

SUBCHAPTER 1. GROSS REVENUE TAX

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19:54-1.1 Description of tax

Subsection 144a of the Act imposes an annual tax on gross revenues, as defined in section 24 of the Act, in the amount of eight percent of such gross revenues.

Effective: 05/25/78

As amended, effective: 04/05/93

19:54-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“2008 agreement” means the agreement dated August 13, 2008, between the New Jersey Sports and Exposition Authority and the Casino Association of New Jersey and other relevant parties for the benefit of the horse racing industry.

"Agreement costs" means the \$90 million (\$30 million annually for three years) payable by the participating casino operators pursuant to the terms of the 2008 agreement ("payments") together with interest to the extent that payments exceed the tax value of eligible promotional gaming credits during the recoupment period. Interest shall be calculated based on the "prime rate" on the first business day of each calendar month as identified in the H.15 Statistical Release issued by the Federal Reserve Board, plus two percent.

"Casino licensee" or "licensed casino" includes the holder of a casino license or interim casino authorization.

"Casino management agreement" means a written agreement between one or more casino licensees and another casino licensee whereby the latter agrees to provide complete management of a casino in accordance with section 82 of the Act.

"Casino management licensee" means a casino licensee which provides complete management of a casino pursuant to a casino management agreement, as herein defined.

"Casino operator" means:

1. Where there is no casino management agreement with regard to the casino hotel facility, the casino operator shall be the casino licensee which is responsible for submitting and maintaining the internal controls required by section 99 of the Act; or

2. Where there is a casino management agreement with regard to the casino hotel facility, the casino operator shall be the casino management licensee, if said licensee has supplied capital at risk in the gaming operations of the casino. If the casino management licensee has supplied none of the capital at risk in the gaming operations of the casino, the casino operator shall be the licensee designated in paragraph 1 of this definition, as though no casino management agreement existed.

"Casino Revenue Fund" means a separate special account established in the Department of the Treasury for deposit of all revenues from the tax

imposed by subsection 144a of the Act, the investment alternative taxes imposed by subsections 144e and 144.1a of the Act, any interest earned pursuant to paragraph 2 of subsection 144.1a or section 145.1 of the Act and any penalties payable to the Casino Revenue Fund pursuant to section 145 of the Act.

“Deduction threshold” means the value of promotional gaming credits that must be wagered in the casinos of all casino operators during a calendar year before any casino operator is entitled to take a deduction from gross revenue for promotional gaming credits during that year. The deduction threshold shall be \$34,426,230 for the year 2008 and \$90 million for each calendar year thereafter.

“Eligible promotional gaming credit” means any promotional gaming credit that is wagered in the casino of a casino operator during a calendar year in excess of the deduction threshold and therefore available as a deduction from gross revenue in accordance with the provisions of N.J.A.C. 19:54-1.11.

"Lease" or "lease agreement" means a written agreement for the lease of the approved hotel in accordance with section 82 of the Act, including any such lease which is capitalized under generally accepted accounting principles.

“Participating casino operator” means a casino operator that is a signatory participant/obligor to the 2008 agreement.

“Participating casino operator sharing percentage” means payments made pursuant to the 2008 agreement by a particular participating casino operator compared pro rata to the payments made pursuant to the 2008 agreement by all participating casino operators, expressed as a percentage. For example, if a particular participating casino operator has made payments of \$6 million pursuant to the 2008 agreement, and all participating casino operators have collectively made payments of \$60 million pursuant to the 2008 agreement, the participating casino operator sharing percentage of that particular participating casino operator would be 10 percent.

“Promotional gaming credit” means a slot machine credit or other item approved by the Commission that is issued by a casino operator to a patron for the purpose of enabling the placement of a wager at a slot machine in its casino. The slot machine credit or other item shall be non-cashable unless an alternative form of slot machine credit has been approved by the Commission. No such credit shall be reported as a promotional gaming credit by a casino operator unless the casino operator can establish that the credit was:

1. Issued by the casino operator; and
2. Received from a patron as a wager at a slot machine in its casino on or after August 14, 2008.

