PENNSYLVANIA GAMING CONTROL BOARD
303 WALNUT STREET, COMMONWEALTH TOWER
HARRISBURG, PENNSYLVANIA 17101

KEVIN F. O'TOOLE
Executive Director
303 Walnut Street
Commonwealth Tower
5th Floor, Strawberry Sq.
Harrisburg, PA 17101
Phone: (717) 346-8300
Fax: (717) 346-8350
Email: keotoole@pa.gov
Website: gamingcontrolboard.pa.gov

February 28, 2024

Sent via Electronic Mail
Interactive Gaming Certificate Holders and Operators
Sports Wagering Certificate Holders and Operators

RE: Industry Guidance – 2024-02
Department of Revenue Policy Concerning Credits and Refunds for Interactive Gaming and Sports Wagering Charge-Backs

Dear Certificate Holders and Operators:

On February 26, 2024, the Pennsylvania Department of Revenue ("DOR") issued Gaming Tax Bulletin 2024-01, which provides guidance on the issue of credit card charge-backs, and the ability of interactive gaming and sports wagering certificate holders and operators to claim a credit or refund based upon charge-back transactions. Board staff have had the opportunity to review this Gaming Tax Bulletin, and after the review felt it would be appropriate to issue this industry letter in affirmance and support of the position taken by DOR and to provide some additional information in this area.

Gaming Tax Bulletin 2024-01 cites the applicable federal and state statutes on the issue of charge-backs, as well as the relevant portions of the Board's regulations. As indicated in the Bulletin, to be able to claim a credit or refund for charge-back transactions: (1) Gaming tax must have been paid on the money that is involved in a charge-back transaction; (2) The amount claimed must be from a fraudulent charge-back transaction; (3) The certificate holder or operator must have made reasonable attempts to recover the funds in the fraudulent charge-back transaction, such as filing a counterclaim to the charge-back transaction; and (4) all internal controls regarding preventing and detecting fraud must be followed.

Before claiming a credit or a refund for gaming taxes paid based upon a charge-back transaction, it is a certificate holders' and/or operators' burden to establish that the criteria listed above have been met. Related thereto, the Board and DOR have developed a system using the attached attestation (which will be part of the tax return form) as a mechanism to streamline the deduction process and reduce the need for certificate holders and/or operators to provide supporting documentation which might otherwise be required to be submitted. Additionally, it is further worth noting that if any funds are ultimately reimbursed based upon the recovery efforts, but such reimbursement comes after the credit or refund has been applied or issued, the initially reported tax must be repaid on a monthly reconciliation return.

In order to implement this expedited process, the Board's Bureau of Gaming Operations is directing that certificate holders' and operators' internal controls be updated and submitted for review, under 58 Pa.Code § 811a.2(b)(14) and 1408a.3(b)(14), to include filing a counterclaim before seeking reimbursement pursuant to this new attestation process. While we certainly understand that it may not be in a certificate holder's best business interest to pursue reimbursement for every fraudulent charge-back transaction, and some may simply be chalked up to a cost of doing business, we see no way around the Gaming Act's requirements and feel the above (and attached attestation) is a reasonable solution to seeking these deductions. Please do not hesitate to contact the Board if you have any questions regarding Gaming Tax Bulletin 2024-01 or this industry letter.

Sincerely,

Kevin F. O'Toole

Kevin F. O'Toole
Executive Director

KFO/cwz

Enclosure

cc: Steve Cook, Chief Counsel, PGCB
Cyrus Pitre, Chief Enforcement Counsel, PGCB
Paul Resch, Director of Gaming Operations, PGCB
Kevin Kile, Director of Sports Wagering Operations, PGCB
Claire Yantis, Director of Administration, PGCB
Christin Heidingsfelder, PA Department of Revenue
Shane Broderick, PA Department of Revenue
Casey Fenstermaker, PA Department of Revenue