date of the notice by the Department.

(b) Moneys shall be transferred by the licensed gaming entity by EFT or other method the Department may require and shall be deposited in the Department's Collection Account prior to being transferred to Treasury's Concentration Account.

(c) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of the problems.

(d) The Department will maintain records of the Department's Collection Account under this chapter and will share information as practicable, to assist Treasury in its reconciliation of deposits into its Concentration Account.

§ 1001.10. Pennsylvania Race Horse Development Fund transfers.

(a) Prior to making each Race Horse Improvement Daily Assessment against a licensed gaming entity, the Department will determine the amount of each licensed gaming entity's gross terminal revenue.

(b) Eighteen percent of the gross terminal revenue of each Category 1 licensed gaming entity shall be returned to each active and operating Category 1 licensed gaming entity that conducts live racing subject to the assessment cap in section 1405(c) of the act (relating to Pennsylvania Race Horse Development Fund), and subject to the allocations specified in section 1406(a)(1)(i)--(iii) of the act (relating to distributions from Pennsylvania Race Horse Development Fund).

(c) Procedures concerning Pennsylvania Race Horse Development transfers are as follows:

(1) Department personnel will notify the respective licensed gaming entity and Treasury of the actual amount each licensed gaming entity shall be required

to deposit in the Department's Collection Account as determined by the CCS. Deposits shall be made on the same banking day as the date of the notice by the Department.

(2) Moneys shall be transferred by the licensed gaming entity by EFT or other method as the Department may require and shall be deposited in the Department's Collection Account prior to being transferred to Treasury's Concentration Account.

(3) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of any of these problems.

(4) The Department will maintain records of the Department's Collection Account under this chapter and will share information as practicable, to assist Treasury in its reconciliation of deposits to its Concentration Account.

(d) The Department will notify each active and operating Category 1 licensee conducting live racing, Treasury and Office of the Budget of the amounts each active and operating Category 1 licensee conducting live racing will receive. [A] An eligible Category 1 licensee will receive from Treasury a weekly payment from the

Pennsylvania Race Horse Development Fund in accordance with the act. The deposits required under section 1406(a)(1)(ii) will be deducted by the Department before making the payment to each active and operating licensee and transferred to the appropriate [state] State fund, under section 1406 of the act.

(1) Payments shall be electronically transferred by the Commonwealth and shall be available to the licensee by the deadline established by the Department.

(2) Both Treasury and the Department will maintain records of distributions under this chapter and will share information, as practicable, to assist each agency in its reconciliation process.

(e) For purposes of the calculations and distributions of section 1406(a) of the act, live racing will be determined annually, and as a Category 1 licensed gaming entity commences live racing in accordance with section 1303(b) of the act (relating to additional Category 1 slot machine license requirements).

§ 1001.11. Property Tax Relief Fund transfers.

The Department will determine the appropriate amount of moneys to be transferred into the Property Tax Relief Fund. The moneys will be transferred only after all amounts of funding have been met concerning the transfers of money to

the other Funds specified in section 1408 of the act
(relating to transfers from State Gaming Fund) and other
applicable laws.

05/16/07

PENNSYLVANIA GAMING CASH FLOW MANAGEMENT
61 PA CODE CHAPTER 1001

DEPARTMENT OF REVENUE PROPOSED REGULATIONS

Published at 37 Pa.B. 1028 (March 3, 2007)

#15-436

COMMENT AND RESPONSE DOCUMENT

Department of Revenue Regulations #15-436
PENNSYLVANIA GAMING CASH FLOW MANAGEMENT
FINAL RULEMAKING
61 PA CODE CHAPTER 1001

This is a list of organizations and interested parties from whom the Department of Revenue has received comments regarding the above-referenced regulation.

