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February 15, 2008

VIA HAND DELIVERY

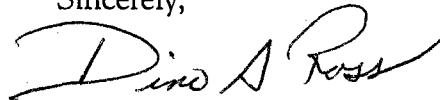
Paul Resch, Secretary
Pennsylvania Gaming Control Board
5th Floor – Strawberry Square
Harrisburg, PA 17101
Attn: Public Comment on Regulation No. 125-78

Re: Downs Racing, L.P.'s Comments to Proposed Rulemaking
In re: Regulation # 125-78

Dear Mr. Resch:

Enclosed please find Downs Racing, L.P.'s comments to Proposed Rulemaking with regard to the above-referenced Regulation.

Sincerely,



Dino A. Ross

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DAR/dsc

Enclosures

cc: Arthur Coccodrill (w/enclosures)
Scott Schalles (w/enclosures)

HAR:78597.1/MOH005-222463

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REVIEW COMMISSION

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

In re: Regulation #125-78
Proposed Rulemaking – 58 Pa. Code Chapter
461a

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DOWN'S RACING, L.P.'S COMMENTS TO PROPOSED RULEMAKING

Down's Racing, L.P. ("Downs Racing") is the holder of a Category 1 slot machine license which authorizes it to operate the Mohegan Sun at Pocono Downs in Plains Township, Pennsylvania. Downs Racing submits these comments to the Pennsylvania Gaming Control Board's ("Board") Proposed Rulemaking, as captioned above, which was published in the Pennsylvania Bulletin on January 19, 2008 at 38 Pa. B. 343.

Comments to Chapter 461a

Chapter 461a of the proposed regulations governs certain aspects of the gaming voucher system. Specifically, Section 461a.1 adds a definition of "unredeemed gaming voucher", which includes gaming vouchers that patrons do not cash and gaming vouchers that are found and turned in to a slot machine licensee. Section 461a.8 requires that a slot machine licensee's internal controls address the following additional items: (1) slot machine licensees are required to develop procedures for the payment of unredeemed gaming vouchers to patrons that can be identified by the licensee; (2) slot machine licensees are required to develop procedures for the retention, tracking and payment of the value of unredeemed gaming vouchers to the Pennsylvania Department of Treasury as required by the Disposition of Abandoned and Unclaimed Property Law (72 P.S. § 1301.1 et seq.) (the "Unclaimed Property Law"), which

essentially requires that a licensee hold unclaimed gaming vouchers for a period of five (5) years and at the end of such period, the value of the voucher must be reported to Treasury in accordance with Section 1301.11 and paid or delivered under Section 1301.13 of the Unclaimed Property Law; and (3) slot machine licensees are required to develop procedures for filing with the Board a copy of any report submitted to Treasury as required by the Unclaimed Property Law.

I. Tracking and Payment of Unredeemed Vouchers

Downs Racing opposes the requirement that a slot machine licensee develop procedures for the tracking and payment of unredeemed gaming vouchers to patrons that can be identified by the licensee (presumably by the licensee's player tracking system) for several reasons. First, the tracking and payment requirement is unduly burdensome without any corresponding regulatory benefit or benefit to the public. The vast majority of unredeemed gaming vouchers are for small dollar amounts, many for less than \$1.00. The time, effort and cost it would take Downs Racing to track down and pay patrons for these unredeemed vouchers far outweigh any possible benefit the process may bring. To illustrate this point, Downs Racing sampled unredeemed gaming vouchers for several representative days. The first sample was taken on Tuesday, September 20, 2007. On that day, 75 gaming vouchers were found and turned in to Downs Racing.¹ It took approximately 2 hours and 36 minutes for an employee to review the found vouchers to determine their amount and whether any had a player number associated with

¹ This sample includes only those unredeemed vouchers which were found or turned in on the premises and not other unredeemed vouchers like those which patrons may have taken with them.

it. Of the 75 vouchers, only three could be associated with a player through the player tracking system.² Significantly, none of the three vouchers was in excess of \$1.00.³

The second sample day was Tuesday, January 23, 2008. On that day, 156 vouchers were found or turned in. Of those vouchers, only three had a value of more than \$1.00 and of those three, none exceeded a value of \$17.50.⁴ 91 of the vouchers were associated with player accounts and of those 91 vouchers, only 2 had a value of more than \$1.00. It took an employee approximately 3 hours to conduct this research.

