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June 20, 2011

**VIA HAND DELIVERY**

Susan Yocum, Assistant Chief Counsel  
Pennsylvania Gaming Control Board  
303 Walnut Street, Strawberry Square  
Verizon Tower, 5<sup>th</sup> Floor  
Harrisburg, PA 17106

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Re: Joint Comments to Proposed Rulemaking No. 125-145

Dear Ms. Yocum:

Downs Racing, L.P. d/b/a Mohegan Sun at Pocono Downs ("MSPD") and Greenwood Gaming and Entertainment, Inc. d/b/a Parx Casino ("GGE") respectfully submit the following comments in response to the Pennsylvania Gaming Control Board's (the "Board") Proposed Rulemaking No. 125-145 amending the Chapters 401a, 461a, 465a, and 467a of the gaming regulations found in title 58 of the Pa. Code. MSPD and GGE have concerns with the amendments to Chapters 401a.3 specifically the definition of *complimentary service* and the implications it will have on *gross terminal revenue* as well as other provisions covered in the aforementioned amendments.

**I. COMMENTS**

**a. 58 Pa. Code § 401a.3 (Complimentary Service)**

The Board in its rulemaking explains that an amendment was made to the definition of the term *complimentary service* to clarify that points associated with an operator's player rewards programs and credits given for free slot play are excluded from the definition of the term. This amendment essentially makes the distinction that the aforementioned rewards and credits are not considered a complimentary, which has the effect of making them taxable personal property awards. The Board's rationale for this amendment seems to be that since the "value of complimentaries" and the aforementioned credits and rewards are treated differently, clarification was needed, although the Board states that in other gaming jurisdictions complimentary services and credits for free slots play are treated the same in the calculation of tax.<sup>1</sup> The amendment and rationale offered are wholly inconsistent and should be reconsidered by the Board for withdrawal.

<sup>1</sup> "The value of complimentaries including cash and noncash gifts or reimbursements may not be deducted from gross terminal or gross table game revenue." Credits for free slot play and player rewards programs may be

The issues of whether personal property awards are within the exclusion to gross terminal revenue as personal property distributed to a patron as the result of playing a slot machine and whether an operator can ever actually realize that exclusion are subject of litigation pending in the Commonwealth Court. See Greenwood Gaming and Entertainment, Inc. v. Commonwealth of Pennsylvania, 617 F.R. 2009. The matter is likely to be argued in the early fall and decided within several months thereafter. Therefore, the Board should refrain from taking regulatory action on matters impacting gross terminal revenue and the treatment of personal property pending the outcome of that case. MSPD and GGE request the Board withdraw its proposed amendment to the term *complimentary service*.

Section 465a.7(a) has been revised in this rulemaking to require the submission by operators to the Board for approval of internal controls related to complimentary services. MSPD and GGE request that the Board carefully reconsider this amendment. Requiring operators to submit internal controls concerning complimentary services is unnecessary and places an additional burden on operators. The rationale offered by the Board for this amendment is that informal reviews of some other operators' internal controls has uncovered inadequacies. However, it seems unfair and unreasonable to impose this requirement on all operators. Surely the Board could require inadequate internal controls to be corrected and resubmitted by the inadequate operator. To impose this requirement on all operators creates an unnecessary and heavy burden. Please revise to eliminate this requirement.

**b. 58 Pa. Code § 465a.9(e)(10) (Surveillance System)**

MSPD and GGE respectfully request that the Board eliminate the requirement of section 465a.9(e)(10), which demands that each ticket redemption machine (TRM) and automated teller machine (ATM) contain a camera within the machine to record the face of each patron transacting business at the machine. This requirement would produce a significant cost to licensees. Currently, there are multiple surveillance cameras around any TRM or ATM area at Mohegan Sun at Pocono Downs and Parx Casino. These cameras and their locations were reviewed and approved by the Board. By requiring individual cameras to be installed in TRMs and ATMs, licensees would need to run specific types of power wires and cables to each TRM and ATM. Licensees would need to buy special cameras for each TRM machine and pay for the labor of installing the camera, running the wires, and any additional labor associated with this work. Based on the preceding, MSPD and GGE request that the Board eliminate the requirement that each TRM and ATM contain a camera inside the machine to record the face of each patron.

