

**ACCOUNTING AND FINANCIAL REPORTING FOR GAMBLING ENTERPRISES,
THIRD-PARTY PROVIDERS OF PROPOSITION PLAYER SERVICES
AND GAMBLING BUSINESSES**

SUMMARY OF 45-DAY WRITTEN COMMENTS WITH RECOMMENDED RESPONSES

PROPOSED ACTION:

The following written comments/objections/recommendations were received regarding the text of the proposed action during the 45-day written comment period that commenced May 2, 2014 and ended June 16, 2014:

Section 12002. General Definitions.

With the addition of a new Chapter 5, certain definitions limited to Chapter 2.1 and 2.2 will now also apply in Chapter 5. Additionally, some terms are used throughout the regulations. For simplicity and clarity, these terms would be added in the general definitions for Division 18. Duplications of these terms would then be removed accordingly. The following amendments are proposed:

1. Subsection (g) – The term “dealer’s bank” would be moved from paragraph (2) of subsection (b) of Section 12400 and added in Section 12002. The phrase “gambling establishment” would be changed to “gambling enterprise.”

Comments/Suggestions:

Mr. Alan Titus, Artichoke Joe’s, in a letter dated June 16, 2014 (Mr. Titus) – The use of the word “total” is not clear and creates confusion. Instead, Mr. Titus suggests amending the text as follows:

(g) “Dealer’s bank” means any and all monies a dealer has on deposit with the gambling enterprise or is assigned from the cage bank or chip trays.

Recommended Response:

This comment is accepted, and will be incorporated into the proposed text as suggested.

2. Subsection (h) – The term “drop” would be moved from paragraph (3) of subsection (b) of Section 12400 and added in Section 12002, and references to TPPPS players would be added. The phrase “gambling establishment” would be changed to “gambling enterprise.” Finally, the current definition of the term “drop” may unintentionally include tournament fees; therefore the definition is amended to exclude tournament fees.

Comments/Suggestions:

Mr. David Fried, California Grand Casino and Oaks Card Club, in a letter dated June 16, 2014 (Mr. Fried); and Mr. Titus – Mr. Fried comments that the definition should exclude services and facilities payments from TPPPS companies. Mr. Fried also comments that this definition for “drop” includes jackpot collections, and questions if this is intentional.

Mr. Titus comments that the use of the word “total” is not clear and creates confusion. As the definition is written, a portion of the compensation collected from patrons would not be considered to be “drop.”

Mr. Fried suggests amending the text as follows:

(h) “Drop” means the total amount of compensation collected from patrons or TPPPS companies by a gambling enterprise to play in controlled games, not including tournament fees or payments under approved contracts for Third-Party Proposition Player Services.

Mr. Titus suggests amending the text as follows:

(h) “Drop” means any and all compensation collected from patrons or TPPPS companies by a gambling enterprise to play in controlled games, not including tournament fees.

Recommended Response:

These comments are accepted, and will be incorporated into the text as follows:

(h) “Drop” means any and all player collection fees received from patrons or TPPPS companies by a gambling enterprise to play in controlled games, not including tournament fees or payments under approved contracts for Third-Party Proposition Player Services.

3. Subsection (m) – The term “jackpot” would be moved from paragraph (8) of subsection (b) of Section 12400 and added in Section 12002. The phrase “authorized game” would be changed to “controlled game” as defined in section 19805. Finally, the term “predetermined” would be changed to “specified.”

Comments/Suggestions:

Mr. Fried – This definition confuses promotions and jackpots. A jackpot is a type of promotion where the prize is based on the outcome of the hand or achieving a designated hand. Participation prizes are also a type of promotion, but are not a jackpot. The current definition would include both jackpot awards and participation prizes. Instead, the definition should refer to the specific type of promotions that are prizes awarded based on a specified result occurring in the play of the game. Mr. Fried suggests amending the text as follows:

(m) “Jackpot” means a gaming activity where the prize is determined by specified criteria determined in the play of a controlled game.

Recommended Response:

This comment is accepted, and will be incorporated into the text as follows:

(m) “Jackpot” means a gaming activity where the prize is awarded based on specified criteria occurring in the play of a controlled game.

4. Subsection (o) – The term “player’s bank” would be moved from paragraph (11) of subsection (b) of Section 12400 and would be amended to include the monies a TPPPS company has on deposit to be consistent with the Bureau of Gambling Control (Bureau) regulations. The phrase “gambling establishment” would be changed to “gambling enterprise.”

Comments/Suggestions:

Mr. Titus – The use of the word “total” is not clear and creates confusion. The status of a portion of the monies a player has on deposit is left unclear. Instead, Mr. Titus suggests amending the text as follows:

(o) “Players bank” means any and all monies a patron or a TPPPS company has on deposit with the gambling enterprise.

Recommended Response:

This comment is accepted, and will be incorporated into the text as suggested.

Section 12312 – Record Retention and Maintenance; General Provisions.

Section 12312 consolidates several current requirements for accounting and financial reporting into one section, adding references to TPPPS companies and gambling businesses where appropriate.

1. The current requirement of subsection (b) of Section 12401 to maintain various accounting records would become subsection (c) of Section 12312. References to TPPPS companies and gambling businesses would be added.