The final sample day was February 5, 2008. Here, as of approximately 10:00 p.m. on February 6, 2008, the report indicated that there were 333 unredeemed vouchers and of those tickets, only 64 could be tracked to a player.⁵ The average amount of those vouchers was \$9.08.⁶ It took an employee almost 4 hours to conduct this research.

In addition to the labor required to track down unredeemed vouchers, the cost of actually mailing letters and checks to identified patrons must also be considered. Downs Racing

² To enable a voucher to be traceable using the player tracking system, a patron must insert his/her players card in the slot machine at the time of play. The voucher will then be imprinted with the patrons player's club number. Downs Racing can identify the player by manually typing in that 20 digit number in the computer system.

³ A copy of the spreadsheet showing this information is attached hereto as Exhibit "A". A "TITO" (ticket in, ticket out), which is a term used on the spreadsheet, is another name for a gaming voucher.

⁴ A copy of the spreadsheet for the found gaming vouchers for January 23, 2008 is attached hereto as Exhibit "B".

⁵ This sample includes all unredeemed gaming vouchers.

⁶ This report was run only one day after the sample day. If the report was run weeks or months after the sample day, the experience of Downs Racing shows that the higher value gaming vouchers would be redeemed by players club patrons. Accordingly, the average value of the unredeemed voucher would be substantially less than \$9.08.

estimates that the cost of each item (postage, letterhead, envelope and check) would be approximately \$.74. If you include the labor cost, it is likely that the cost associated with tracking and mailing payments to patrons for unredeemed vouchers would exceed the amount actually sent to the patron in many instances.

Additionally, the Board should take into consideration the amount of confusion the tracking and payment requirement may cause. In many circumstances, patrons elect not to use their voucher the day it is generated but instead elect to use it during their next visit to the casino, which could be weeks or even months later. In these circumstances, under the procedure contemplated by the proposed regulations, patrons could conceivably get a check in the mail from Downs Racing prior to redeeming the voucher notwithstanding that the patron intended to redeem the voucher at their next visit to the casino. This would cause confusion on the patrons part, defeat the patron's intended use of the voucher and cause Downs Racing potential accounting problems. It could also induce the patron to forgo attending the casino when he or she otherwise would have gone to redeem the voucher, a situation which would ultimately reduce casino revenue. Moreover, a more problematic scenario results if the patron elects to use and does attempt to use the voucher after Downs Racing sends the patron the check but before the patron actually receives it. This situation certainly creates player confusion and may create liability issues for Downs Racing.

In evaluating the tracking and payment requirement of the proposed regulations, it is also instructive to consider several other similar Pennsylvania statutes and regulations and how the issue of unclaimed tickets is dealt with in those statutes and regulations. In the regulations promulgated under the Race Horse Industry Reform Act, 4 P.S. §325.101 et seq., it is

specifically provided that the holder must present his/her winning pari-mutuel ticket for payment before April 1st of the year following the year of its purchase and failure to do so constitutes a waiver of the right to receive the winnings.⁷ Notwithstanding that there is a players club system for horse and harness racing that permits the tracking of winning tickets, there is no requirement that the licensee attempt to identify and pay the winning ticket holder. Rather, the exact opposite is true. It is the sole responsibility of the winning ticket holder to claim his/her prize within a set time period or be forever barred from recovering any monies. This lack of tracking requirement is especially instructive given that it would be more feasible to have such a system in the horse and harness racing industry than in the gaming industry – the number of winning tickets is substantially less than the number of unredeemed tickets in the gaming industry and the value of a winning pari-mutuel ticket is likely higher than the average unredeemed gaming voucher. Accordingly, if tracking is not required in the horse and harness racing industry, there is no good reason to require it in the gaming industry. Patrons can and should be responsible for redeeming their own winnings.