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deducted from the total of cash or cash equivalent wagers when calculating gross terminal revenue. See Board's explanation to Proposed Rulemaking No. 125-145.

**c. 58 Pa. Code § 465a17(f) (Bill Validators)**

MSPD and GGE respectfully request the addition of clarifying language in regulation 465a.17(f), so it parallels temporary regulation 525.21—match play coupons. Specifically, MSPD and GGE suggest including match play coupons as items to be deposited in the table game drop box.

**d. 58 Pa. Code § 465a.18(d) (Transportation of Table Game Drop Boxes)**

MSPD and GGE previously submitted comments as part of a larger group to Temporary Table Game Rulemaking No. 125-121 concerning the transportation of table game drop boxes. Upon review of the instant rulemaking it is necessary to reiterate those comments submitted regarding Sections 465a.18(d) (previously Section 525.18(c)). Section 465a.18(d) requires that table game drop boxes removed from gaming tables be transported directly to and secured in the count room by at least one security department employee and one finance department employee. Since the count team is not involved with the pulling of table game drop boxes, MSPD and GGE recommend that the Board's requirement that at least one finance employee be present at the count room to secure all drop boxes be replaced either by one table games employee or add another security department employee. Further subsection (d)(3) should be revised as well. Subsection (d)(3) provides that a table game drop box being replaced by an emergency drop box must be transported, using a trolley, directly to and secured in the count room by at least one security department employee and one finance department employee. The requirement that a table game drop box being replaced by an emergency drop box be transported 'using a trolley' directly to the count room is onerous and impractical. The industry standard is for the drop box to be carried back to the count room or storage area and by a table games (not finance) and a security employee. MSPD and GGE request the Board revise subsection (d)(3) to conform with the industry standard.

**e. 58 Pa. Code § 465a.19 (Acceptance of Tips)**

MSPD and GGE respectfully request that Poker supervisors be exempt from the requirements of section 465a.19(a). Poker, pursuant to temporary regulation Chapter 553, is the only non-banking table game in Pennsylvania. Due to this status, licensees have no vested interest in the outcome of the hand. MSPD and GGE would like to expand the role of a Poker supervisor to include more service-based and customer-related functions. This expanded service role would require the ability to accept gratuities from patrons. As a result, MSPD and GGE respectfully request that the Board revise section 465a.19 to exempt Poker supervisor from the prohibition of accepting tips or gratuities.

**f. 58 Pa. Code § 465a.36(c) (Table Inventories)**

MSPD and GGE respectfully request that the Board eliminate the requirement that a table inventory slip be completed at least once each gaming day for a table game that is not open for gaming activity. GGE currently operates 171 gaming tables at Parx Casino (and MSPD currently operates 84 gaming tables at Mohegan Sun at Pocono Downs). The number of table games opened each day depends on business volume and customer demand. However, there are days when not all of GGE's 171 (or 84 at MSPD) gaming tables have been opened that day. Under the current requirement, GGE would be required to open each table, whether closed all day or not, and complete a table inventory slip. There is no security or accounting risk with keeping the table game closed and maintaining the table inventory slip that was created when the table initially closed. MSPD and GGE believe that the current requirement creates a security and accounting risk by requiring the opening of the closed games each day and inventorying the unused table game, instead of keeping it closed and secured. As a result, MSPD and GGE request that the Board revise section 465a.36(c) by eliminating the requirements that a table inventory slip be completed at least once each gaming day for a table game that has not been opened for gaming activity.

**g. 58 Pa. Code § 465a.35(b)(5) (Table Game Minimum Staffing)**

Section 465a.35(h) of the temporary gaming regulations allows operators to submit a written alternative minimum staffing plan to the Board for approval that departs from the minimum staffing requirements set forth by the Board. While MSPD and GGE greatly appreciate the Board's flexibility to date here, given recent regulatory changes in New Jersey discussed below that relax the staffing standards and also considering the Board's year of experience with actual table game operations in the Commonwealth, it would be more efficient for the Board to revisit its regulations to allow for additional flexibility.