“Proportionate share” means the value of the promotional gaming credits wagered in the casino of a particular casino operator during a tax year or portion thereof compared pro rata to the value of the promotional gaming credits wagered in the casinos of all casino operators during the same tax year or portion thereof, expressed as a percentage. For example, if \$15 million in promotional gaming credits are wagered in the casino of a particular casino operator during a tax year, and \$100 million in promotional gaming credits are wagered in the casinos of all casino operators during the same tax year, the proportionate share of that particular casino operator would be 15 percent.

“Recoupment period” means the period commencing on August 14, 2008, and ending on the date that the tax value of eligible promotional gaming credits deducted by participating casino operators equals the agreement costs.

“Tax value of eligible promotional gaming credits” means each dollar of deductions for eligible promotional gaming credits shall be valued at an amount equal to the tax rate on gross revenue set forth in N.J.S.A. 5:12-144a to be applied against each dollar of the agreement costs. For example, if the eligible promotional gaming credits in a tax year equal \$100 million, and the tax on gross revenue equals 8 percent, the tax value of the eligible promotional gaming credits would be \$8 million for that tax year.

Effective: 05/25/78

As amended, effective: 04/05/93
As amended, effective: 01/18/94
As amended, effective: 01/20/09

19:54-1.3 Tax year

For purposes of the tax on gross revenues, the tax year shall be the calendar year. In the year in which a casino operator commences gaming operations, the tax year for that casino operator shall begin with the commencement of operations and terminate on the last gaming day of the current calendar year.

Effective: 05/25/78
As amended, effective: 04/05/93

19:54-1.4 Tax payer

(a) The obligation to file returns and reports and to pay the gross revenue tax and any investment alternative taxes shall be upon the casino operator who shall be primarily liable therefor. In the event of a transfer of operations to a different casino operator, the transferor-operator will be obligated to file a return and to pay all taxes based upon gross revenues derived by the said transferor during the tax year in which the transfer occurred. The appointment of a conservator under the Act shall not be deemed a transfer to a different casino operator but, for the duration of the conservatorship, the conservator shall file all returns and pay all taxes on behalf of the former or suspended casino licensee who shall remain primarily liable therefor.

(b) In accordance with section 82 of the Act, each casino licensee which is a party to either a casino management agreement or a lease with the casino operator, shall be individually and severally liable for any acts, omissions and violations by the casino operator regarding the taxation obligations imposed by

the Act regardless of actual knowledge of such act, omission or violation and notwithstanding any provision of such agreement or lease to the contrary.

(c) In the event of a sale or other transfer by the casino operator of its interest in the licensed premises to another casino licensee, the transferee shall be liable for any default by the former casino operator in its taxation obligations with respect to the licensed premises. The liability of the transferee shall not, however, release any other party from potential liability.

(d) Nothing in this section shall be construed to limit the authority of the State Treasurer or the Commission to enforce any tax obligation by way of a lien against the property of a taxpayer or otherwise as provided by the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes, by the Act or by any other applicable law.

Effective: 05/25/78

As amended, effective: 04/05/93

19:54-1.5 Payment of tax

(a) In accordance with subsection 148a of the Act, the gross revenues tax shall be due and payable annually on or before the 15th calendar day of March except that if the 15th calendar day of March is a Saturday, Sunday or legal holiday, the due date shall be advanced to the next preceding regular business day. The gross revenues tax shall be based upon the gross revenues derived by the casino operator during the previous tax year. The amount of the annual tax shall be computed in accordance with N.J.A.C. 19:54-1.6.

(b) The annual nature of the tax notwithstanding, the casino operator shall make weekly deposits of the tax at such times, under such conditions, and in such depositories as shall be prescribed by the State Treasurer pursuant to subsection 145b of the Act, provided that deposits for a given week shall be made no later than the Monday of the succeeding week. If such Monday is a legal holiday, the deposit shall be made on the next business day.

In the event that the week for which the weekly deposit is being made includes gaming days from two calendar months, the casino operator shall deposit and report separately, the amount of the deposit attributable to the gaming days of each month. The deposits shall be deposited to the credit of the Casino Revenue Fund.

