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Via Hand Delivery and Email

Maria L. Miller
Office of Chief Counsel
Department of Revenue
Dept. 281061
Harrisburg, PA 17128-1061
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RE: PA Department of Revenue's Proposed Regulations #15-460 on iLottery Games

Dear Ms. Miller:

With the Pennsylvania Department of Revenue's ("Department") implementation of interactive lottery ("iLottery") games in the Commonwealth, Greenwood Gaming and Entertainment, Inc. ("GGE") respectfully submits this correspondence in order to share its position on the Department's proposed permanent regulations #15-460 on iLottery games. As discussed in more detail below, GGE respectfully requests that the proposed permanent regulations be tabled by the Department due to a pending challenge by casino operators to the legality of the iLottery program. If the Department moves forward in the regulatory review process, GGE requests that the Department consider these comments and revise its proposed regulations governing iLottery games. Absent such changes, upon becoming a final form rulemaking, the regulations should be denied by the Independent Regulatory Review Commission.

The Proposed Permanent Regulations Do Not Adequately Implement Act 42 of 2017's
Prohibition on the Department Offering Casino-Style Games

The General Assembly authorized an online presence for both the State Lottery and slot machine licensees in Act 42 of 2017 ("Act" or "Act 42").¹ Significantly, the General Assembly created the clear distinction between the offerings, prohibiting the State Lottery from offering casino-style games or games that simulate them.² With authorized slot machine licensees set to commence interactive gaming operations in July 2019, it is imperative that the distinction be clearly made between (1) iLottery games and (2) casino-style games and games that simulate casino-style games. The implementation of permanent regulations is an opportunity for the

¹ Act of Oct. 30, 2017, P.L. 419, No. 42.

² 4 Pa.C.S. § 502.

Department to establish a process to ensure that the iLottery games it offers are not casino-style games or games that simulate casino-style games, as required by Act 42.

The proposed permanent regulations do not adequately follow Act 42's directive that prohibits the Department from offering games that simulate casino-style games. The Act defines an "iLottery game" as follows:

"iLottery game." Internet instant games and other lottery products offered through iLottery. The term does not include games that represent physical, Internet-based or monitor-based interactive lottery games which simulate casino-style lottery games, specifically including poker, roulette, slot machines or blackjack.

4 Pa. C.S. § 502 (emphasis added). The term specifically excludes games that simulate "casino-style lottery games." The proposed permanent regulations only reference the prohibition on the Department offering "casino-style lottery games" and games that simulate "casino-style lottery games" in the definition of the term "iLottery game."³ The proposed permanent regulations do not provide any parameters for what features or game characteristics simulate a "casino-style lottery game." In addition, the proposed regulations do not establish any mechanism to evaluate whether a game the Department intends to offer is prohibited.

In order to ensure compliance with the simulated casino-style games prohibition, the proposed permanent regulations should make clear that iLottery games may not include any of the following characteristics or features: (1) games that currently or have previously appeared on the gaming floor or in a mobile application or website of any casino in any jurisdiction; (2) games that have features established in the statutory definition of a "slot machine,"⁴ such as spinning reels or videos displays; (3) games that mimic the interactive appearance, feel and play experience of a casino game; and (4) games that contain bonus games or features. Further, iLottery games should have characteristics expected of lottery games; primarily, that the games have a fixed price (without the ability to multiply or change the bet amount), fixed number of tickets or plays per iLottery game, and a pre-determined number of winners for each game.

GGE submits that the above-proposed parameters on iLottery games are necessary as, in direct contravention to the statutory prohibition, the Department has been offering interactive lottery games that simulate slot machines and casino-style games. Virtually all, if not all, of the iLottery games currently offered by the Department offer the same appearance, feel and patron-experience as casino games. Thus, the iLottery games simulate casino-style games (and are prohibited under the Act). Numerous iLottery games offered by the Department are slightly varied versions of slot machines offered in Pennsylvania or online slot machines offered by casinos in other jurisdictions. Those games even use the same name and symbols and similar play mechanics of said slot machines.

Due to the Department's offering of iLottery games that simulate casino-style games, GGE believes it is necessary for the permanent regulations to establish a process to evaluate whether a game the Department intends to offer is a casino game or simulates a casino-style game. At a

³ 61 Pa. Code § 876.2.

⁴ 4 Pa.C.S. §1103.

minimum, that process should include cross-checking a database of games offered by casinos in any jurisdiction, a consultation with the Pennsylvania Gaming Control Board's Bureau of Gaming Laboratory Operations, and a comprehensive evaluation of whether the proposed iLottery game contains features or characteristics that mimic casino-style games. The database of games offered by casinos should include games that have been certified for compliance with gaming standards in Pennsylvania and in other jurisdictions, such as New Jersey and the United Kingdom. Additionally, prior to release of an iLottery game, Pennsylvania slot machine licensees should have the opportunity to object to the offering of an iLottery game on the basis that it simulates a casino-style game.

As described in the recommendations below, the Department should take additional steps to ensure that its iLottery games do not simulate casino-style games.