MSPD and GGE respectfully request that the Board eliminate the requirement of section 465a.35(b)(5). Based on our experience, MSPD and GGE do not believe the requirement of one boxperson for each Craps game is appropriate. This requirement creates a situation where there are two supervisor positions assigned to a Craps game. There is the boxperson and the floorperson, who supervises the game as required by section 465a.35(c)(5)-(6). See 58 Pa. Code § 465a.35(c)(5)-(6), *Temporary Rulemaking* 41 Pa.B. 2581). Moreover, New Jersey recently revised its regulations regarding table game staffing to allow casinos in Atlantic City to structure their table game operation based on that casino's individual need, not a predetermined staffing list that may be inappropriate for that casino. As part of this regulatory change, the Division of Gaming Enforcement repealed the regulatory requirements for a boxperson and a pit boss. See Emergency Regulation N.J.A.C. 13:69D-1.12 (Div. of Gaming Enforcement, April 6, 2011).

**h. 58 Pa. Code § 465a.35(c)(4) (Table Game Minimum Staffing)**

MSPD and GGE respectfully request that the Board eliminate the requirement of section 465a.35(c)(4) that prohibits a floorperson from supervising one (1) Midibaccarat game and one (1) Pai Gow game. Based on our experience, MSPD and GGE believe that a floorperson can adequately supervise the nine (9) seats for Midibaccarat and the six (6) seats for Pai Gow at the same time. As previously discussed, New Jersey recently revised its regulations regarding table game staffing to allow casinos in Atlantic City to structure their table game operation based on that casino's individual need, not a predetermined staffing list. See Emergency Regulation N.J.A.C. 13:69D-1.12 (Div. of Gaming Enforcement, April 6, 2011). Based on the preceding, MSPD and GGE request that the Board revise section 465a.35(c)(4) by deleting the reference to Pai Gow.

**i. 58 Pa. Code § 465a.35(c)(4) (Table Game Minimum Staffing)**

MSPD and GGE respectfully request that the Board revise the prohibition of section 465a.35(c)(6) that prevents a floorperson from supervising one (1) Craps game and more than one (1) additional banking table. Based on our experience, MSPD and GGE believe that a floorperson can adequately supervise a Craps game and two (2) additional banking tables, excluding Baccarat, Midibaccarat, Mini-Craps and Pai Gow. As previously discussed, New Jersey recently revised its regulations regarding table game staffing to allow casinos in Atlantic City to structure their table game operation based on that casino's individual need. See Emergency Regulation N.J.A.C. 13:69D-1.12 (Div. of Gaming Enforcement, April 6, 2011). Based on the preceding, MSPD and GGE request that the Board revise section 465a.35(c)(6) by changing the one (1) additional table game prohibition to two (2) additional table games, excluding Baccarat, Midibaccarat, Mini-Craps and Pai Gow.

**j. 58 Pa. Code § 465a.35(c)(10) (Table Game Minimum Staffing)**

MSPD and GGE respectfully request that the Board eliminate the requirement of section 465a.35(c)(10) that prohibits a floorperson from supervising one (1) Midibaccarat game and one (1) Pai Gow game. Based on our experience, MSPD and GGE believe that a floorperson can adequately supervise the nine (9) seats for Midibaccarat and the six (6) seats for Pai Gow at the same time. As previously discussed, New Jersey recently revised its regulations regarding table game staffing to allow casinos in Atlantic City to structure their table game operation based on that casino's individual need. See Emergency Regulation N.J.A.C. 13:69D-1.12 (Div. of Gaming Enforcement, April 6, 2011). Based on the preceding, MSPD and GGE request that the Board revise section 465a.35(c)(10) by deleting the reference to Midibaccarat.