⁷ Section 165.113(n) of the Horse Racing Commission Regulations, 58 Pa. Code §165.113(n), specifically provides:

(n) All winning pari-mutuel tickets must be presented for payment before April 1st of the year following the year of their purchase and failure to present any such ticket within the prescribed period of time shall constitute a waiver of the right to participate in the award or dividend. After April 1st of the year following the year of their purchase, all licensees shall forward to the State Treasurer all funds so held for such uncashed tickets. The Commission shall be notified by the licensee of the amounts so forwarded.

The regulations for the Harness Racing Commission contain an identical provision. See 58 Pa. Code §185.164(n).

Similarly instructive is the statute and regulations governing the Pennsylvania lottery. Neither the statute governing the lottery nor the regulations promulgated under the statute require the tracking and payment of winning lottery tickets. In fact, the burden is entirely on the winning ticket holder to present the winning lottery ticket within one (1) year of the drawing or lose any right to payment.⁸ If there is no tracking system required in the lottery system where winning tickets can have a value in the millions of dollars, there should be no such requirement in the gaming regulations where the value of an unredeemed ticket on average is much less than \$10.00.⁹

Accordingly, based on the above, Downs Racing requests that the Board eliminate the requirement that slot machine licensees be required to develop procedures for the tracking and payment of unredeemed gaming vouchers to patrons that can be identified by the licensee.

II. Holding Unredeemed Vouchers for Five Years

Downs Racing also opposes the requirement that the slot licensee hold unredeemed gaming vouchers for a period of five (5) years prior to turnover of the value of such vouchers to the State Treasury. Again, this requirement creates an extreme administrative burden on the slot

⁸ See 61 Pa. Code §811.17, which provides as follows:

Unclaimed prize money on a winning lottery ticket or share shall be retained by the Secretary for payment to the person entitled thereto for one year after the drawing in which the prize was won. If no claim is made within such period, the prize money shall be paid into the State Lottery Fund and used for purposes as otherwise herein provided in this part so that no less than 40% of the lottery revenues are used for the payment of lottery prizes.

⁹ It is also noteworthy that with limited exceptions, the Unclaimed Property Law does not require the holder of unclaimed property to attempt to locate the owner prior to expiration of the holding period.

licensee. As indicated above, there are potentially hundreds of unredeemed vouchers which are found and turned in every day. The required record storage space needed for these found tickets is great and, in fact, much greater than was anticipated by Downs Racing when developing the current storage plans for its permanent facility, Project Sunrise. Moreover, such storage area would be required to be climate controlled given the tendency of the vouchers to lose clarity in uncontrolled conditions. Again Downs Racing is faced with more costs with no corresponding material regulatory or public benefit.

Of further significance is the burden the five (5) year holding period would have on the cage team. The cage team, pursuant to internal control requirements, is required to verify the liability of the licensee at each shift change. Because the unredeemed found tickets are listed on the cage close out sheets after each shift, this liability would be required to be verified at the conclusion of each shift in the cage department. One can only imagine how oppressive this requirement would be after the accumulation of unredeemed vouchers for five (5) years.

In order to alleviate this undue administrative burden, Downs Racing suggests that the Board eliminate the provision in Section 461a.8 which requires a 5 year unredeemed voucher holding period and add a provision in the regulations similar to that contained in the regulations under the Race Horse Industry Reform Act or the Pennsylvania Lottery Law – a provision which limits the time in which a voucher may be redeemed and after which the proceeds must be reported, paid and delivered to Treasury.¹⁰ Downs Racing would suggest the following:

¹⁰ Section 1207(5) of the Gaming Act, 4 Pa. C.S. §1207(5), gives the Board the power to "prescribe the procedures to be followed by slot machine licensees for any financial event that occurs in the operation of slot machines." Certainly the generation and redemption of gaming vouchers is a "financial event that occurs in the operation of slot machines." Accordingly, the Board has the power to promulgate such a regulation.