<u>ID #</u>	<u>Name/Address</u>
(1)	Kim Kaufman, Executive Director Independent Regulatory Review Commission 14 th Floor 333 Market Street Harrisburg, PA 17101
(2)	Honorable Steven R. Nickol Minority Chairman House Finance Committee 18 East Wing, P.O. Box 202193 Harrisburg, PA 17120-2193
(3)	Marie Jiapello Jones, Esquire Counsel for Washington Trotting Association, Inc. Fox Rothschild LLP Midtown Building, Suite 400 1301 Atlantic Avenue Atlantic City, NJ 08401-7212
(4)	J. Scott Kramer, Esquire Counsel for Sands Bethworks Gaming LLC Duane Morris 30 South 17 th Street Philadelphia, PA 19103-4196

Department of Revenue Final Regulation
Chapter 1001 - Pennsylvania Gaming Cash Flow Management
COMMENTS AND RESPONSES

Economic or fiscal impact of the regulation.

Comment:

1.) The Independent Regulatory Review Commission (IRRC) requests more detailed information regarding costs to the Commonwealth for the administration of this rulemaking and costs imposed upon the regulated community, especially as it relates to the reimbursement of Commonwealth expenses.

(1)

Response:

1.) In response to IRRC's request for more detailed information regarding costs to the Commonwealth, there is no cost for implementing this permanent regulation. The permanent regulation serves to clarify the Department of Revenue's responsibilities in terms of slot machine gaming regulation. The Department of Revenue has submitted a proposed budget of \$8.3 million for 2007-08. That amount includes all costs associated with the Department to administer this rulemaking. These expenses will be billed on a prorata basis to licensed gaming entities and deducted from each entity's Section 1401 account.

§ 1001.3. Definitions

Comment:

2.) *Credit against tax* - This definition and § 1001.4(a), pertaining to calculations of credit against tax, implement Section 1209(c) of the Pennsylvania Race Horse Development and Gaming Act (Act) (4 Pa.C.S. § 1209(c)). IRRC recommends the definition be amended to include a reference to this section of the Act. (1)

Response:

2.) The Department accepts the recommendation of IRRC. The definition has been amended in the final rulemaking to include a reference to Section 1209(c) of the act.

§ 1001.5. Administration and distribution of moneys held by licensed gaming entities and the Commonwealth.

(a) Application of section.

Comment:

3.) Subsection (a) - "any other fund as specified in this chapter"

IRRC requests if any other funds are specified in this chapter, that they be identified in this subsection. (1)

Response:

3.) Section 1001.5(a) describes all funds that receive distribution under the Act. Accordingly, no changes have been made in the final rulemaking.

(b) Deposits and transfers to Treasury by licensed gaming entities.

Comment:

4.) Subsection (b) (1)

IRRC requests the terms "Office of the Budget" and "Governor's Budget Office" be referenced the same in 1001.5(b) (1), 1001.8(b) (1) and 1001.10(d), and recommends the term be defined. Second, under the section, the commentator recommends a method of calculating the amount due be included in the final-form regulation to replace the language "as calculated by the CCS." This could be achieved by referencing the various sections of the Act that relate to assessments. (1)

Response:

4.) The Department accepts the recommendations of IRRC. The term "Office of the Budget" is used consistently in the final rulemaking. The term "Office of the Budget" has been added to the definition section of the final rulemaking. In addition, the language "as calculated by the CCS" has been clarified and references the various sections of the Act: "in accordance with sections 1323, 1403, 1405-1407 of the Act."

Comment:

5.) Section 1001.5(b)(5)(i) (Proration of assessment) - The proposed regulation provides that the required minimum annual sum otherwise due a municipality is to be prorated for that portion of the fiscal year the Gaming Board determines the facility was actually in operation. What is the underlying authority for this "proration" proviso? (2)

Another commentator addressed 1001.5(b)(5)(i) - The proposal at 61 Pa. Code 1001.5(i) speaks in terms of proration of the minimum assessment based on the municipality's fiscal year, but that is a murky and ill defined and completely unnecessary concept. . . . Rather the host fee should be assessed on an annual basis measured from the gaming entity's first day in operation, without reference to the host municipality's fiscal year. The Gaming Act supports this methodology. (4)

IRRC also asked the Department to explain its statutory authority for the proration of the required minimum, as well as the rationale behind it and the method of implementation. (1)

Response:

5.) Section 1403(c)(3) of the Act states that a municipality will receive "2% of the gross terminal revenue or \$10,000,000 annually, whichever is greater" (emphasis added). The Act does not define the meaning of the term "annually" in this context. Based on the Department's understanding of Act 71, as amended by Act 135 and the nature of most municipal government's respective budget years, the Department has determined that "annually" can be reasonably construed to mean a municipality's fiscal year.

