STEVEN R. NICKOL, MEMBER
18 EAST WING
PO BOX 202193
HARRISBURG, PENNSYLVANIA 17120-2193
PHONE: (717) 783-8875
TOLL-FREE 1-800-251-8798
FAX: (717) 783-8898

HANOVER DISTRICT OFFICE:
"HOTEL RICHARD MCALLISTER"
11 YORK STREET, SUITE 101
HANOVER, PENNSYLVANIA 17331
PHONE: (717) 633-1721
FAX: (717) 633-9295

E-MAIL: snickol@pahousegop.com
WEBSITE: www.stevenickol.com

2596

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

REPUBLICAN FINANCE CHAIRMAN
INSURANCE

APPOINTMENTS

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT SYSTEM
BOARD OF TRUSTEES
TOBACCO SETTLEMENT INVESTMENT
BOARD

March 29, 2007

The Honorable Thomas W. Wolf
Acting Secretary of Revenue
Strawberry Square, 11th Floor
Harrisburg, PA 17128

RE: Notice of Proposed Rulemaking—Pennsylvania Gaming Cash Flow Management Regulations (61 Pa. Code §§ 1001.1 - 1001.11)

Dear Secretary Wolf:

Thank you for the opportunity to review and comment on the draft regulations submitted by the Department of Revenue regarding Gaming Cash Flow Management in the context of slots gaming as authorized by the Pennsylvania Race Horse Development and Gaming Act (hereinafter referred to as the "Act"). As Minority Chairman of the House Finance Committee, I would like to offer some observations and raise a few questions concerning certain provisions of the proposed regulations.

Under section 1403(c)(3) of the Act, a municipality hosting a slots facility is generally entitled, on an annual basis, to a statutorily set portion of the gross terminal revenue of the facility (2% of gross terminal revenue or $10 million, whichever is larger), subject to certain municipal budgetary considerations. Section 1001.5(b)(5)(i) of the proposed regulations 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. There does not appear to be a statutory foundation for this "proration" in section 1403(c)(3) or in any other section of the Act.....an annual stipend is mandated, with no mention of any mitigation of same. What is the underlying authority for this "proration" proviso? Is it the Department's intent to apply this "proration" provision to the initial start up of a slots facility (which may have some logic), or to any instance in succeeding years in which the facility is actually in operation less than 365 days?

Section 1001.6(e) of the proposed regulations deals with gaming entity reimbursement of the Commonwealth for certain costs incurred by the Commonwealth in administering the Act. Certain expenses and costs directly related to a particular gaming entity are charged to and collected from that entity. Section 1001.6(e)(3) goes on to provide that general administrative costs of the Commonwealth not specifically related to and assessed against a particular gaming

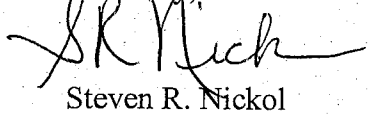
entity are to be borne by each gaming entity "at the discretion of the Secretary of Revenue." This language supplanted an earlier version of the proposed regulations that provided for a pro rata sharing of these expenses by a gaming entity based on a ratio obtained by dividing its gross terminal revenues by the gross terminal revenues of all gaming entities. My inquiry here is simply what is the statutory basis for the transferal of this authority to the Secretary? (Although this is not directly on point, as Commonwealth administrative expenses are not at issue, I would note that in section 1901.1 of the Act, the repayment of loans made from the General Fund to the Gaming Fund to cover start up costs of the Gaming Board, etc., is to be effectuated by assessments on the gaming entities on a pro rata basis based on gross terminal revenues as described above. The proposed assessment methodology in section 1001.6(e)(3), i.e., leaving it entirely up to the Secretary, runs counter to this pro rata approach , an approach which strikes me as a reasonable way to tackle the expense reimbursement issue as well.)

As was noted above, section 1403(c) of the Act generally provides for the payment of a portion of a slots facility's gross terminal revenues to the county and the municipality in which the facility is located. Actual payments are to be made on a quarterly basis directly to the host county and the host municipality involved. Section 1001.8(c)(1) of the proposed regulations apparently is the provision that is intended to spell out in technical detail how these payments are to be made. However, in paragraph (1) the language therein 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. I believe the Act requires that host municipality payments are to be made directly to the municipality, not through the county. Perhaps this is covered elsewhere and I simply missed it, but I wanted to mention this in the event there was an oversight in the proposal on this narrow, but important point.

Finally, I want to turn my attention to 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. (I say "now" because the word "daily" was contained in an earlier version of the proposed regulations, but was struck out in this latest version.) Just how often will the tax computation be made? While I certainly understand the need to tailor the mechanics of these computations, deposits, and attendant actions in such a way that they can be accomplished in an efficient and timely fashion, I would nonetheless appreciate a little more by way of explanation as to the purpose behind the aforementioned change made from the earlier draft of the proposed regulation.

I look forward to your response to these observations and questions, and thank you for your attention to the matter.

Sincerely,



Steven R. Nickol
State Representative