

**COMMONWEALTH OF PENNSYLVANIA  
GAMING CONTROL BOARD**

IN RE: Adopted Loan Repayment Schedule :  
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**ADMINISTRATIVE ORDER**

The Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S. § 1101, et. seq., (the “Gaming Act”), provides for the funding of the Pennsylvania Gaming Control Board, Pennsylvania State Police, Department of Revenue and the Office of Attorney General (Commonwealth agencies with various responsibilities under the Gaming Act) to be accomplished through draws on accounts established under Chapter 14 of the Gaming Act (“Section 1401 accounts”). The Gaming Act initially contemplated that a total of fourteen licenses be issued and that the regulatory costs of all four agencies be assessed and spread among all operating casinos. Due to delays in commencing operations, however, during the fiscal years 2007 – 2010, complete funding of all four agencies’ operational budgets by facilities was not feasible given the limited number of facilities open during that period. As a result, approximately \$63.8 million was borrowed from the Property Tax Relief Reserve Fund to fund PGCB operations costs for that three year period. Funding of the Pennsylvania State Police, the Department of Revenue and the Office of Attorney General was accomplished through the Section 1401 account assessments.

Amendments to the Fiscal Code during the summer of 2010 mandated that the Board establish a schedule governing the repayment of the loans by operating facilities no later than June 30, 2011. These provisions also called for repayment of the fiscal year 2007 – 2010 loans to begin when at least eleven slot machine licenses have been issued and eleven licensed gaming entities have commenced operations of slot machines. The legislative provision for the establishment of a repayment schedule mandates that the repayment schedule must, at a minimum: (1) set forth the frequency of the payments (quarterly, semi-annually, or annually); (2) assess the cost of repayment

in an amount that is proportional to each slot machine licensee's gross terminal revenue; and (3) result in full repayment not earlier than five years, but not more than ten years following commencement of the loan repayments.

Industry input was solicited and received on two occasions and comments were received from elected officials. The Office of Chief Counsel presented numerous calculation methods that were direct suggestions from the industry and permutations devised by counsel.<sup>1</sup> Taking the comments and suggestions into consideration and analyzing other repayment schedule calculation options, during the public meeting held on June 28, 2011, the Board adopted a repayment schedule that reflects a fair and equitable distribution of the repayment obligations.

1. The loan repayment term shall be ten years.
2. Each year during the loan repayment term, 1/10 of the total initial loan balance as it exists on July 1, 2011 will be repaid collectively by the operating casinos.
3. Each year during the loan repayment term, each operating facility's gross terminal revenue will be calculated at the close of the fiscal year (or June 30<sup>th</sup>).
4. The individual operating facility's gross terminal revenue will be divided by the statewide gross terminal revenue for the corresponding fiscal year. This results in a percentage that reflects the proportional share of gross terminal revenue for each operating facility for the single fiscal year.
5. The individual operating facility's cumulative gross terminal revenue will be divided by the cumulative statewide gross terminal revenue. This results in a percentage that reflects the proportional share of cumulative gross terminal revenue.

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<sup>1</sup> On April 14, 2011, the Office of Chief Counsel presented several repayment calculations, including: the single fiscal year approach; the cumulative gross terminal revenue approach; the historical approach, which reflected the staggered facility openings and had only a portion of the facilities repaying in the first few years; and the weighted approach, which reduced the loan amount due for the year based upon the percentage of facilities open during the corresponding year. Additionally, a calculation method submitted by some facilities was presented that advocated only those facilities open during the years in which the loans were authorized should make repayments. As with any repayment method, each of these calculations had pros and cons associated with them; however, each method is skewed towards benefiting either early opening facilities or later opening facilities. Self-interest on the part of the facilities was reflected in the suggested repayment methods submitted to the Board.

6. The single fiscal year percentage and the cumulative percentage will then be averaged to produce an average gross terminal revenue percentage.
7. The average percentage for each operating facility will be multiplied by the amount due (approximately \$6.38 million), resulting in the determination of the payment amount that is due from each operating facility for that fiscal year.
8. The Board will issue an annual assessment to each operating licensee in July of every year.
9. Amounts of repayment will be recalculated each year to reflect changing yearly allocations of both cumulative gross terminal revenue and single fiscal year gross terminal revenue for each licensed casino.