Section 1403(c)(3) provides for enhanced distributions to municipalities. It is understood that enhanced distributions to municipalities were anticipated by the General Assembly in order to compensate municipalities for the increased costs associated with hosting a licensed facility. It follows that distributions under Section 1403(c)(3) should directly correlate with the timeframe in which a licensed facility was actually in operation.

Accordingly, the Department has not made any revisions in the final rulemaking to Section 1001.5(b)(5)(i) (Proration of assessment).

Comment:

6.) Section 1001.5(b)(5)(iii) (Distributions of local share assessments to municipalities)

Commentator addresses that this section links the 4 Pa.C.S.A. § 1403(c)(3) local share assessment to the host municipality's fiscal year and believes this is fundamentally flawed. The proposal would require payment of the shortfall within 15 days following the end of the municipality's fiscal year. The regulation should require the payment within 15 days following the end of the licensee's fiscal year. The municipality's fiscal year has nothing to do with the determination whether any tax is due. (4)

Another commentator on this section addresses the deletion of the word "banking" from banking days and the reduction of time that licensed gaming entities have to respond to a notice. This reduction renders unreasonable short the period of time within which licenses gaming entities can conduct reasonable levels of due diligence to confirm or contest a notice of shortfall. (3)

IRRC asks when would a licensed gaming entity distribute money directly to a municipality? If distributions are not made from a licensed entity to a municipality, IRRC suggests the second provision be deleted. (1)

Response:

6.) In response to Commentator (4), see response to Comment (5) above. Commentator (3)'s concern regarding responding to a notice is addressed at the response to Comment (9) under assessment notices. Finally, in response to IRRC's question, subsection (b)(5)(iii) [re-lettered to subsection (c)(1)] is amended in the final rulemaking to remove the language that allows for direct distributions to municipalities by licensed entities, as the Department and the licensed entities anticipate all distributions will be made by the Department.

§1001.6. Administration of amounts deposited by licensed gaming entities with Treasury to pay Commonwealth gaming related costs and expenses (\$5 million).

Subsection (d) language "nothing prohibits the Board from drawing against any source of the licensed gaming entity"

Comment:

7.) What authority does the Department have to allow or prohibit the Pennsylvania Gaming Control Board (Board) from taking a particular action? If the provision is found in the Act, IRRC questions the need for including it in this rulemaking. (1)

Response:

7.) The Department accepts IRRC's recommendation; and therefore, subsection (d) is deleted under Section 1001.6 in the final rulemaking. The subsections have been re-lettered accordingly.

Subsection (e) Reimbursement of Commonwealth expenses
[Re-lettered to subsection (d) in the final rulemaking]

Comment:

8.) Section 1001.6(e)(1) (Period assessments)

IRRC expressed two concerns regarding this section:

The term "periodic" that is used to describe when these assessments will be issued is vague. The final-form should include a specific time period relating to the issuance of these assessments.

What is the Department's statutory authority for issuing assessments to recoup the cost of "any other Commonwealth entity"? The general term "Commonwealth" is used in 1001.6(e)(2) and (3). Does this term mean any Commonwealth agency or just the four that are listed in the Act? (1)

Response:

8) The phrase "periodic assessments" provides flexibility to the Department to adapt its assessment process in an efficient manner to changing business situations. This assessment process has been conveyed to each licensed facility through written communications.

Regarding IRRC's last point, the Department has removed the language "any other Commonwealth entity charged with administrative duties under the act" from subsection (e) (1) [re-lettered to (d) (1)] in the final rulemaking.

Comment:

9.) Section 1001.6(e) (2) (Assessment notices)

IRRC recommends the final-form regulation be amended to provide for detailed assessment notices that explain how amounts due were calculated.

Response:

9.) The assessment process has been conveyed to each licensed facility through written communications. Further, the expenses addressed in Section 1001.6 cannot be reimbursed until the General Assembly has approved budgets for the specified Commonwealth agencies as provided in Sections 1401 and 1402.1 of the Act. Therefore, no revisions to Section 1001.6(e) (2) [re-lettered to (d) (2)] have been made in the final rulemaking.