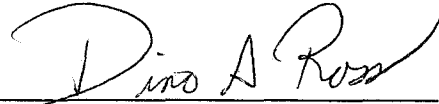
All gaming vouchers must be redeemed within 180 days of their issuance and failure to redeem such gaming voucher within the prescribed period of time shall constitute a waiver of the right to redeem such voucher. At the conclusion of the 180 day period, all slot machine licensees shall forward to the State Treasurer the value of the vouchers that have not been redeemed.

The legal effect of this suggested provision is the same as in the regulations promulgated under the Race Horse Industry Reform Act and the Pennsylvania Lottery Law – after the expiration of a certain time period, the patron loses any right to redeem it and therefore it has no value to the patron. The expired voucher, having no value to the patron, would therefore not be unclaimed property subject to the five (5) year holding period of the Unclaimed Property Law.

The adoption of this alternative approach accomplishes the same goals of the proposed regulation without the extreme administrative burden of keeping the hundreds of thousands and possibly millions of unredeemed vouchers on the books for five (5) years. Patrons will have the opportunity to redeem the voucher for a reasonable period of time and at the conclusion of said time period, the funds will escheat to the Commonwealth.

Accordingly, Downs Racing respectfully requests that the Board incorporate its comments into its final rulemaking.

Respectfully submitted:



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*Counsel for Downs Racing, L.P. and the
Mohegan Tribal Gaming Authority*

Date: February 15, 2008

EXHIBIT A

Denominations	# of TITOs	Total \$ Amount	TITOs with Account #s
\$0.01	13	\$0.13	
\$0.02	2	\$0.04	
\$0.03	8	\$0.24	
\$0.04	5	\$0.20	
\$0.05	7	\$0.35	
\$0.06	2	\$0.12	
\$0.08	3	\$0.24	
\$0.09	1	\$0.09	
\$0.10	4	\$0.40	1
\$0.12	1	\$0.12	
\$0.13	1	\$0.13	
\$0.14	1	\$0.14	
\$0.15	1	\$0.15	
\$0.16	1	\$0.16	
\$0.17	1	\$0.17	
\$0.18	2	\$0.36	
\$0.19	1	\$0.19	
\$0.20	1	\$0.20	
\$0.21	2	\$0.42	
\$0.23	1	\$0.23	
\$0.25	2	\$0.50	
\$0.30	1	\$0.30	
\$0.33	1	\$0.33	
\$0.40	1	\$0.40	1
\$0.44	1	\$0.44	
\$0.49	1	\$0.49	
\$0.50	2	\$1.00	
\$0.65	1	\$0.65	
\$0.75	1	\$0.75	
\$0.80	1	\$0.80	
\$1.00	1	\$1.00	1
\$2.50	2	\$5.00	
\$5.00	1	\$5.00	
\$11.00	1	\$11.00	
Totals	75	\$31.74	3