(c) The amount of the required weekly deposit for a given week shall be determined by subtracting the total amount of deposits made by the casino operator in the current tax year up to and including the week preceding the given week from the total tax liability incurred by the casino operator for the current tax year. The total tax liability for the current tax year shall be based upon the gross revenues derived by the casino operator from the commencement of the current tax year to the end of the gaming day which commenced on the Friday of the given week.

1. Any casino operator that estimates slot machine drop for purposes of the monthly gross revenue tax report pursuant to N.J.A.C. 19:54-1.7(c) shall include a weekly slot machine drop estimate, calculated in accordance with methodology approved pursuant to that subsection, in each weekly tax deposit required by this section.

(d) The amount of deposits required for a given month shall be the amount determined by subtracting the total amount of deposits made by the casino operator in the current tax year up to and including the month preceding the given month from the total tax liability incurred by the casino operator for the current tax year. The total tax liability for the current tax year shall be based upon the gross revenues derived by the casino operator from the commencement of the tax year to the end of the gaming day which commenced on the last calendar day of the given month.

(e) In the event that the total amount of deposits made for the entire tax year is determined to be less than the annual tax liability for the entire year, the casino operator shall remit the requisite additional payment to the State Treasurer. In the event that the total amount of such deposits is determined to

be greater than the annual tax liability, the casino operator may be allowed to reduce the amount of its weekly deposits in the succeeding tax year by the amount of the overpayment, provided, however, that the casino operator shall not claim any such credit against deposits unless the Commission first certifies the existence and amount of the overpayment. Nothing in this section shall limit any authority of the Commission under sections 149 and 150 of the Act and the "State Tax Uniform Procedure Law," Section 9 of Title 54 of the Revised Statutes, including the authority to determine the insufficiency of any deposit or deposits, to require payments of penalties and interest or to allow or disallow any claim for refund due to overpayment of taxes.

Effective: 05/25/78

As amended, effective: 04/05/93

As amended, effective: 03/02/98

19:54-1.6 Computation of tax

(a) The gross revenue tax shall be eight percent of gross revenue. The gross revenue for the tax year, or portion thereof, shall be the amount obtained from the following calculation: the total of all sums for the tax year, or portion thereof, that are actually received by a casino operator from its gaming operations, which sums include, but are not limited to, cash, slot tokens, prize tokens counted at face value pursuant to N.J.A.C. 19:45-1.41 and 19:45-1.43, the value of electronic credits withdrawn from patron accounts pursuant to N.J.A.C. 19:45-1.37A, checks received by a casino operator pursuant to N.J.S.A. 5:12-101 whether collected or not, and gaming vouchers and coupons counted pursuant to N.J.A.C. 19:45-1.33 and documents evidencing credit and debit card chip transactions processed pursuant to N.J.A.C. 19:45-1.18A regardless of validity, less only the total of all sums paid out as winnings to patrons.

(b) Nothing in this section shall be construed to limit the authority of the Commission to redetermine the amount of tax liability or to require adjustments or corrections to the accounts of the casino operator.

(c) For each tax year, the amount recorded on each document evidencing a section 100k credit or debit card transaction and counted pursuant to N.J.A.C. 19:45-1.33 shall be included in the totals "actually received by a casino operator from its gaming operations" referred to in (a)1 above, and no adjustment thereof shall be allowed in the event the taxpayer does not receive full and final payment of the amount charged to a credit card account.

(d) For purposes of calculating the tax on gross revenue pursuant to (a) above, a casino operator shall be entitled to a deduction from gross revenue for the value of eligible promotional gaming credits:

1. Allocable to the casino operator in accordance with the provisions of N.J.A.C. 19:54-1.11(a) or (d); or
2. Wagered in the casino of the casino operator in accordance with the provisions of N.J.A.C. 19:54-1.11(e).