Subsequent to the June 28<sup>th</sup> Board meeting, the General Assembly enacted Senate Bill 907 of 2011 (Fiscal Code) which provided at Section 1799-E(G) that repayment of the loan funds by licensed gaming entities shall begin January 1, 2012. The Section deleted reference to the payments commencing when at least eleven slot machine licensees have commenced operations. Thus, while the repayments begin upon a date which will only include ten operating casinos at this time, the formula adopted by the Board remains valid and appropriate in light of the Fiscal Code changes.

Pursuant to Senate Bill 907, the annual assessment to the licensed facilities is due by January 1, 2012. Licensed gaming entities may pay the annual assessment in four equal quarterly installments beginning January 1, 2012, with subsequent payments due by April 1, July 1, and October 1. Beginning the loan repayment on the earliest date permitted by statute ensures that funds will be deposited in the Property Tax Relief Reserve Fund to alleviate concerns that it will not have sufficient financial support to maintain sustainable property tax relief to Pennsylvania's citizens. Allowing facilities to make quarterly repayments still results in expedited repayment in light of the Fiscal Code changes. Repayment under the previous Fiscal Code language would not begin until eleven facilities were operational, which would have been during the third quarter of calendar year 2012 at the earliest and possibly later. Since the repayment "trigger point" has been

replaced with a date certain, repayment can begin at least seven months before previously estimated.

The repayment schedule adopted herein recognizes two competing and counteracting theories. First, the majority of the loans were taken in fiscal years in which only a few facilities were in operation. The majority of the expenses of the Board (and therefore, the loans) were spent on the regulation and oversight of those few facilities. Consequently, those few facilities should bear a higher burden of the debt. Additionally, to ignore revenues earned during the time period in which only a handful of facilities were in operation would be counterintuitive, given the fact that they were enjoying very limited competition in legalized slot machine play in the Commonwealth. Using a proportional percentage based on cumulative gross terminal revenue reflects the idea that these facilities should pay an amount which recognizes that they enjoyed longer periods of operation than those facilities that opened later.

Conversely, those facilities that have been in operation the longest have also been paying the full cost of the Pennsylvania State Police, the Department of Revenue and the Office of Attorney General through the Section 1401 accounts during the relevant time period. It is unfair to effectively saddle these facilities with the full assessment based upon the years in which the loans were taken. The loans subject to this repayment plan were authorized by the General Assembly to defer full industry funding of the PGCB. In turn, the deferment allowed some facilities to be the first entrants to the gaming market in the Commonwealth with the assurance that they would not be laden with funding PGCB operations on their own. To then assess the early opening facilities for their entire cumulative gross terminal revenue would penalize the early opening facilities for simply taking advantage of being the first in the market.

Lastly, those facilities that opened later have benefited from the development of the regulatory system that began years before they opened. As a result of the initial expected inefficiencies necessarily associated with regulating, licensing and opening the first few facilities,

the regulatory system developed into a more efficient licensing and opening process. This allowed later opening facilities to have a smoother progression towards their respective openings than enjoyed by the early opening facilities. Using a percentage based on a single fiscal year's gross terminal revenue reflects the idea that cost allocation must be considered by spreading out the proportion to every operating facility. Utilizing only a single year's gross terminal revenue, however, fails to take into account the years of earnings of the early opening casinos.

Striking a balance between these two realities is essential to ensure fairness and equity to all facilities that must repay the loans. Assessing each operating facility based upon an averaged gross terminal revenue percentage represents the best option because it achieves a mid-line between two methods of calculation that affect two groups of operating facilities differently. Averaging the two percentages takes cumulative gross terminal revenue into account, yet offsets it against the gross terminal revenue for a single fiscal year, providing some relief from the entire burden. The result is consideration of both the cumulative gross terminal revenue and the facilities' current proportion of gross terminal revenue.

The loan repayment calculation, as expressed by a formula is below:


$$\frac{\text{Individual Casino Cumulative Gross Terminal Revenue}}{\text{Statewide Cumulative Gross Terminal Revenue}} = \text{Cumulative \%}$$

$$\frac{\text{Individual Casino Single Year Gross Terminal Revenue}}{\text{Statewide Single Year Gross Terminal Revenue}} = \text{Single Year \%}$$

$$\frac{(\text{Cumulative \%} + \text{Single Year \%})}{2} \times \$6.38 \text{ million} = \text{Payment amount}$$

IT IS ORDERED that the Board adopts the loan repayment schedule as set forth above.

BY THE BOARD:

  
Gregory C. Eajt  
Chairman

DATED: July 11, 2011