**k. 58 Pa. Code § 465a.35(e) (Table Game Minimum Staffing)**

MSPD and GGE respectfully requests that the Board revise the requirement of section 465a.35(e) regarding the number of floorpersons that a pit manager may supervise. Based on our experience, MSPD and GGE do not believe the requirement that one pit manager may supervise up to six (6) floorpersons is appropriate or effective. This requirement creates a situation where there are multiple layers of supervision at times when business demands and volumes do not require such significant supervision. MSPD and GGE need greater flexibility in providing staffing coverage for its gaming activities, especially with the number of table games each operates (171 table games with respect to GGE and 84 by MSPD). Finally, New Jersey revised its regulations regarding table game staffing to allow casinos in Atlantic City to structure their table game operation based on that casino's individual need, not a predetermined staffing list. As part of this regulatory change, the Division of Gaming Enforcement repealed and eliminated the regulatory requirements for pit bosses. See Emergency Regulation N.J.A.C. 13:69D-1.12 (Div. of Gaming Enforcement, April 6, 2011). As a result, MSPD and GGE respectfully request that the Board revise section 465a.35(e) by changing the number of floorpersons from six (6) to eight (8).

**II. CONCLUSION**

MSPD and GGE respectfully request that the Board consider the above comments to Proposed Rulemaking No. 125-145 and amend the Proposed Rulemaking in accordance with these comments. We attach for your convenience comments previously submitted to the Temporary Table Game Rulemaking No. 125-121 concerning in part table game drop boxes. Thank you for your kind consideration in this matter.

Respectfully submitted,

  
Alan C. Kohler

Enclosure

# **ATTACHMENT**



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June 25, 2010

**VIA HAND DELIVERY**

Richard Sandusky  
Director of Regulatory Review  
Pennsylvania Gaming Control Board  
303 Walnut Street, Strawberry Square  
Verizon Tower, 5<sup>th</sup> Floor  
Harrisburg, PA 17106

Re: Joint Comments to Temporary Table Game Rulemaking No. 125-121

Dear Mr. Sandusky:

Downs Racing, L.P. d/b/a Mohegan Sun at Pocono Downs ("MSPD"), Greenwood Gaming and Entertainment, Inc. d/b/a Parx Casino ("GGE"), Penn National Gaming, Inc. d/b/a Hollywood Casino at Penn National Race Course ("Penn"), Sands Bethworks Gaming d/b/a Sands Casino Resort/Bethlehem ("Sands"), and Washington Trotting Association, Inc. d/b/a The Meadows Racetrack & Casino ("Meadows") (collectively referred to as the "Operators") respectfully submit the following Joint Comments in response to the Pennsylvania Gaming Control Board's (the "Board") Temporary Table Game Rulemaking No. 125-121 addressing the drop and count for table games.<sup>1</sup> As in previous submissions of Joint Comments, the Operators have considered the Rulemaking in light of their experience and expertise and these Joint Comments represent a collection of their comments, concerns and recommendations.<sup>2</sup>

**INTRODUCTION**

As in the past, the Joint Comments advocate the need for additional flexibility in some of the rulemaking requirements. Section 525.18, one of the sections on which these Joint Comments are focused, describes the procedures applicable to the transportation, storage and security of the

<sup>1</sup> Joint Comments are not being submitted to Temporary Table Game Rulemaking No. 125-122. In Rulemaking No. 125-122 the Board adopted amendments to the table game equipment, general licensing requirements, Pai Gow and Pai Gow Poker provisions. The Operators commend the Board for their continued efforts to implement flexibility into the regulations and for responding to the Operators' suggestions, see Joint Comments to 125-112, 125-113 and 125-116, through these amendments.

<sup>2</sup> The Operators reiterate that these Joint Comments are being submitted in order to promote their common regulatory positions before the Board consistent with Board established processes. The submission of Joint Comments does not represent a coordination of the Operators internal business practices or business conduct.

table game drop boxes. Section 525.19 addresses the requisite procedures to be followed in the count and recording process and is also discussed in this Joint Comment letter.

**COMMENTS TO SECTION 525.18**

Section 525.18 requires operators to submit to the Board's Bureau of Compliance for approval a plan for the distribution and collection of table game drop boxes. § 525.18(a). Subsection (c) provides that:

All drop boxes removed from gaming tables shall be transported directly to and secured in the count room by at least one security department employee and one finance department employee.