EXHIBIT B

Abandoned Tickets

Amount	Asset	Time	Date	Card?
0.01	1226	14:22:44	23-Jan	176186
0.45	1042	15:25:34	23-Jan	199500
0.18	1234	12:48:14AM	24-Jan	na
0.01	1151	6:45:12	24-Jan	na
0.25	1004	14:59:29	23-Jan	212237
0.06	1231	14:31:44	23-Jan	174622
0.75	1066	16:59:38	23-Jan	na
0.25	1008	15:17:44	23-Jan	na
0.12	1234	10:38:31	23-Jan	na
0.5	1075	11:41:49	23-Jan	na
0.75	1040	13:33:13	23-Jan	159124
0.32	2215	13:51:21	23-Jan	143836
0.06	1233	12:44:07	23-Jan	232482
0.75	1008	11:52:40	23-Jan	132626
0.21	1229	4:34:22	23-Jan	na
0.01	1366	9:03:55	23-Jan	109538
0.64	1342	11:14:38	23-Jan	127054
0.02	1307	9:18:02	23-Jan	104296
0.75	2213	10:20:33	23-Jan	132626
0.25	1097	10:48:35	23-Jan	113284
0.04	1246	1:31:50	23-Jan	na
0.03	1414	9:38:53	23-Jan	na
0.04	2159	7:51:14	23-Jan	na
0.01	1185	7:45:05	23-Jan	na
0.5	2213	7:37:30	23-Jan	na
0.01	1221	6:10:01	23-Jan	na
0.05	1280	3:58:34	23-Jan	na
0.01	2158	1:41:40	23-Jan	153440
0.05	1226	0:05:02	23-Jan	na
0.05	1342	1:19:22	23-Jan	na
0.25	1234	0:41:10	23-Jan	209597
0.16	1235	3:43:14	24-Jan	110343
0.1	1234	3:25:50	24-Jan	157304
0.14	1231	4:38:38	24-Jan	na
0.25	1042	7:55:13	24-Jan	135034
0.06	1230	17:49:50	23-Jan	141254
0.1	1113	23:39:50	23-Jan	na
0.02	2158	6:50:13	24-Jan	na
0.23	1108	6:25:40	24-Jan	na
0.1	1115	8:03:08	24-Jan	132027
0.01	2235	20:16:56	23-Jan	169389
0.19	1267	22:54:04	23-Jan	150966
0.17	1231	21:43:05	23-Jan	na
0.6	2213	21:07	23-Jan	na
0.01	1192	16:39:33	23-Jan	150777
0.01	1280	18:42:24	23-Jan	na
0.03	1231	18:29:24	23-Jan	153768
0.75	2108	17:16:01	23-Jan	180057
0.2	1181	17:10:39	23-Jan	na

0.01	1182	17:10:56	23-Jan	175031
0.05	2212	16:03:40	23-Jan	125296
0.15	1207	15:44:05	23-Jan	na
0.01	1246	15:22:26	23-Jan	na
0.05	1161	6:44:45	24-Jan	na
0.05	1274	5:16:08	24-Jan	na
0.05	1305	20:28:46	23-Jan	131230
0.04	1308	20:28:26	23-Jan	na
0.25	1498	0:07:28	23-Jan	209597
0.1	1826	2:24:03	23-Jan	na
0.2	2148	0:51:35	23-Jan	233408
0.05	2147	1:53:44	23-Jan	na
0.25	1992	12:43:39	23-Jan	209983
0.1	1761	7:22:50	23-Jan	na
0.01	1858	7:13:49	23-Jan	na
0.01	2031	8:22:00	23-Jan	na
0.08	1870	5:09:47	23-Jan	110382
0.5	1315	10:36	23-Jan	293935
0.03	1850	9:14:02	23-Jan	na
0.1	1794	12:26:06	23-Jan	187038
0.01	1854	14:29:49	23-Jan	111651
0.04	1846	14:28:51	23-Jan	180764
0.15	1780	14:28:27	23-Jan	115004
0.05	1769	13:59:05	23-Jan	296431
0.5	1480	13:30	23-Jan	na
0.25	1638	14:13:12	23-Jan	264383
0.25	1961	11:21:13	23-Jan	na
0.09	2225	10:38:41	23-Jan	116780
0.04	1231	9:13:12	23-Jan	na
0.15	1712	10:00:37	23-Jan	118057
0.01	1785	5:18:08	23-Jan	na
0.03	1836	5:18:36	23-Jan	na
1	1530	4:57:39	23-Jan	296364
0.07	2009	4:50:28	23-Jan	na
0.01	1405	0:49:40	23-Jan	na
0.02	1850	9:34:59	23-Jan	143609
0.05	1533	4:44:09	23-Jan	198414
0.05	1938	7:26:22	23-Jan	na
0.09	1944	7:26:17	23-Jan	na
0.2	2249	7:26:08	23-Jan	na
0.24	1553	6:09:54	23-Jan	164312
0.32	1406	0:03:15	23-Jan	na
1	2110	0:28:48	23-Jan	na
0.45	2107	0:28:44	23-Jan	na
0.03	2070	17:20:50	23-Jan	na
0.5	1963	20:56:17	23-Jan	127725
0.05	1599	22:59:02	23-Jan	197537
0.06	1612	16:43:05	23-Jan	113465
0.01	1406	13:46:36	23-Jan	130904
0.02	2150	0:31:42	23-Jan	na
0.16	1712	9:23:13	23-Jan	192217
0.02	1331	15:12:31	23-Jan	na

