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**House of Representatives**  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

**DEMOCRATIC CHAIRMAN,  
FINANCE COMMITTEE**

**COMMITTEES**

RULES

**CAUCUSES**

EARLY CHILDHOOD EDUCATION

**BOARDS**

LEGISLATIVE BUDGET AND FINANCE

October 18, 2011

The Honorable Silvan B. Lutkewitte, III, Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101

RECEIVED  
IRRC  
OCT 19 P 2:41

Department of Revenue Regulation No. 15-451

Dear Chairman Lutkewitte:

In our capacities as the Democratic chairpersons of the Finance Committee and the Gaming Oversight Committee of the Pennsylvania House of Representatives, we respectfully submit the attached comments for the Independent Regulatory Review Commission's (IRRC) consideration in the above captioned proposed rulemaking.

The matter at hand is a proposed rulemaking of the Department of Revenue regarding the Local Option Small Games of Chance Act. The attached comments reveal some of the issues and concerns which we believe necessitate a thorough review by your Commission of our comments, comments of other stakeholders, and the Department of Revenue's proposed rulemaking. Moreover, we support and agree with the comments of the Majority Chairman of the House Gaming Oversight Committee, The Honorable Curt Schroder, which were submitted to IRCC on September 23, 2011. Not unlike Representative Schroder, we respectfully submit that the "one license limit per eligible organization," a "regulatory" change proposed by the Department of Revenue, is beyond the agency's administrative authority. Consequently, we incorporate Representative Schroder's comments by reference.

As you may know, both the Senate and House of Representatives have convened public hearings on several legislative proposals which would amend the Local Option Small Games of Chance Act. The proposed amendments to the Act contemplated in some of these proposals may have a direct impact on the Department of Revenue's proposed rulemaking. It is our opinion that the Department should wait until the Legislature concludes its work on this issue before moving forward with any regulatory changes. Accordingly, we feel that it is not the appropriate time to overhaul the regulations when we are unsure of what changes will be enacted into law or how statutory changes, juxtaposed with the proposed rulemaking, will impact the ability of eligible organizations to conduct small games of chance.

The Honorable Silvan B. Lutkewitte, III

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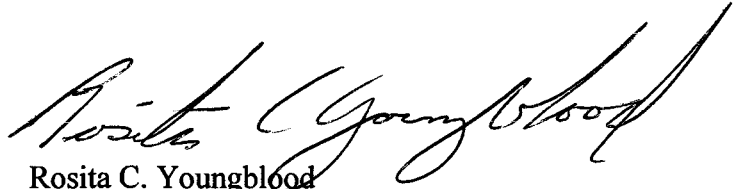
October 18, 2011

Therefore, we respectfully submit the attached comments for IRRC's consideration and strongly urge your Commission to contact us if you have any questions or need further clarification.

Sincerely,



Phyllis Mundy  
Democratic Chairperson  
House Finance Committee



Rosita C. Youngblood  
Democratic Chairperson  
House Gaming Oversight Committee

Attachments

cc: The Honorable Dan Meuser

**Comments of Representative Phyllis Mundy, Democratic Chairperson,  
House Finance Committee and  
Representative Rosita C. Youngblood, Democratic Chairperson,  
House Gaming Oversight Committee**

**RE: Proposed Local Option Small Games of Chance Regulations: Regulation #15 – 451**

**“For sale and use in this Commonwealth” and “for use in this Commonwealth.”**

Throughout the proposed regulations, the Department of Revenue (Department) goes back and forth between using the phrase “for use in this Commonwealth” and “for sale and use in this Commonwealth.” *See, e.g.*, §901.23(a)(2) and (b)(1); §901.425(1)(v); §901.445(1)(v) and (vi); §901.632(a) and (b); §901.634(a). We believe that the phrase “for use in this Commonwealth” is appropriate. It is recommended that the Department’s use of these phrases should be reviewed to ensure consistency and accuracy.

**§901.23. Restriction of sales.**

§901.23(a)(2) provides for restrictions on manufacturer sales. All manufacturers that sell, offer for sale or furnish games in Pennsylvania must be registered with the Department. Many manufacturers sell games of chance for use in other states. The Department does not approve games of chance sold for use in other states. Therefore, the language should be clarified as follows:

(2) Sales. A manufacturer may only sell, offer for sale or furnish games of chance [that the Department has approved for use sale in this Commonwealth] ~~that the Department has approved for use in this Commonwealth~~ IN THIS COMMONWEALTH THAT HAVE BEEN APPROVED BY THE DEPARTMENT FOR USE IN THIS COMMONWEALTH.