§ 525.18(c) (emphasis added). Operators point out and recommend that since the count team is not involved with the pulling of table game drop boxes the Board's requirement that at least one finance employee be present at the count room to secure all drop boxes be replaced either by one table games employee or add another security department employee.

Similarly, subsection (e) provides in pertinent part that:

Prior to the movement of a trolley containing table game drop boxes from a table game pit, the count room supervisor shall verify that the number of drop boxes being removed from the pit equals the number of drop boxes that have been loaded on the trolley....

§ 525.18(e) (emphasis added). Again, the count team is not involved with the pulling of the table games drop boxes and it is therefore recommended that the requirement for a count room supervisor be amended to designate a security department supervisor for the position.

The Operators recognize that Section 525.20 permits the submission of alternate procedures for the separate collection, distribution, opening, counting and recording of the contents of nonbanking table game drop boxes. To the extent this section permits operators to deviate from the transportation requirements in Subsections 525.18(c) and (e) the Operators acknowledge the Board's flexibility, however, the Operators are requesting flexibility in the transportation of table games drop boxes for all table games and furthermore without the required submission of alternate procedures as currently required for nonbanking table games.

Subsection (f) provides for the following:

A table game drop box being replaced by an emergency drop box shall be transported, using a trolley, directly to and secured in the count room by at least one security department employee and one finance department employee.

§ 525.18(f). The requirement that a table game drop box being replaced by an emergency drop box be transported 'using a trolley' directly to the count room is onerous and impractical. The industry standard is for the drop box to be carried back to the count room or storage area and by a table games (not finance) and a security employee. Operators request the Board revise subsection (f) to conform with the industry standard.

#### **COMMENTS TO SECTION 525.19**

Section 525.19 (n) outlines the circumstances under which the door to the count room can be opened once the Table Games count has commenced. The regulatory language must provide the allowance to open the door to allow the count team completing the slot bill validator drop to place a full cart of hot boxes into the count room and retrieving a trolley of cold bill validator boxes to resume the drop in process on the slot floor. Currently, no provision is written which allows operators to store them elsewhere until the table game count is concluded. It is requested by the Operators that the Board amend the temporary rulemaking as necessary to consider the above scenario.

In Section 525.19 (u) (c) (4) & (5) the regulatory language states that "Counter Checks" are counted in the count room. Counter checks issued at gaming tables are applied to the table game from which they were issued on the Master Game Report at the time of issuance (if the counter check is computer generated) or at the time of input (if the counter check is manually prepared) and subsequently input into the computerized system. The drop box copy of the Counter Check is dropped into the table game drop box, which provides documentation to support the removal of chips from the table inventory in an amount equal to the value of the counter check. The negotiable part of the Counter Check is the original which is paid in the pit or forwarded to the cage; the original of the Counter Check is retained as a receivable until it is redeemed or deposited. There is no value added by having a member of the count team manually record the serial number and amount of each Counter Check in the drop box, The Counter Checks should be forwarded by the Count Room Supervisor, along with the other daily paperwork, to the Revenue Audit department for the daily audit. The process required in the regulation is a revenue audit function and not a function of the count process.

The regulatory language in Section 525.19 (y) states that all cash and Counter Checks shall be presented to a main bank cashier or cashier supervisor to count and total the items and calculate a total independent of the count team totals. The copies of the Counter Checks do not belong in

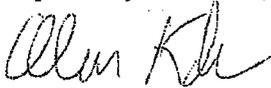
Richard Sandusky  
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the main bank, as further explained above. In addition, verification of the total of the counter check issuance copies has no value to the cage representative buying the cash. The verification of counter checks is a revenue audit function.

**CONCLUSION**

The Operators respectfully request that the Board consider the above Joint Comments to Temporary Table Game Rulemaking No. 125-121, and issue amendments to the Temporary Regulation to address our concerns.

Respectfully submitted,



Alan C. Kohler

cc: Robert DeSalvio (Sands)  
Robert Green (GGE)  
Robert Soper (MSPD)  
Mike Bean (MSPD)  
Tom Bonner (GGE)  
Holly Eicher (Sands)  
Rick Robb (Penn)  
Lance Young (Meadows)