Comments/Suggestions:

Mr. Nathan DaValle, Assistant Bureau Chief, Bureau of Gambling Control, in a letter dated June 16, 2014 (Mr. DaValle) – The Bureau of Gambling Control (Bureau) would like to ensure that detailed records are maintained to track that the monies paid out are approved, not excessive, and are maintained for each specific jackpot. Mr. DaValle suggests changing the proposed text of paragraph (4) of subsection (c) to read as follows:

(4) Records, separated by gaming activity, of all jackpot monies contributed by the gambling enterprise, jackpot monies collected from patrons, and monies withdrawn for either jackpot administrative fees or payment to patrons.

Recommended Response:

This comment is accepted and will be incorporated into the text as suggested.

Section 12313. Financial Statements and Reporting Requirements.

The current Section 12403 would be renumbered as Section 12313 with non-substantive edits for clarity and simplicity. Additionally, the following amendments are proposed:

1. Subsection (a), paragraph (4) – The reference to those in Group III with gross revenue of less than \$500,000 per year would be changed to refer to the new Group IV.

Comments/Suggestions:

Mr. DaValle – The Bureau is concerned about the option to submit a federal tax return in lieu of the financial statements. Since an income tax return is derived from the financial statements, the licensee should be able to provide the statements. Mr. DaValle suggests that clauses 1 and 2 of subparagraph (A) be deleted and the requirements to engage an independent accountant to perform a compilation of the licensee’s annual financial statements in clause 1 be added to subparagraph (A), as follows:

“A Group IV licensee shall prepare financial statements that include, at a minimum, a statement of financial position and a statement of income or a statement of operations. If the licensee is unable to produce the financial statements, it shall engage an independent accountant licensed by the California Board of Accountancy to perform a compilation of the licensee’s annual financial statements in accordance with standards for accounting and review services or with currently applicable professional accounting standards. Management may elect not to provide footnote disclosures as would otherwise be required by generally accepted accounting principles.”

Recommended Response:

This comment was considered, but is not incorporated. The current regulatory provision of Section 12403 that allows for the submission of a federal tax return is only applicable if the licensee is unable to produce financial statements, not in lieu of financial statements. Subsection (a) states “A licensee shall prepare financial statements covering all financial activities...” Subsection (a), paragraph (4), subparagraph (A), also states “A Group IV licensee shall prepare financial statements...” The submission of federal tax forms for Group IV licensees only applies “if the licensee is unable to produce financial statements...” This is a current provision related to what is now a subset of Group III, but would become Group IV under the proposed action.

According to the Final Statement of Reasons for the current regulation (CGCC-GCA-2003-02-R), this provision was included as a less expensive method for those licensees with low revenues. Business and Professions Code section 19840 provides that the Commission shall take into consideration the operational differences of large and small establishments to the extent appropriate. To delete the current provision for submitting federal tax forms would remove this less expensive method and impose a negative economic impact on the licensees who may be the least likely to have the resources necessary to hire an accountant.

In a review of this matter, no requirement could be found for the use of financial statements in the preparation of federal tax returns. In some instances, licensees' tax returns may be clearer and more concise than the supporting documentation used to prepare them. Furthermore, that supporting documentation would be available to the Bureau for audit just as it would be to the IRS.

2. Subsection (c) – The phrase “and the Commission” would be added to allow the Commission to also receive a copy of the annual financial statements to be used to make determinations on an applicant's suitability for licensure and other approvals.

Comments/Suggestions:

M. Robbins, in a letter received June 3, 2014 (Robbins) – The reinsertion of “and the Commission” is not in accordance with the Governor's Reorganization Plan No. 2 (GRP No. 2). The submission of the financial statements to both the Bureau and the Commission is unnecessarily duplicative. In accordance with GRP No. 2, Section 19826 provides that the Bureau investigates and is “to receive and process,” so the Commission should get this information from the Bureau. Requiring the licensees to submit a copy to both the Commission and the Bureau would require staff at both the Commission and Bureau to copy financial statements instead of one person at the Bureau, and therefore be a burden upon the taxpayers as well as contrary to the intentions of GRP No. 2. Robbins suggests that the text be amended to remove “and the Commission” and suggests that the Commission request financial statements from the Bureau.

Recommended Response:

This comment was considered, but is not incorporated. Licensees have submitted copies of financial statements to both the Commission and the Bureau since 2003. This requirement is not inconsistent with GRP No. 2 or Business and Professions Code Section 19826. The general purpose of GRP No. 2 was to eliminate inefficiencies and separate the policy functions of the Commission from the licensing, investigation, compliance, and enforcement functions of the Bureau. Business and Professions Code Section 19826, as amended by GRP No. 2, requires the Bureau to “receive and process *applications* for any license, permit, or other approval, and to collect related fees.” This section also requires the Bureau to investigate the qualifications of applicants, as specified. As indicated in the Commission's Initial Statement of Reasons, while the Bureau uses the annual financial statements for investigative purposes, the Commission also uses these financial statements on a regular, ongoing basis for non-investigative purposes (to make determinations on an applicant's suitability for licensure and other approvals). Upon further review, we believe that it would be more efficient overall for licensees to resume providing the financial statements to the Commission when they provide these statements to the Bureau, as this would ensure that the Commission has timely access to the most current financial statements used for Commission decisions. The suggested alternative would be more burdensome to the Commission, Bureau and licensees, as it would require the Commission to submit a request to the Bureau for financial statements and require the Commission to await a response from the Bureau. As a result, this could cause delays in making suitability

determinations for licensure and other approvals which, in turn, could negatively impact applicants and licensees.