Effective: 05/25/78

As amended, effective: 04/05/93

As amended, effective: 12/20/93

As amended, effective: 10/03/94

As amended, effective: 03/18/96

As amended, effective: 09/16/96

As amended, effective: 07/20/98

As amended, effective: 01/06/03

As amended, effective: 01/20/09

19:54-1.7 Return and reports

(a) The casino operator shall file with the Commission an annual tax return for purposes of the gross revenues tax. The return shall be filed no later than March 15 following the tax year. Filing of the annual tax return shall satisfy the reporting of gross revenues requirement imposed by subsection 148a of the Act. The annual tax return shall be made on a form promulgated

and distributed by the Commission pursuant to section 151 of the Act. The casino operator shall provide all information required on the form and shall attest to the accuracy of such information. The annual tax return shall be signed by the chief executive officer, chief financial officer, treasurer, or controller if the casino operator is a corporation; by a general partner if the operator is a partnership; by the chief executive officer if the operator is any other form of business association, or by the proprietor if the operator is a sole proprietorship.

(b) On or before the 10th calendar day of each month, the casino operator shall file with the Commission a monthly gross revenue tax report which shall reflect the amount of gross revenues derived during the preceding month, the amount of tax deposits required for that month, the amount of gross revenues derived during the year to the end of the preceding month, and the tax liability for the year calculated to the end of the preceding month. The monthly gross revenue tax report shall be on a form promulgated and distributed by the Commission, pursuant to section 151 of the Act. The casino operator shall provide all information requested on the form which shall be sworn to and signed by the same individual designated in (a) above to sign the annual return.

(c) For purposes of the monthly gross revenue tax reports required in (b) above, the casino operator may estimate slot machine drop provided that:

1. Such estimates are calculated through an approved system of reading and recording slot machine meters pursuant to N.J.A.C. 19:45-1.42(o);
2. Such estimates are calculated in accordance with methodology approved by the Commission;
3. The approved methodology is utilized for each monthly gross revenue tax report, except that the casino operator may discontinue use of such methodology upon 30 days prior written notice to the Commission and with prior Commission approval; and
4. The casino operator complies with the requirements of N.J.A.C.

19:54-1.5(c)1.

Effective: 05/25/78

As amended, effective: 04/05/93

As amended, effective: 03/02/98

19:54-1.8 Examination of accounts and records

(a) The Commission may perform audits of the books and records of a casino licensee, at such times and intervals as it deems appropriate, for the purpose of determining the sufficiency of gross revenue tax deposits and payments. The Commission shall also conduct an annual gross revenue examination for the purpose of determining whether the total amount of gross revenue tax paid by the casino operator for the relevant tax year was correct.

(b) The casino operator shall permit duly authorized representatives of the Commission to examine the operator's accounts and records for the purpose of certifying gross revenues. In the event that any records or documents deemed pertinent by a Commission examiner are in the possession of another licensee or entity, the casino operator shall be responsible for making those records or documents available to the examiner. Further, the casino operator shall be individually and severally liable for any relevant accounts, records or documents maintained or required to be maintained by any other licensee or entity with regard to the casino.

(c) The Commission's annual gross revenue tax examination shall be conducted in accordance with standards and practices established by the director of the Commission's Division of Financial Evaluation. A copy of such standards and practices shall be made available upon request to all casino operators.

(d) An examination pursuant to this section may incorporate audit work performed by a casino operator's internal audit department provided that:

1. Such audit work is conducted in accordance with minimum standard internal audit procedures which have been submitted to and

approved by the Commission, including, at a minimum, a detailed description of the audit tests to be performed;

2. The casino operator submits to the Commission by January 31 of each year an annual audit plan specifying the scheduled audit dates for that upcoming calendar year; and

3. The casino operator submits to the Commission, no later than March 15 of each year, copies of all internal audit reports and any other reports directly relating to the reporting of gross revenue for the preceding tax year.

(e) The Commission shall:

1. Notify the casino operator in accordance with N.J.A.C. 19:54-1.9 of any tax deficiencies disclosed during a gross revenue tax examination;

2. Record all deviations from regulatory or internal control requirements concerning revenue-related transactions which are discovered during a gross revenue tax examination, which record shall be provided to the casino operator on an annual basis; and

3. Refer any such deviations to the Division of Gaming Enforcement for investigation and any other action which the Division deems appropriate.

