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INDEPENDENT REGULATORY
REVIEW COMMISSION

December 4, 2008

Mr. Richard Sandusky
Director of Regulatory Review
Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

RE: Proposed Regulation #125-92 Smoking in Licensed Facilities

Dear Mr. Sandusky:

The Pennsylvania Gaming Control Board (PGCB) has recently proposed an amendment to the PGCB Regulations relating to "Smoking in Licensed Facilities" as set forth in Proposed Regulation 58 P.A. Code § 441a.25. The Proposed Regulation provides in subsection (a) that smoking is permitted on 25% "of the square footage of the gaming floor" and provides in subsection (d) that the percentage of the gaming floor where smoking is permitted may be increased "*in proportion to the percentage difference in revenue*" between games in smoking areas versus non-smoking areas up to a maximum of 50% of the gaming floor.

The Clean Indoor Air Act (Act 27), 35 P.S. § 637.1, *et. seq.*, (the "Smoking Act") also permits smoking on a minimum of 25% of the gaming floor and allows for a maximum of up to 50%. The method for determining if a slot machine Licensee is permitted to increase the square footage of the smoking area is set forth at §637.3(b)(11) of the Smoking Act, which states in pertinent part:

...If the report shows that the average gross terminal revenue per slot machine unit in the designated smoking area equals or exceeds the average gross terminal revenue per slot machine in the designated nonsmoking area, the licensed facility may increase the designated smoking area of the gaming floor *in proportion to the percentage difference in revenue*. (Emphasis added).

First, we suggest a definition be added to the Proposed Regulation defining what is included in the calculation of the square footage of the gaming floor. This calculation must be uniform for all Licensees. The Gaming Floor should be defined as the secure perimeter of the floor as designated on the floor plans that are submitted by Licensees and approved by the PGCB including all areas and amenities located on, and within the footprint of the gaming floor such as bars and lounges. Further, all areas of the gaming floor that contain slot machines and/or are directly related to slot machine operations, such as bars that have bar-top slot

machines and the casino cage, should be included in the square footage calculation for defining the gaming floor. It is our understanding that this is how the square footage for the smoking area is currently being calculated at one, if not more casinos within the Commonwealth.

We also recommend that what is meant by "in proportion" be spelled out by giving an example because otherwise what is meant by "in proportion" is not clear. We think the example, which is consistent with the Smoking Act, should be as follows: If the report from the Department of Revenue indicates that the average win per unit of the slot machines located in the non-smoking section of the gaming floor is \$100, and the average win per unit of the slot machines located in the smoking section of the gaming floor is \$125, then the machines located in the designated smoking section have outperformed the machines located in the non-smoking section by 25%. Thus, the Licensee should be able to increase the square footage of the gaming floor designated as a smoking area by adding the difference, in this case 25%, to the then-existing designated smoking section. Under the above example, if a Licensee currently has 25% of its gaming floor designated as a smoking area, the licensee will be permitted to increase the designated smoking area to 50%. However, if the analysis determines that the machines located in the smoking section have average gross terminal revenue per unit that is 1% greater than the machines located in the non-smoking area, the Licensee would be permitted to increase the smoking section to 26% of the total gaming floor.

We also suggest that specific timelines be set forth within the Regulation allowing for reasonable turn-around times for the required reports and review from the Department of Revenue, the Gaming Control Board and the Licensees. Specifically, under §441a.25(c), we suggest that the Licensee receive the gross terminal revenue report from the Department of Revenue within five (5) business days of submitting the request to the Department. This should not present any difficulty because the Department of Revenue computes gross terminal revenue on a daily basis. We also suggest that under §441a.25(d), the Board's Executive Director should be required to verify the gross terminal revenue comparison report submitted by the licensee within five (5) business days. And under §441a.25(e) the Board's Executive Director should be required to review and verify compliance of revised gaming floor plans within 10 business days from a Licensee submitting its notice of intent to increase, decrease or reconfigure the square footage of the gaming floor designated for smoking. This process would allow for a total review and verification timeline of 20 business days from the time the Licensee requests the gross terminal revenue report from the Department of Revenue to the time a Licensee may adjust the smoking area of its gaming floor.

You have asked for comments relating to whether smoking and/or non-smoking labels should be placed on each individual slot machine. We do not believe that such labels should be placed on the machines for several reasons. First, the required signage should be adequate to delineate the areas where smoking is allowed. Second, for that reason, we think that the posting of labels is an unnecessary administrative and maintenance burden. The labels could be peeled or torn off the machines by guests, leaving a residue on the machines, labels on the floor, and defeating the purpose of having the label on the machine in the first place. Monitoring the machines for intact labels, cleaning the machines and replacing the labels would create

unnecessary expense. Furthermore, when machines are relocated from the smoking section of the floor to the non-smoking section, the labels would have to be removed, again requiring cleaning and expense and risking error if the labels are not changed and conflict with the signage. Therefore, there should be no need for individual labels on each slot machine.

Thank you for the opportunity to comment on this important issue.

Regards,

A handwritten signature in black ink, appearing to read 'R. DeSalvio', followed by a long horizontal flourish line extending to the right.

Robert J. DeSalvio
President

CC: F. Kraus
H. Eicher
K. Brady