

# 2614

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July 13, 2007

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*Via FedEx Overnight Delivery*

Paul Resch, Secretary  
Pennsylvania Gaming Control Board  
303 Walnut Street  
Harrisburg, Pennsylvania 17106  
Attention: Public Comment of Regulation #125-64

**RE: Comments to Regulations Pertaining to Pennsylvania Gaming Control Board  
Regulation #125-64 (Chapters 429, 433, 435, 437 and 441)**

Dear Mr. Resch:

On behalf of HSP Gaming, L.P., enclosed please find an original and three (3) copies of comments to Proposed Regulations pertaining to Pennsylvania Gaming Control Board Regulation #125-64 (Chapters 429, 433, 435, 437 and 441).

Thank you for your consideration in this matter. Please feel free to give me a call if you have any questions.

Very truly yours,

*Michael D. Sklar*

MICHAEL D. SKLAR

MDS/mai  
Enclosures

# DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	07/10/2007	ADDRESS 1	1600 Arch Street
SECTION # OR SUBJECT	Sections 429, 433, 435, 437 and 441	ADDRESS 2	Suite 300
FIRST NAME	Michael	CITY	Philadelphia
LAST NAME	Sklar	STATE	PA
ORGANIZATION NAME	HSP Gaming, L.P.	ZIP CODE	19103
EMAIL ADDRESS	msklar@levinestaller.com	COUNTY	Philadelphia
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COMMENTS

Please see attached comments on behalf of HSP Gaming, L.P.

Comments may be submitted to the Board by U.S. Mail at the following address:

Pennsylvania Gaming Control Board  
P.O. Box 69060  
Harrisburg, PA 17106-9060  
Attn: Public Comment

**Comments of HSP Gaming, LP to Proposed Regulations Pertaining to  
Pennsylvania Gaming Control Board Regulation #125-64 (Chapters 429,  
433, 435, 437 and 441)**

**1. Proposed Regulation Section 433a.1 – Definitions**

An “applicant” is defined as anyone who has submitted an application to the Board. However, the definition does not recognize that at some point the application will be granted or denied and thus, the person submitting the application will no longer be an applicant.

Accordingly, we propose that the definition be revised as follows:

*“Applicant* – A person that has submitted an application to the Board for a slot machine license, manufacturer license, manufacturer designee license, supplier license, management company license or junket enterprise license, **which is pending before the Board or the denial of which is subject to a pending appeal, or for which the period of time to appeal has not expired.**”

**2. Proposed Regulation Section 433a.3 – Individual Ownership.**

Subsections (c) and (d) – Subsection (d) provides for an exemption from the licensing requirements as a principal if the individual’s indirect ownership interest in an applicant or licensee is less than 1%. The intent of this subsection (d) is to create an exemption for those individuals who hold a *de minimis* ownership interest, *i.e.*, less than 1%. Subsection (c) unintentionally defeats this exemption where the individual has the right to receive any profit, distribution or benefit from an intermediary or holding company of a slot machine applicant or licensee. In addition, we propose that the exemption from principal licensing be extended to those individuals with direct ownership interest in an applicant or licensee less than 1%; provided that such individual does not have the ability to control or direct the management or policies of an applicant or licensee.

The fact that an individual has the right to receive a distribution, provided that such individual has no power to control or direct management or policies should not defeat the *de minimis* ownership exemption.

We propose that subsection (c) be deleted since the direct ownership interest filing requirement is covered in subsection (a) and, as stated above, the right to receive profit, distribution or a benefit should not defeat the *de minimis* ownership exemption.

We propose that subsection (d) be revised as follows:

**“Notwithstanding subsection (a),** an individual that has a 1% or greater **direct or** indirect ownership interest in an applicant or licensee shall be licensed as a principal. An ownership that is held indirectly by an individual through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.”

Subsection (f) – This section requires a grantor of a trust to be licensed as a principal. We propose that the requirement for a grantor of a trust to become a principal be eliminated provided that the grantor has no further commitment or obligation or rights with respect to the trust.