Adopted, effective: 05/25/78

As amended, effective: 04/05/93

As amended, effective: 12/04/95

19:54-1.9 Determination of tax liability; notice; disputes; hearings

(a) If a return or deposit required by section 145 of the Act or by these regulations with respect to the gross revenue tax is not filed or paid, or if a return or deposit when filed or paid is incorrect or insufficient in the opinion of the Commission, the amount of tax due or deposit shall be determined by the Commission through an examination of the casino licensee's books and records. The Commission is empowered to determine whether a casino

operator or other casino licensee has fully satisfied its obligations with regard to the gross revenues tax and to require that a casino operator or casino licensee make additional payments, including the payment of interest or penalty, or take additional steps to comply.

(b) If the Commission determines that the casino operator has not satisfied its obligation as to payment of tax or deposit, a notice of such determination shall be given to the casino operator and to other licensees liable for the payment under N.J.A.C. 19:54-1.4. Such determination shall finally and irrevocably fix the tax unless within 30 days after receiving notice of such determination, the casino operator or any other licensee liable for the payment shall apply to the Commission for a hearing, or unless the Commission on its own motion shall redetermine the same. Any Commission hearing will be governed as to notice and procedure by the general hearing rules of the Commission (see N.J.A.C. 19:42).

(c) In discharging its responsibilities under this Act, the Commission shall have all the authority granted by the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes, and all proceedings shall be conducted in accordance with said law, except to the extent that a specific provision of the Act or these regulations may be in conflict therewith. Nothing herein shall prevent the Commission from employing additional procedures including informal conferences with a licensee at which the licensee may present legal and factual contentions to the Commission. Such informal conferences shall not, however, be a substitute for a formal hearing as defined and described in the said "State Tax Uniform Procedure Law."

Effective: 05/25/78

As amended, effective: 04/05/93

19:54-1.10 Penalties and sanctions

(a) A casino operator which fails to file its return when due or to pay the

tax or deposit when due shall be subject to such penalties and interest as provided in the "State Tax Uniform Procedure Law", N.J.S.A. 54:48-1 et seq. Interest shall be calculated from the date the tax was originally due through the actual date of payment, provided, however, that if the deficiency is paid within 10 business days from the date of the Commission's tax deficiency notice, interest shall be calculated through the date of such notice.

(b) If the Commission determines that any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In this regard, a monthly deposit shall be considered part of the tax required to be shown on a return.

(c) Any person failing to file a return, failing to pay the tax or deposit, or filing or causing to be filed, or making or causing to be made, or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by the Act, or rules or regulations adopted thereunder which is willfully false, or failing to keep any records required by the Act or rules and regulations adopted thereunder, shall, in addition to any other penalties herein or elsewhere prescribed, be guilty of a misdemeanor and subject to not more than three years imprisonment or a fine of \$100,000 or both.

(d) In addition to the foregoing, any casino operator or other casino licensee which violates any of the provisions of the Act, the rules of the Commission or its approved internal controls regarding the gross revenue tax shall be liable to any sanction, penalty or other consequence which the Commission may be authorized to impose, such as those delineated in sections 111, 129 and 130 of the Act.

Adopted, effective: 05/25/78

As amended, effective: 04/05/93

As amended, effective: 12/04/95

As amended, effective: 01/03/00

19:54-1.11 Deduction for promotional gaming credits

(a) During the recoupment period, a participating casino operator shall be entitled to a deduction from gross revenue equal to its participating casino operator sharing percentage times:

1. Until the tax value of eligible promotional gaming credits deducted by participating casino operators equals \$90 million, the value of the eligible promotional gaming credits wagered in the casinos of all casino operators during the tax year or portion thereof; and

2. For the remainder of the recoupment period, the value of the eligible promotional gaming credits wagered in the casinos of all participating casino operators during the tax year or portion thereof, in addition to any deduction to which a participating casino operator may be entitled pursuant to (d) below.