Comment:

10.) Section 1001.6(e) (3) (General administrative costs)
Section 1001.6(e) (3) provides that general administrative costs of the Commonwealth not specifically related to and assessed against a particular gaming entity are to be borne by each gaming entity "at the discretion of the Secretary of Revenue." . . . What is the statutory basis for the transferal of the authority to the Secretary? (2)

No reasonable basis exists for adopting such a fluid approach to a question of such fundamental fairness. WTA is unable to find any affirmative support in Act 135 for the deletion of the "prorated basis" language. . . . Cost allocation structure - Licensed gaming entities that are open are effectively paying a portion of the general administrative costs of the Commonwealth for the benefit of licensees who have been awarded licenses, but are not yet open. The proposed regulations fail to specifically address how these costs will be divided and recouped in the future. (3)

The proposed revision would provide no standards for the assessment of costs and would leave the formula to be applied "at the discretion of the Secretary of Revenue."

Regulatory costs should be assessed as incurred for each license and unallocated general overhead should be split equally among the licensees. The regulation should mandate that only on-line casinos will incur general administrative cost assessments other than the repayment of the initial loan Other than the limited exception of participating in repayment of the initial loan prescribed in Section 1402, there is no statutory authority to assess licensees for general regulatory costs to licensees for periods of time when they are not open. (4)

IRRC expressed four concerns regarding this section:

- o The regulation represents a policy decision of such a substantial nature that it requires further legislative input and direction. IRRC urges the Department to consult and work closely with the General Assembly to gain a better understanding of the legislative intent.
- o Identify and justify statutory authority for this provision.
- o IRRC asks what fiscal impact this provision will have on the regulated community.
- o IRRC expressed concern of creating an uneven playing field for all the licensed gaming entities. How will the Department implement an assessment system that is fair to all licensed gaming entities? (1)

Response:

10.) In response to several commentators' concerns regarding the language "at the discretion of the Secretary of Revenue," the Department has added clarifying language for the assessment/distribution of expenses on the prorata basis to Section 1001.6(e)(3) [re-lettered to (d)(3)] in the final rulemaking.

§1001.8. State Gaming Fund transfers

Comment:

11.) Section 1001.8(b) (Establish restricted receipt accounts)

What authority does the Department have to allow or prohibit the Governor's Budget Office from taking a particular action? If the provision is in the Act, IRRC questions the need for including in the regulation. (1)

Response:

11.) The Department agrees with IRRC's recommendation; and therefore, subsection (b) is deleted in the final rulemaking. The subsections have been "re-lettered" accordingly in the final rulemaking.

Comment:

12.) Section 1001.8(c)(1) (Quarterly distributions to counties or municipalities)

The language makes mention of payments to counties and how such payments are to be handled, but makes no specific mention of how payments to municipalities are to be handled. Commentator believes the Act requires that host municipality payments are to be made directly to the municipality, not through the county. (2)

IRRC expressed three concerns regarding this section:

- o No details on how payments to municipalities should be made.
 - o Either the reference to Management Directive 305.4 or the detailed instructions found in (c)(1) should be deleted.
 - o Annual inflation adjustment - specify what the Department is adjusting and how the adjustments will be calculated.
- (1)

Response:

12.) To address the comments on payments to municipalities, the Department has added clarifying language to section 1001.8(c) [re-lettered to subsection(b) in the final rulemaking]. At IRRC's suggestion to avoid duplication, the detailed instructions found in (c)(1) [re-lettered to (b)(1)] have been deleted in the final rulemaking, as they are already referenced in Management Directive 305.4.

In response to IRRC's inquiry on the annual inflation adjustment, the inflation adjustment provisions specifically refer to the net slot machine revenue distributions under Section 1403 of the Act. The Act mandates that each municipality receiving net slot machine distributions shall not receive an amount that exceeds 50% of that municipality's yearly total budget, indexed for inflation annually in accordance with the Consumer Price Index as specified in Section 1403(d) of the Act.

