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EMBARGOED MATERIAL



January 26, 2007

Thomas A. Decker, Chairman
Pennsylvania Gaming Control Board
Harrisburg, PA 17106-9060

Dear Chairman Decker:

We have received your letters of January 11 and 22, 2007, describing the Gaming Control Board's (the "Board") plans to assess licensees the budgets approved by the Board for itself, the Department of Revenue (the "Department"), the Pennsylvania State Police ("SP"), and the Attorney General (the "AG") for regulatory costs (the "Regulatory Costs"). We understand that the budget for Regulatory Costs for fiscal year 2007-08 is \$52,600,000. We submit this response as invited by your letters.

We start, as you do, with 4 Pa. CSA § 1401(b), which provides that each licensee is required to deposit \$5,000,000 in an account with the State Treasurer not later than two (2) days before operations commence. This deposit amounts to an imprest fund because 4 Pa. CSA § 1401(c) provides that the licensee must replenish the account on a weekly basis with an amount equal to the deductions made by the Department from the account as authorized by 4 Pa. CSA § 1402. In turn, 4 Pa. CSA § 1402(a) ("Section 1402") authorizes deductions for appropriate assessments by the Department for (1) costs incurred by the Department attributable to a specific licensee, (2) the other costs and expenses of the Department within the budget approved by the Board, (3) sums necessary to repay loans from the general fund to the Department in carrying out its responsibilities including the acquisition of the central computer, (4) the costs and expenses of the SP and the AG and not otherwise reimbursed to them and in accordance with an approved budget, (5) sums necessary to repay loans to the SP from the general fund, (6) the costs and expenses of the Board based on the budget of the Board approved by the Board, and (7) sums necessary to repay loans from the general fund to the Board.

On a related note, 4 Pa CSA § 1208(1) requires the Board to collect the cost of investigations from the licensee in question. Sands Bethworks has paid approximately \$600,000 in application fees and investigative costs including approximately \$500,000 in investigative fees.

The legislative scheme is consistent in requiring each licensee to pay for the cost of its own investigations and its own Regulatory Costs. Section 1402(a)(1) focuses on reimbursement of department specific costs for a licensee; only then do the remaining provisions of Section 1402 permit the recovery of common costs of regulation that cannot be attributable to an individual licensee. Section 1402, entitled *Gross Terminal Revenue Deductions*, envisions the assessment of Regulatory Cost beginning only upon the commencement of the licensee's revenue generation.

We think that several conclusions follow from the statutes already analyzed. Until just prior to the commencement of operations, a licensee is not required to fund any Regulatory Costs that are not specific to the investigation of its application. As of the time it commences

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operations, a licensee may be assessed its appropriate share of costs to establish the system of regulation such as loans to the Department from the general fund for its share of the central computer system. However, we see nothing in Section 1402 that would authorize the assessment to a licensee of general staff costs not allocable to its investigation.

With these conclusions in mind, we offer these observations. First, we are concerned that the "true up" may be an indirect method to do what Section 1402 does not authorize: to allocate to licensees general Regulatory Costs incurred for the general operation of the various agencies for periods of time when the licensee is not in operation. Second, while we do not believe that such a retroactive assessment of general Regulatory Costs is authorized by Section 1402, we think it is unfair to allocate such costs to licensees attributable to periods of time when they are not open. Otherwise, the licensees that are not open would wind up bearing general Regulatory Costs when they are earning no revenue with the result that the general Regulatory Costs would be shifted from licensees that are open and earning revenue to those that are not open and nor earning revenue.

We think that there is a just solution to whatever shortfall there may be between the amount of the general Regulatory Costs and what may be fair to assess to the initial licensees. We note in your letter of January 22, 2007 that the Commonwealth has enjoyed just since November 14, 2006 the receipt of \$173,500,000 in license fees, taxes and other assessments. The license fee for each licensee is \$50,000,000 so there are ample funds available to the Commonwealth to cover an initial general Regulatory Costs shortfall without unduly burdening initial licensees with excessive assessments for Regulatory Costs and without shifting to the other licensees the Regulatory Costs attributable to periods before they commence operations.

We are more alarmed by the suggestion that once a stabilized year is achieved when all 11 licensees are operating that the general Regulatory Costs would be paid as a percentage of gross terminal revenue. We see no basis in the Act or in fairness to assess a larger proportion of the general Regulatory Costs to more successful licensees especially because those more successful licensees would be realizing the reward of better business acumen and larger investments. Each licensee has already been assessed the costs specifically attributable to its own investigation and operations. What is left is the residue of Regulatory Costs that should be shared in common and equally by each licensee. We see no basis for shifting the pro rata share of general Regulatory Costs from one or more licensees to one or more more successful licensees that are generating more gross terminal revenue because they have invested more money in their operations in order to achieve larger gross terminal revenue.

We appreciate the invitation to offer these comments.

Respectfully submitted,



Frederick H. Kraus, Esq.
Vice President - General Counsel

cc: Gregory C. Fajt
Secretary, Department of Revenue