The Proposed Permanent Regulations Should Be Revised to Eliminate the Use of a Random Number Generator with Animated Graphics and Computer Operations to Provide A Visual Depiction of the Outcome

The iLottery games currently offered have the same structure as slot machines – an outcome that is determined by a random number generator presented with animated graphics and computer operations to provide a visual depiction of that outcome. The Department's use of a random number generator to determine the outcome of an iLottery game in this fashion demonstrates its intent to imitate casino games. To distinguish iLottery games and to ensure that they do not simulate casino-style lottery games, GGE recommends that the Department not use a random number generator to determine the outcome of the play of an iLottery game. As mentioned above, iLottery games should have a fixed number of tickets or plays per iLottery game and a pre-determined number of winners for each game, consistent with other lottery offerings.

Limitations Should Be Established to Assist in Ensuring that iLottery Games Do Not Simulate Casino-Style Games

The Department has mimicked casino's offerings in its implementation of iLottery. For example, the iLottery games have an average payout of 85%, which is the minimum payout percentage for a slot machine or authorized interactive game that replicates the play of a slot machine. In contrast, the minimum payout percentage for traditional lottery games is 40%.⁵ Patrons of casinos are accustomed to a payout percentage of at least 85%. To assist in distinguishing iLottery products from casino games and casino-style games, GGE recommends that the Department offer a distinct payout rate for iLottery games that does not mimic the payout percentage for slot machines and interactive games that replicate slot machine play.

The permanent iLottery regulations should also prohibit the provision of: (1) free play / bonus money; (2) bonus games and features; (3) dynamic betting features; and (4) progressive game prize structures. Free play, also termed as bonus money offers, is frequently offered by casinos, and the iLottery's free play promotions mimic casino offerings for casino games. To avoid simulating casino games and casino-style lottery games, GGE urges the Department to remove the definition of "bonus money" from Section 876.2 of the proposed regulations and to remove

⁵ 72 P.S. § 3761-311(a).

“bonus money, credits or promotional prizes issued by the Bureau” from the methods for funding a lottery account in Section 876.11a. Subsection 876.14a(e) (withdrawals from a lottery account) should be stricken in its entirety, as the provision would be inapplicable, and the term “bonus moneys” should be stricken from Subsection 876.14a(g). These above-referenced modifications would aid the Department in ensuring that it upholds its statutory obligation to not imitate casino gaming.

Slot machines typically feature a bonus game or other bonus features to provide the player another opportunity to win. Utilization of bonus games or other bonus features in iLottery games imitates the interactive experience that patrons have when playing slot machines. Several iLottery games offer bonus games and free spins, mirroring slot machine play mechanics. To assist in distinguishing iLottery games from casino games and casino-style lottery games, GGE suggests that Subsection 876.4(6) (iLottery game description) of the proposed permanent regulations be deleted in its entirety as it contemplates bonus games, mini-games and games within a game.

Also, many of the iLottery games currently offered have dynamic (as opposed to fixed) betting structures, with a prize table or paytable with the bet multiplier showing the prize increasing in conjunction with the bet. Several of the iLottery games have a betting structure that is identical to slot machines. This game feature simulates casino-style games and, accordingly, iLottery games should not utilize this feature which is prevalent in slot machines. Again, lottery offerings should have a fixed price.

Lastly, GGE encourages the Department to remove progressive prize structures as a permissible structure for iLottery game prizes. Progressive jackpots are a dimension of slot machine play that creates anticipation and excitement by players. The Department’s proposed permanent regulations would add the definition of the term “progressive” to the regulations and establish a prize structure in which “the top prize available begins with a minimum prize amount, as determined by the Bureau, which grows at a predetermined rate every time a play is purchased and then resets to the minimum prize amount whenever a top prize winning play is purchased.”⁶ GGE recommends that the proposed definition of “progressive” be deleted and that the provision permitting a progressive prize structure be removed from Section 876.2c(d)(3) of the regulations.

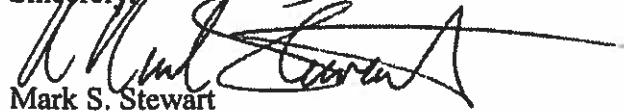
In sum, GGE’s recommended edits to the proposed permanent regulations are offered to aid the Department in complying with Act 42’s prohibition on the Department offering games that simulate casino-style lottery games. GGE suggests that the Department’s issuance of the proposed regulations is premature. The legality of the iLottery program is currently being challenged by seven of the Pennsylvania casino operators in the Commonwealth Court of Pennsylvania, *Greenwood Gaming and Entertainment, Inc., et al. v. Commonwealth of Pennsylvania Department of Revenue, et al.*, No. 571 MD 2018. While litigation is pending that seeks to stop the Department from violating Act 42, which prohibits it from offering iLottery games that simulate casino-style games, GGE recommends that the Department table the proposed regulations. If the Department proceeds in the regulatory review process, GGE urges the Department not to offer games that are casino games or simulate casino-style lottery games and for it to revise its proposed permanent regulations, as outlined above, to reflect its

⁶ 61 Pa. Code § 876.2 (Definitions.).

commitment to uphold the explicit intent of Act 42. Without such changes, the Independent Regulatory Review Commission should reject the rulemaking once in final form.

Thank you for your consideration of GGE's positions on these important matters. Should you have any questions on these comments, please feel free to contact me.

Sincerely,



Mark S. Stewart

cc: Robert Green (via email)
Thomas C. Bonner, Esq. (via email)
Laura Campbell, IRRC (via email)
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