Comments of the Independent Regulatory Review Commission

Department of Revenue Regulation #15-451 (IRRC #2905)

Local Option Small Games of Chance

October 26, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the August 27, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Revenue (Department) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under §745.5(a) in the regulatory analysis form (RAF).

The information contained in the RAF submitted with this rulemaking is not sufficient to allow this Commission to determine if the regulation is in the public interest. As an example, there is no detailed fiscal impact and cost benefit analysis in the RAF. The Department has also failed to describe how the regulation compares to those of other states. Without this information, we cannot determine if this proposed regulation is in the public interest. In the Preamble and RAF submitted with the final-form rulemaking, the Board should provide more detailed information required under §745.5(a) of the RRA.

2. Section 901.117. Denial, notice of violation and revocation. – Need; Reasonableness.

This section states that the Department will deny a manufacturer's application for registration and certificate and revoke a registration and certificate if the application is not complete. Instead of denying or revoking an applicant based on an incomplete application, has the Department considered allowing the applicant an opportunity to provide the missing information? What is the reason for the approach proposed in this rulemaking?

We have similar concerns with Section 901.151, pertaining to the denial, notice of violation and revocation of distributor licenses.

3. Section 901.117a. Registration following denial or revocation. – Clarity.

This section pertains to the review of a manufacturer's application. Subsection (a) uses the phrase "registration certificate." Other sections of the rulemaking use the term "registration *and* certificate." (Emphasis added). As noted by Representative Phyllis Mundy, Democratic Chairperson of the House Finance Committee, and Representative Rosita Youngblood, Democratic Chairperson of the House Gaming Oversight Committee (Co-Chairs), the inconsistent use of these phrases is confusing. In the Preamble to the final-form regulation, we ask the Department to explain now it processes applications from manufacturers and what type of documentation is sent to applicants if their applications are approved. We suggest that one phrase be used consistently in the regulation.

4. Section 901.143. Restrictions on distributorship interest. – Clarity.

New language is being added to this section that defines the term "pecuniary interest." The new language includes the phrase, ". . . the actual or potential for an accession to wealth. . ." It is unclear what this phrase means. We ask the Department to provide clarification in the final regulatory package.

5. Section 901.425. Records. – Need; Reasonableness; Fiscal impact.

Subsection (1) pertains to sales invoices and records that must be kept by manufacturers of small games of chance tickets. The Department is proposing to delete the following sentence from Subsection (1)(iv): "Each game listed on the invoice that the Department has approved for sale in this Commonwealth must be clearly noted." The Department is proposing to add the following sentence as new Subsection (1)(v): "For sales to a Pennsylvania registered manufacturer or Pennsylvania licensed distributor, the manufacturer shall indicate on the invoice each game that the Department has approved and not approved for sale in this Commonwealth."

Commentators have noted that this change will require changes to their invoice software, but will not help with any enforcement actions. What is the need for this change? What additional costs would be associated with making the necessary changes to comply with this provision?

We have similar concerns with Section 901.445, pertaining to records of distributors.

6. Section 901.445. Records. – Need; Implementation procedures; Fiscal impact.

Subsection (1)(vi) will require licensed distributors selling small games of chance tickets to eligible organizations to confirm that the Department has approved the game and to include a written statement on the invoice affirming that each game has been approved. We have two questions. First, what is the need for including a written statement on the invoice? Second, how would a licensed distributor know if a particular game has been approved by the Department?

7. Section 901.601. Uniform minimum quality standards. – Reasonableness.

This section sets forth pull-tab manufacturing standards. Subsection (d) prohibits a deal in a pull-tab game from being segregated into sub-deals or portions and played separately from the rest of the deal in the pull-tab game. Manufacturers of pull-tab games have commented that games with sub-deals are designed to be played separately. What is the reason for this provision? Has the Department approved pull-tab games that can be segregated into sub-deals in the past?

8. Section 901.632. Predetermination of rules, winning chances and prizes. – Reasonableness; Need; Fiscal impact; Implementation procedures.

This section of the regulation falls under the topic of general manufacturing standards. New language being added as Subsection (b) has generated considerable concern from manufacturers, distributors and eligible organizations. Representative Curt Schroder, Chairman of the House Gaming Oversight Committee and the Co-Chairs also expressed concerns with the provision. The new language states the following:

> A registered manufacturer may not produce a pull-tab game or punchboard for sale or use in this Commonwealth that permits the operator of or a participant in the game to choose between optional game rules, payout structures or methods of operating the game.

Commentators have noted that these games are some of the most popular games offered. These "option" games allow eligible organizations to keep their small games of chance inventory low while meeting the demands of the players. The commentators believe this new provision will increase their costs associated with purchasing small games of chance tickets, decrease the amount of revenue eligible organizations are able to generate and increase the number of games the Department will have to approve, thus increasing costs to state government. Some commentators are also concerned with how this provision will be implemented as it pertains to their existing inventory of "option" games.

We agree with the concerns raised by commentators and ask the Department to explain the need for this provision and how it will be implemented. If the provision is retained, we ask the Department to quantify all costs associated with it, including the following: costs to eligible organizations for additional small games of chance ticket purchases needed to meet the demands of players; loss of revenue to eligible organizations resulting from less purchases by players; and costs to the Department in reviewing and approving additional small games of chance. We also ask the Department to consider phasing in this new provision to allow the regulated community to use its existing inventory of these "option" games.

9. Section 901.634. Game of chance form numbers. – Reasonableness; Need; Fiscal impact; Implementation procedures.

This new section of Chapter 901 will require registered manufacturers to assign separate and distinct form numbers to each game of chance produced for sale or use in this Commonwealth. Several manufacturers, Representative Schroder and the Co-Chairs have expressed concerns with this section. First, they note that manufacturers produce games for several states and it will not

be cost effective to assign unique form numbers to each game. Concern was also expressed about Subsection (b)(1) and the requirement that games with assigned form numbers must be exact in regard to spelling, graphics, winning and losing numbers and symbols. Some believe that this provision does not reflect the way games are currently manufactured. For example, rules for a particular game could be the same, but the graphics printed on the game ticket could be different.

Our concerns on this section are similar to our concerns on Section 901.634. We ask the Department to explain the need for this new language, to quantify the potential costs to the regulated community and state government and to explain how the provision will be implemented as it pertains to the existing inventory of eligible organizations, manufacturers and distributors.

10. Section 901.709. One eligible organization and license per premises. – Clarity.

New language is being added to this section that states, "Only one license may be issued for each licensed premises." Representative Schroder and the Co-Chairs have commented that the Department does not have the authority under the Local Option Small Games of Chance Act (Act) (10 P.S. §§ 311 - 327) to impose this restriction. We note that the Act does allow an eligible organization to use another eligible organization's premises (10 P.S. § 320(b.1)). Would the new language being added to this section prohibit an eligible organization from using the premises of another eligible organization? This should be clarified in the final-form rulemaking.

11. Miscellaneous clarity.

- § 901.151a pertains to the licensing of distributors. As noted by the Co-Chairs, this section includes incorrect references to manufacturers. This should be corrected in the final-form regulation.
- The Co-Chairs have noted that the rulemaking includes the phrase "for use in this Commonwealth" and also "for sale and use in this Commonwealth." Is there a reason for the use of both phrases? If not, we recommend that one phrase be used consistently throughout the regulation.