

June 5, 2015

Volume 21, Issue 19

For more information on Michigan's gaming industry, please visit www.michigangaming.com

Editor in Chief

David D. Waddell, Esq.

Phone: 517.507.3859

waddell@rmclegal.com

Senior Gaming Analyst & Editor

Robert R. Russell, II

Phone: 517.507.3858

russell@rmclegal.com

Reporter and Associate Editor

Dustin M. Ford, Esq.

Phone: 517.999.5414

dford@rmclegal.com

Reporter

Blaine R. DeGracia, Esq.

Phone: 517.507.3857

degracia@rmclegal.com

Subscription information:

info@michigangaming.com

A publication of

RMC Ventures, LLC

Asher Court

321 W. Lake Lansing Rd.

East Lansing, MI 48823

Phone: 517.507.3860

Fax: 517.908.0235

www.rmclegal.com

The MICHIGAN GAMING Newsletter



GOVERNOR SNYDER APPOINTS NEW MICHIGAN GAMING CONTROL BOARD MEMBER

On Friday, May 29, 2015, Governor Rick Snyder announced the appointment of Carla Walker-Miller to the Michigan Gaming Control Board ("MGCB"). Ms. Walker-Miller will replace Dennis Beagan and serve the remainder of his term that expires on December 31, 2016.

Ms. Walker-Miller is the President and CEO of Walker-Miller Energy Services, LLC, which provides energy efficiency, utility products, and other energy-related services to its clients. She has been widely recognized for her work and involvement with a number of Detroit-based public and private institutions, including serving as a board member of the University of Detroit Jesuit High School, on the investment committee of Invest Detroit First Step Fund, and served as a commissioner for the Detroit Water and Sewerage Department. In addition, Ms. Walker-Miller serves as the President of the Michigan Chapter of American Association of Blacks in Energy and is an adjunct professor at the Wayne County Community College District.

In a press release on the matter, Governor Snyder stated that "I am confident Carla has the skills and experience to ensure the integrity of Michigan's casino gaming industry."

The MGCB is a five-member board that oversees the state's commercial casino gaming industry. Ms. Walker-Miller will serve as a Democrat; the board is limited to no more than three members of the same political party. Her appointment was submitted on May 27, 2015 to the Michigan Senate by the Governor for its advice and consent and has been referred to the Committee on Government Operations.

MICHIGAN BILLS SEEK TO AUTHORIZE SPORTS, SIMULCAST WAGERING AT CASINOS

On June 2, 2015, legislation was introduced by Representative Robert Kosowski (D-Westland) that, if passed, would authorize licensed commercial casinos in Michigan to operate sports wagering programs. In addition, Rep. Kosowski introduced separate legislation that would authorize casinos to accept wagers on simulcast horse races.

[House Bill 4669 \(“HB 4669”\)](#) would amend the Michigan Gaming Control and Revenue Act to permit a casino license holder to “accept wagers on sporting events” and direct the Michigan Gaming Control Board to “promulgate rules to regulate the conduct of sports betting.” The legislation also acknowledges the necessity of local and statewide voter approval required by Article 41 of the Michigan Constitution for legislation that seeks to expand the scope of gaming activity in the state.

If the bill passes the legislature and receives the required voter approval, it will likely face significant hurdles under federal law. The Professional and Amateur Sports Protection Act (“PASPA”) prohibits states from authorizing or regulating sports wagering except for in Nevada and in limited forms in Oregon, Delaware, and Montana, all of which had sports wagering programs that were grandfathered when the law was passed in 1992. In November of 2014, the US District Court for the District of New Jersey invalidated New Jersey’s attempt to authorize sports wagering in the state by affirming PASPA’s preemption of conflicting state statutes. New Jersey previously had sought to have PASPA declared unconstitutional, claiming that it violated the Equal Protection Clause by favoring four states to operate sports wagering while prohibiting all other states from doing so, but this argument was rejected by the courts.

[House Bill 4670 \(“HB 4670”\)](#) would also amend the Michigan Gaming Control and Revenue Act to allow commercial casinos in the state to accept simulcast horse race wagers. Similar to HB 4669, HB 4670 would require statewide and local voter approval in accordance with Article 41 of the Michigan Constitution before it is enacted.

HB 4669 and HB 4670 have been referred to the

House Committee on Regulatory Reform.