(b) A participating casino operator which ceases gaming operations prior to the full recovery of its pro rata share of the costs of the 2008 agreement shall:

1. Continue to have the right to such allocation of eligible promotional gaming credits and the right to deduct the value of same from gross revenue; and

2. Have the right, subject to Commission approval, to transfer and assign such rights to another casino operator, which shall thereafter have the right to deduct the value of the eligible promotional gaming credits from its gross revenue as if it were the participating casino operator entitled to the allocation of the eligible promotional gaming credits pursuant to (a) above.

(c) Based upon the information reported pursuant to (f) below, the Commission shall, on or before the seventh calendar day after month-end, advise all casino operators when the tax value of eligible promotional gaming credits deducted by participating casino operators equals:

1. \$90 million, thereby signifying that casino operators may be eligible to take a deduction from gross revenue for promotional gaming credits in accordance with (d) below; and

2. The agreement costs, thereby signifying the end of the recoupment period.

(d) After the tax value of eligible promotional gaming credits deducted by participating casino operators equals \$90 million and until the end of the recoupment period, in any tax year or portion thereof in which eligible promotional gaming credits are wagered in the casinos of non-participating casino operators, each casino operator shall be entitled to a deduction from gross revenue in an amount equal to its proportionate share, as defined in N.J.A.C. 19:54-1.2, times the value of the eligible promotional gaming credits wagered in the casinos of non-participating casino operators. This deduction shall be in addition to any deduction to which a participating casino operator is entitled pursuant to (a)2 above.

(e) After the completion of the recoupment period, in any tax year or portion thereof in which there are eligible promotional gaming credits, a casino operator shall be entitled to a deduction from gross revenue in an amount equal to its proportionate share of the eligible promotional gaming credits wagered in the casinos of all casino operators during the tax year or portion thereof.

(f) On or before the third calendar day of each month, each casino operator shall report to the Commission the value of the promotional gaming credits that were wagered in its casino during the preceding month. In addition, until all payments are made pursuant to the 2008 agreement, each participating casino operator shall report any payments that it made pursuant to the 2008 agreement during the preceding month. Upon timely receipt of this information, the Commission shall, on or before the seventh calendar day after month-end, make available to all casino operators the industry promotional gaming credit information, including the value of promotional gaming credits

wagered and the value of eligible promotional gaming credits allocable to each casino operator for deduction from gross revenue.

(g) In each tax year or portion thereof during the recoupment period, and in accordance with the information provided by the Commission pursuant to (f) above, each participating casino operator shall be entitled, in its monthly gross revenue tax report, to deduct from its gross revenue the value of eligible promotional gaming credits allocated by the Commission to such participating casino operator.

(h) In each tax year or portion thereof after the tax value of eligible promotional gaming credits deducted by participating casino operators equals \$90 million, and in accordance with the information provided by the Commission pursuant to (f) above, each casino operator shall be entitled, in its monthly gross revenue tax report, to deduct from its gross revenue its proportionate share, as defined by N.J.A.C. 19:54-1.2, times the value of the eligible promotional gaming credits wagered in the casinos of non-participating casino operators. This deduction shall be in addition to any deduction to which a participating casino operator is entitled pursuant to (g) above.

(i) In each tax year or portion thereof after the completion of the recoupment period, and in accordance with the information provided by the Commission pursuant to (f) above, each casino operator shall be entitled, in its monthly gross revenue tax report, to deduct from its gross revenue its proportionate share of the value of the eligible promotional gaming credits wagered in the casinos of all casino operators.

(j) Any increase or decrease in the value of eligible promotional gaming credits from the previous month shall be reported on the next weekly tax transfer made in accordance with N.J.A.C. 19:54-1.5.

(k) Notwithstanding any other provision of this section to the contrary, the Commission may reduce the value of the available deduction for promotional gaming credits if it determines that such a limitation is necessary to eliminate a negative fiscal impact on the Casino Revenue Fund attributable

solely to the deduction and not to other economic or other factors that cause a negative fiscal impact to the Casino Revenue Fund. In accordance with the provisions of N.J.S.A. 5:12-144.2d(2), a negative fiscal impact shall be deemed to have occurred only if the value of promotional gaming credits wagered by patrons in all casinos during any tax year falls below \$90 million.

Adopted, effective: 01/20/09