0.01	1870	14:44:53	23-Jan	159314
0.25	1473	16:37:42	23-Jan	113866
10.43	2010	2:13:10	23-Jan	167097
0.03	1705	16:43:13	23-Jan	264468
0.75	1963	16:14:09	23-Jan	na
0.15	1793	16:05:54	23-Jan	146830
0.01	1693	15:52	23-Jan	na
0.01	2058	16:46:51	23-Jan	126307
0.01	1858	6:29:23	24-Jan	128084
0.07	2149	23:25:59	23-Jan	na
0.2	1729	17:45:30	23-Jan	261584
0.2	1779	17:33:58	23-Jan	224354
0.02	1678	19:00:51	23-Jan	106943
17.5	1556	20:19:35	23-Jan	na
0.1	1519	20:30:53	23-Jan	169384
0.25	1392	17:06:28	23-Jan	na
0.01	1200	17:02:02	23-Jan	186508
0.07	1793	16:35:17	23-Jan	175095
0.2	1443	17:57:27	23-Jan	106781
0.15	1558	18:58:05	23-Jan	296461
0.25	1972	19:40:21	23-Jan	170356
0.1	1743	19:40:06	23-Jan	114722
0.02	1919	19:11:43	23-Jan	181000
0.2	1516	18:52:03	23-Jan	163248
0.04	2252	15:32:08	23-Jan	113791
0.01	2154	18:59:10	23-Jan	210920
0.08	1634	19:19:37	23-Jan	150495
0.01	1357	19:58:48	23-Jan	111903
0.01	1403	15:14:46	23-Jan	na
0.01	1978	17:12:09	23-Jan	123789
0.25	1959	19:01:30	23-Jan	143323
0.25	1642	19:01:56	23-Jan	106782
0.15	1392	19:05:16	23-Jan	178953
0.33	1838	20:04:38	23-Jan	155031
0.25	1644	23:11:19	23-Jan	136401
0.04	1956	19:57:54	23-Jan	169389
0.01	2025	23:28:37	23-Jan	na
0.02	1836	4:16:59	24-Jan	106687
0.05	1584	23:18:21	23-Jan	191116
0.07	1550	22:07:17	23-Jan	116030
0.01	1404	21:24:42	23-Jan	291118
0.03	1363	22:06:48	23-Jan	na
0.01	1802	21:54:24	23-Jan	128641
0.2	2255	22:46:29	23-Jan	106774
0.01	2025	8:12:38	24-Jan	na
0.08	2147	21:46:17	23-Jan	na
0.23	1745	20:39:14	23-Jan	152287
15	1070	20:35:48	23-Jan	130436
0.1	1761	20:35:52	23-Jan	117357
0.16	1447	6:49:10	24-Jan	114456
1	2169	4:22:18	24-Jan	na
0.05	1795	7:51:59	24-Jan	na

0.05	1311	20:09:36	23-Jan na
0.25	1310	20:08:46	23-Jan na
0.1	2113	20:42:51	23-Jan na
0.04	2147	17:00:34	23-Jan 116452

68.41