MGCB RELEASES NOTICE OF REGULAR PUBLIC MEETING

The Michigan Gaming Control Board (“MGCB”) has recently announced that it will hold its regular public meeting on Tuesday, June 16, 2015 at the MGCB Detroit office, Cadillac Place, 3062 West Grand Blvd., Suite L-700, in Detroit.

The meeting will begin at 9:30 a.m. with the staff briefing, followed immediately by the agenda items. The Cadillac Place is in Detroit’s New Center Area near the John Lodge Freeway (M-10), between Second Avenue and Cass Avenue. The Fisher Building and the Albert Kahn Building are nearby landmarks.

For more information regarding the MGCB, please visit their website at: www.michigan.gov/mgcb

COMPLIANCE SUMMARY: NON-GAMING LICENSING

In addition to its regular coverage of gaming news, The Michigan Gaming Newsletter will be providing compliance updates and summaries of the various legal and regulatory requirements for companies involved in the state’s gaming industry. This week, we have included a review of non-gaming licensure requirements. The following is a general discussion of the state’s compliance requirements and should not be considered legal advice.

The Michigan Gaming Control Board (“MGCB”), in addition to its oversight of gaming-related activities, has established a detailed list of licensing and approval requirements for those companies that provide the Detroit casinos with non-gaming goods and services. In general, non-gaming goods and services are defined as products that do not affect the outcome of a gambling game.

Importantly, companies that are interested in providing non-gaming products to the Detroit casinos should be knowledgeable of the licensing process and requirements before entering the casino market. As the gaming industry is highly regulated

by the MGCB, including absolute bars for participation by certain individuals or entities, it is important to review and understand the regulatory requirements before soliciting casino business in the state. The below is a brief overview of the initial licensing requirements for non-gaming suppliers working in the commercial casino industry. If working with a Native American Tribe, it is important to contact the tribe directly as each maintains their own licensing and approval requirements that are unrelated to the MGCB requirements.

First, an interested party should ascertain if a license, exemption, or other approval is necessary. For non-gaming companies, the MGCB has established business volume thresholds that determine the appropriate level of licensure needed to work with the Detroit casinos. [Board Resolution 2015-01](#), adopted in January 2015, requires companies that provide over \$400,000 to one or more of the Detroit casinos in any rolling 12-month period to obtain a non-gaming supplier's license. Companies providing between \$50,000 and \$399,999 must file for a licensing exemption, and those providing less than \$50,000 are automatically exempt from licensing requirements. In addition, certain fields of commerce are exempt from licensing, such as governmental agencies, legal services, professional entertainers, and others. For more information on the non-gaming licensing exemption process, please see our previous coverage in [Volume 21, Issue 16 \(May 8, 2015\) of The Michigan Gaming Newsletter](#).

As noted above, there are absolute bars to licensure. If a company or qualifier within the company has been convicted of any felony, misdemeanor involving gambling, theft, or dishonesty, or is an elected state official, they are ineligible to receive a supplier's license under MCL 432.207a. Thus, it is important to review the applicable statute and regulations in advance of filing an application to determine whether the company and its qualifiers are eligible for licensure.

Before providing any goods or services, those companies that contemplate providing more than the \$400,000 threshold must complete and file a Non-Gaming Supplier License Application with the MGCB. To complete the form, the applicant will need to provide responses related to basic

identification information (address, phone, tax ID, etc.), corporate structure, management and ownership, litigation history, tax and bankruptcy matters, political contributions, and other information to allow the MGCB to determine whether the applicant meets the requirements of the Michigan Gaming Control and Revenue Act and the MGCB Administrative Rules. Each qualifier of the company applicant, such as its officers, directors, owners, key management, and those dealing directly with the casinos, will be required to submit a Personal Disclosure Form along with the company application. The Personal Disclosure Form requires disclosure of personal information, criminal and civil action history, financial status, taxes, family history and relationships, and other personal information related to the applicant's history, experience, and character. There is a \$1,000 (up to \$500,000 in expected business) or \$2,500 (over \$500,000 in expected business) application fee.

After an initial review of the application materials has been completed by the MGCB, the applicant may seek to obtain a temporary supplier's license that will allow the applicant to provide goods to the Detroit casinos while its application is being reviewed by the MGCB. The review process can take up to several months to complete, depending on the complexity of the applicant's materials, so a temporary license is typically desired to allow business to proceed.