**§901.116. Reserved.**

In the Preamble to the proposed regulations, the Department’s “Explanation of Regulatory Requirements” states that §901.116 (relating to change in ownership or personnel) has been reserved, adding that the section was superseded by §901.103a (relating to change of application information). If it is the Department’s intent to rescind the current §901.116 language then that language should be carried over into the proposed regulations and bracketed out.

**Manufacturers and registered manufacturers.**

Throughout the regulations, the Department uses the term “registered manufacturer.” *See, e.g.*, §901.117(d)(1). In §901.1 of the Local Option Small Games of Chance regulations, the term “manufacturer” is defined in relevant part as: “(i) A person who assembles from raw materials or subparts a completed game of chance for use in authorized activities, and who sells or otherwise furnishes the same to a licensed distributor...” The term “registered manufacturer” is not defined in the regulations. We believe that the term “registered manufacturer” is confusing and inconsistent and should not be used.

**§901.117. Denial, notice of violation and revocation.**

Throughout §901.117 (and §901.117a), the Department uses the phrases “registration and a certificate” or “registration and certificate.” The defined term in regulation is “manufacturer registration certificate or certificate.” The term is defined in §901.1 (relating to definitions) to mean *a document issued by the Department, upon application, to a manufacturer authorizing the manufacturer to sell games of chance that the Department has approved to distributors licensed to sell games of chance in this Commonwealth.* Usage of the term in §§901.117 and 901.117a suggests two separate and distinct documents: a registration and a certificate. For consistency, we respectfully suggest that the defined term “manufacturer registration certificate” or “certificate” be considered to avoid confusion.

**§901.117a. Registration following denial or revocation.**

§901.117a. (a) provides for registration by a manufacturer following the Department’s denial of a manufacturer’s application for a registration and certificate. Under subsection (a)(1), if the denial of a manufacturer’s application is the result of an incomplete application, the manufacturer may reapply for a registration certificate at any time after the denial. We believe that this is fair and should not be limited by the introductory language in subsection (a). Thus, it is recommended that the introductory language in subsection (a), “Unless otherwise provided in the act or this part,” be deleted. With the suggested changes, subsection (a) would read as follows:

(a) Denial. [Unless otherwise provided in the act or this part, a] A manufacturer whose application for a manufacturer’s registration certificate is denied may reapply as follows:

§901.117a (b) of the proposed regulations provides (unless otherwise provided by the act or this part) that a manufacturer whose registration and certificate are revoked is ineligible to reapply for registration and another certificate for six months for the first revocation, 18 months for the second revocation, and 30 months for a third and subsequent revocation. However, it is unclear by the way subsection (b) is drafted as to when the period of ineligibility begins. To clarify any ambiguity, it is recommended that the following language (see capitalized text) be inserted into §901.117a (b):

(b) Revocations. Unless otherwise provided by the act or this part, a manufacturer whose registration and certificate are IS revoked is ineligible to reapply for another manufacturer registration certificate FOR A PERIOD OF TIME FROM THE DATE OF REVOCATION as follows:

## **Distributors and licensed distributors.**

Throughout the regulations, the Department uses the term “licensed distributor.” *See, e.g.*, §901.151(c)(1). In §901.1 of the Local Option Small Games of Chance regulations, the term “distributor” is defined as: “A person who purchases or otherwise obtains games of chance, including punchboards or pull-tabs, from a manufacturer and sells or otherwise furnishes the games of chance, with or without merchandise to be awarded as prizes in connection therewith, to another person for the resale, display or operation of the games of chance by a licensed eligible organization.” The term “licensed distributor” is not defined in the regulations. We believe that the term “licensed distributor” is confusing and inconsistent and should not be used.

### **§901.151a. Licensing following denial or revocation.**

§901.151a (a) provides provisions for reapplication following the denial of a distributor’s license application. Therefore, the inclusion of the terms “manufacturer” in §901.151a (a)(1) and “manufacturer’s” in §901.151a (a)(2) is incorrect and should be replaced with the words “distributor” and “distributor’s,” respectively.

Also, under subsection (a)(1), if the denial of a distributor’s application is the result of an incomplete application, the distributor may reapply for licensure at any time after the denial. We believe that this is fair and should not be limited by the introductory language in subsection (a). Thus, it is recommended that the introductory language in subsection (a), “Unless otherwise provided in the act or this part,” be deleted.