Comment:

13.) Section 1001.8(d) (Tax and credit against tax) -
The word "daily" was removed in section 1001.8(d), which deals with the determination of the taxes due on the gross terminal revenues of gaming entities and other aspects of the mechanics of how amounts of tax due will be remitted to the Department. The Act at section 1403(b) appears to require a daily Departmental computation of tax due from each gaming entity, yet the language in paragraph (1) of proposed section 1001.8(d) now makes no reference to this daily calculation. Commentator asks how often will the tax computation be made? (2)

IRRC asks if the provisions in (d) apply only to the transfer of money to and from the State Gaming Fund, or would they also apply to transfers involving all the funds? IRRC suggests that if it applies to all of the Funds, then the regulation should be amended. (1)

Response:

13.) In response to Commentator (2)'s question on the frequency of tax computations, the computations of tax will be made daily.

To address IRRC's question, the provisions in subsection 1001.8(d) govern transfers to the State Gaming Fund only. Subsection (d) has been re-lettered to (c) in the final rulemaking.

Comment:

14.) Section 1001.8(e) (Imposition of penalties) -
IRRC asks what is the Department's authority to impose penalties under this regulation for failure to transmit money to any fund except those related to gaming? IRRC recommends that the Department either list the other funds or delete the language, "or any other fund of the Commonwealth." (1)

Response:

14.) The Department accepts IRRC's recommendation; and therefore, deletes the language "or to any other fund of the Commonwealth" in the final rulemaking. Subsection (e) has been re-lettered to (d) in the final rulemaking.

Miscellaneous

Comment:

15.) Sections 1001.1, 1001.2 and 1001.5

IRRC recommends these sections be amended to note that this regulation also pertains to the "collection of tax." (1)

Response:

15.) The Department accepts IRRC's recommendation; and therefore, amendments have been made in the final rulemaking to Sections 1001.1, 1001.2 1001.5 and 1001.8 to add the language "collection of tax and other assessments." In addition, the title of subsection 1001.8 (c) in the final rulemaking has been amended to "Tax, assessments and credit against tax."

Comment:

16.) Section 1001.5(b) - Subsections (b)(5)(iii) and (iv) relate to distributions of local share assessments. IRRC recommends that subsections (b)(5)(iii) and (iv) be moved to a new subsection (c). (1)

Response:

16.) The Department accepts IRRC's recommendation; and therefore, amendments have been made in the final rulemaking at Section 1001.5. A new subsection (c) (Distribution of local share assessments) has been created and the language formerly at subsections (b)(5)(iii) and (iv) has been moved under this new subsection.

5/18/07

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code Chapter 1001

Pennsylvania Gaming Cash Flow Management

The Department of Revenue received one request for a copy of the final-form regulation from the following:

J. Scott Kramer, Esquire
Counsel for Sands Bethworks Gaming LLC
c/o Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196

Department of Revenue - Notice of Final Rulemaking

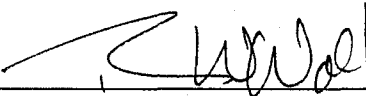
61 Pa. Code §§ 1001.1-1001.11

Pennsylvania Gaming Cash Flow Management

15-436

SECRETARY'S CERTIFICATION

I, Thomas W. Wolf, do hereby certify that I have reviewed this final regulation and determined that the final regulation is consistent with the principles outlined in Executive Order 1996-1.



Thomas W. Wolf
Secretary of Revenue

Department of Revenue - Notice of Final Rulemaking

61 Pa. Code §§ 1001.1 - 1001.11

Pennsylvania Gaming Cash Flow Management

15-436

FORM AND LEGALITY

I certify that I have reviewed this final regulation for form and legality, that I have discussed any legal and policy issues with the attorneys responsible for this final regulation, that I have made all appropriate revisions and that all information contained in the Preamble and Annex A is current and accurate.


Christopher Zettlemeier
Chief Counsel

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 15-436
SUBJECT: PENNSYLVANIA GAMING CASH FLOW MANAGEMENT
AGENCY: DEPARTMENT OF REVENUE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/25/07	<i>L. Kanno</i>	HOUSE COMMITTEE ON FINANCE
5/25/07	<i>A. Wilkinson</i>	
5/25/07	<i>B. Trumm</i>	SENATE COMMITTEE ON FINANCE
5/25/07	<i>Mary Ann...</i>	
5/25/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)