The MGCB investigation will include reviews of all application documents, follow-up response and clarifications, personal interviews with qualifiers and the company representative, and additional communications with MGCB staff. As this process can be cumbersome and complex, an applicant should consider obtaining legal or regulatory counsel to help guide the process and ensure that all filings are properly made.

After the investigation has concluded, applicants will be notified of the recommendation made by staff to the MGCB on whether to grant or deny the license. If a denial is indicated, the applicant may seek to cure the issues identified by the MGCB and, if no cure is accepted or possible, appeal the formal denial through the processes outlined in Part 7 of the MGCB Administrative Rules. Applicants that receive a denial are prohibited

from reapplying for licensure for a period of one year.

If the MGCB approves the license, the applicant will need to make a \$5,000 license fee payment to the MGCB before receiving the formal license. This fee is in addition to the application fee. Once this process has been completed, the licensee is able to provide any amount of non-gaming goods and/or services to the Detroit casinos under the license. Renewals are conducted on an annual basis and, on every fifth year, there is a full review of the applicant similar to the initial licensing process.

CASINOS OUTLINE CONCERNS WITH IRS PROPOSAL TO CHANGE CASINO TAX REGULATIONS

The American Gaming Association (AGA) filed comments this week as the Internal Revenue Service (IRS) closed the public comment period on its [proposal](#) for reporting requirements on winnings from slot machine, bingo and keno play. The IRS is proposing mandatory electronic player tracking regulations using player loyalty cards for tax reporting purposes and may consider lowering the winnings threshold from \$1,200 to \$600.

“The gaming industry is aware of no other industry in the country for which the IRS has issued regulations requiring the industry to deploy its customer loyalty program for federal tax collection purposes,” said Geoff Freeman, president and CEO of the AGA. “Further, members of Congress from eleven states and every segment of the gaming industry – operators, suppliers and customers – are united against the potential proposal to lower the gaming winnings threshold for federal tax withholding from \$1200 to \$600.”

Such a threshold reduction would render slot machines inactive for significant periods of time. As a result, the move would lead to a decrease in state gaming revenues and harm the customer experience.

While expressing concerns, the AGA also aims to help the IRS meet its goals of increasing efficiency and gathering more accurate information.

“We look forward to collaborating with the IRS to improve the efficiency, accuracy and customer-friendliness of the tax reporting process,” said Mr. Freeman. “We appreciate the approach the IRS is taking to this complex issue and look forward to building a stronger relationship.”

After the IRS announced the proposal on March 4, the AGA convened experts from member companies for regular meetings to assess each aspect of it, built consensus and formulated an effective response. AGA officials also met with the IRS in person to discuss the proposal last month.

Earlier this week, 17 members of Congress from eleven states sent a [letter](#) to the IRS outlining their concerns with the proposal. States represented are Arizona, Colorado, Florida, Indiana, Iowa, Louisiana, Mississippi, Missouri, Nevada, New Jersey and Ohio.

“If the proposed regulations are set forth as mandatory, then the gaming industry’s significant labor cost and lost business revenue to comply would be detrimental to local, state and national economies that depend on needed dollars to support critical services,” wrote the congressmen.

In its comments, the AGA expressed concern with the proposed mandatory slot tax information reporting that is based on electronic player tracking by the casino. Such a requirement would adversely affect a crucial casino marketing tool and could have a chilling effect, as customers would be reluctant to use or sign up for loyalty cards associated with tax tracking and collection.

AGA also warned that current electronic player tracking systems were designed for marketing purposes and lack the types of controls necessary to ensure proper compliance with tax information reporting. Conflicting state tax reporting and withholding requirements would also pose serious challenges.

While the public comment period closed this week, the process of writing the final regulation is just beginning, and input remains valuable. By the end of the public comment period on Tuesday, more than 13,000 people had expressed opposition

to the proposal by signing a [petition](#), leaving a comment [directly](#) with the IRS, or contacting their member of Congress by phone, on Twitter or on Facebook.

“This is what 21st century advocacy looks like,” said Freeman.

The IRS will hold a public hearing on the proposal on June 17 in Washington, D.C.

[Read the AGA’s public comments in response to the IRS proposal.](#)