§901.151a (b) provides (unless otherwise provided by the act or this part) that a distributor whose license is revoked is ineligible to reapply for and receive another license for six months for the first revocation, 18 months for the second revocation, and 30 months for a third and subsequent revocation. However, it is unclear by the way subsection (b) is drafted as to when the period of ineligibility begins. To clarify any ambiguity, it is recommended that the following language (see capitalized text) be inserted into §901.117a (b):

(b) Revocations. Unless otherwise provided by the act or this part, a distributor whose license is revoked is ineligible to apply for and receive another license FOR A PERIOD OF TIME FROM THE DATE OF REVOCATION as follows:

### **§901.425. Records.**

The inclusion of the phrase “For sales to a Pennsylvania registered manufacturer or Pennsylvania licensed distributor” at the beginning of §901.425(1)(v) is redundant and calls into question whether paragraphs (i), (ii), (iii), and (iv) under §901.425(1) apply to all sales (including out of state) or just those to a Pennsylvania registered manufacturer or Pennsylvania licensed distributor.

**§901.631. Subcontracting and manufacturer responsibility**

Although the proposed regulations do not amend §901.631, we thought it was a good opportunity to point out word usage errors in subsections (a) and (b) of §901.631. Specifically, subsection (a) states that “[a] registered manufacturer may subcontract for the **manufacturer** or production of the parts...” and subsection (b) states “[a] subcontractor who only **manufacturers** or produces...” The bolded words should be replaced with the words manufacture and manufactures, respectively.

**§901.709. One eligible organization and license per premises.**

§901.709(a) would allow only one license for the operation of games of chance to be issued for each licensed premises. This prohibition is not mandated, legislatively, in the Local Option Small Games of Chance Act (Act). Therefore, this proposed administrative change to the Local Option Small Games of Chance regulations is beyond the scope of the Department’s regulatory authority. Moreover, we believe that eligible organizations should be permitted to share premises to conduct games of chance consistent with the provisions of the Act.

#2905

Respond to:

CURT SCHRODER, MEMBER  
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## House of Representatives

Commonwealth of Pennsylvania  
Harrisburg

September 23, 2011

COMMITTEES  
RECEIVED  
GAMING OVERSIGHT - CHAIRMAN  
INSURANCE

2011 SEP 23 P 3:21

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Mary R. Sprunk, Regulatory Coordinator  
Office of the Chief Counsel  
Pennsylvania Department of Revenue  
10<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17128-1061

Dear. Ms. Sprunk:

As Chairman of the House Gaming Oversight Committee, I would like to comment on Regulation #15-451, the Department of Revenue's regulations addressing small games of chance. This is a proposed rulemaking currently before IRRC.

I have several areas of concern and have broken these concerns down into two categories (1) affecting manufacturers, (2) affecting operators and player

### Concerns affecting manufacturers:

- *Requiring manufacturers to include "that the Department has approved for use in this Commonwealth"* Many of our small games of chance manufacturers also manufacture games for other states and it will not be cost effective for the manufacturer to print this on each of their games.
- *Requiring a manufacturer to indicate on the invoice if the game is approved in PA.* Any game a manufacturer should be selling to a distributor or directly to an operator should already be approved for use in PA and the manufacturer should have no need to make this indication. Many games are made exclusively for the PA market and there would be no other jurisdiction where the game could be sold. This will cause a significant financial loss to many individuals.

### Concerns affecting operators and players:

- *Requiring one eligible organization per licensed premise.* This requirement is not currently in the Local Option Small Games of Chance Act; therefore, this is out of the scope of Revenue's regulatory powers.

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- *Prohibiting variety pack games with one form number and different names.* Currently, manufacturers produce different looking symbols and themes of games that have the same payout structure and play the same way as the other games in the package. This change would require every game title to have a separate form number and will eliminate variety packs, affecting the variety of games operators can give their players.
- *Prohibiting multiple payout options on "Seal Card" prizes.* Currently, seal cards allow for manufacturers, distributors and game operators to reduce their investment in inventory or games that are similar. Under this proposed change, distributors will be forced to select the best selling games. In turn, it eliminates an operators ability to choose which payout options work best for their organization.

Small games of chance are the prime fundraising source for many of the non-profit organizations throughout the Commonwealth. It is imperative that they are able to raise funds, without unnecessary regulatory hindrance, by offering small games of chance.

Also to note, the Legislature is working diligently on making changes to the Local Option Small Games of Chance Act and these changes may affect the proposed regulations. It may be in the Department's best interest at this time to withdraw the regulations until the legislation is signed into law.

I recommend that you make the necessary changes to ensure our organizations can be sustained through these games or withdraw the regulations until updated legislation is passed.

Very truly yours,

  
CURT SCHRODER, Member  
155<sup>th</sup> Legislative District

CS/cjm

cc: Fiona Wilmarth, Acting Director ✓  
Independent Regulatory Review Commission  
Scott Schalles, Independent Regulatory Review Commission