In the alternative, where a grantor established a trust in excess of one year prior to the trust becoming an applicant or where establishes a trust with *de minimis* financial contributions and such grantor has no further commitments or obligations to the trust, an exemption is appropriate. Thus, we propose that an exemption be created for a grantor of a trust the trust was established in excess of one year prior to the trust becoming an applicant or where the financial contributions made by the grantor establishing the trust is under \$1,000 and no further financial contributions are made to the trust by such grantor.

### 3. **Proposed Regulation Section 433a.7 – Trusts.**

Subsection (b) – As set forth in the comments above, a *de minimis* ownership exception should exist. We propose subsection (b) be revised as follows:

**“Notwithstanding subsection (a),** a trust or similar business entity that holds a 1% or greater **direct or** indirect ownership interest in an applicant or licensee shall be licensed as a principal. An ownership interest that is held indirectly by an entity through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.”

Subsection (d) – We propose that the following language be added to this subsection to clarify that trustees, grantors and beneficiaries will be required to be licensed as principals only to the extent required by the regulations:

“A trust or similar business entity will not be issued a principal license unless each trustee, grantor and beneficiary, including a minor child beneficiary, **as required pursuant to this Chapter 433,** has been granted a principal license.”

**4. Proposed Regulation Section 433a.9 – Principal License Term and Renewal.**

Subsection (a) – We propose that this section be modified to provide that principal license renewals coincide with the renewal of the licensee with which they are associated.

**5. Proposed Regulation Section 437a.1 – General Vendor Requirements.**

Subsection (b)(3) This subsection requires a vendor to apply to the Board for certification if its employees will have access to restricted areas or the gaming floor. This provision should only require certification if the vendor's employees will perform duties on the gaming floor which are gaming related, such as working on slot machines, central computer system, etc. For example, a vendor whose employees are repairing a hole in the carpet on the gaming floor or a carpenter bolting down a chair in front of a slot machine should not have to become a certified vendor. The casino licensee's security and surveillance personnel can insure that such employees do not engage in improper or unlawful activity.

Accordingly, we propose this subsection be modified as follows:

“The vendor's employees will have access to restricted areas or perform gaming related duties on the gaming floor.”

**6. Proposed Regulation Section 437a. 4 – Principal Certification.**

We propose that persons who directly or indirectly hold a beneficial interest, or ownership, of less than 5% in a certified vendor, provided that such person does not have the power to control or direct the management or policies of the vendor, be granted an exemption from principal certification from the Board. This practice is consistent with the Board's past practice and with other jurisdictions, *e.g.*, New Jersey.

We further propose that officers and directors of publicly traded vendors applying to become certified vendors be granted an exemption from filing application forms as principals. General information regarding such officers and directors will be provided in the Vendor Certification Form. Publicly traded vendors are also regulated by the United States Securities Exchange Commission.

In the alternative, we propose that the officers and directors of publicly traded vendors be permitted to file a principal waiver form.

In addition, we propose that officers of certified vendors that are not regularly and actively involved in the certified vendor's business with a licensee may request that the Board waive the requirement to be licensed as a principal.

7. **Proposed Regulation Section 441a.5 – License Fee Payment Bond or Letter of Credit Requirements.**

Subsection (f)(2)(i) - This subsection provides that the payment bond or irrevocable letter of credit will expire in the event the issuer of the payment bond or irrevocable letter of credit receives a signed statement from the Board indicating that the application has been denied.

We propose that the payment bond or irrevocable letter of credit remain in place in the event an application has been denied but the applicant has an appeal pending related to the denial of the application. The recent Category 2 license appeals have demonstrated the unfairness of allowing an applicant to continue on appeal after withdrawing its payment bond or letter of credit. Thus, we propose this subsection be modified as follows:

**“The application has been denied and no appeal of such denial by the applicant is pending.”**

8. **Proposed Regulation 441a.7 – Licensing Hearings for Slot Machine Licensees.**

Subsection (h)(3) and (4) Consistent with the Board’s practice, we propose that with respect to the filing of the pre-hearing memorandum, applicants not be required to attach copies of documents which have been previously been provided to the Board or which contain confidential information.

To the extent that documents have previously been provided to the Board and such documents are not confidential, *e.g.*, local impact reports and traffic studies, the Board will either make such documents available to the public or will have posted such documents on the Board’s web site. To the extent the documents contain confidential information, the competing applicants are not entitled to access.