Massachusetts Gaming Commission

MEMORANDUM

Date: June 2, 2014

To: The Honorable Deval L. Patrick, Governor
The Honorable Therese Murray, Senate President
The Honorable Robert A. DeLeo, Speaker of the House
The Honorable Stephen M. Brewer, Chair, Senate Committee on Ways and Means
The Honorable Brian S. Dempsey, Chair, House Committee on Ways and Means
The Honorable Gale D. Candaras, Senate Chair, Joint Committee on Economic Development and Emerging Technologies
The Honorable Joseph F. Wagner, House Chair, Joint Committee on Economic Development and Emerging Technologies

From: Massachusetts Gaming Commission

Re: Request from Casino Applicants and Others for Changes in Expanded Gaming Legislation

Please replace this memo for our earlier May 20 submission, and note the change in last sentence, first paragraph, listing all our competitor states that would be affected.

Both the MGM and Wynn Category 1 license applications were accompanied by a number of issues the applicants say need to be resolved before they can operate successfully in Massachusetts. (It has not been made clear whether either MGM or Wynn would refuse to proceed with the license award without amendment to one or more of these issues. Mohegan Sun Massachusetts has stated clearly that it does not require any legislative changes to proceed, and in fact supports the legislation as it stands. It should be noted, however, that the Commission believes that the most serious issue in the gaming law, the $600 withholding requirement, would have the consequence of favoring the Connecticut**, Maine, Rhode Island and New York** casinos, by driving regular players out of Massachusetts' casinos. See Attachment A.)

In addition, there have been certain issues raised by other constituents that might require legislative change, which we have considered.

Consistent with our decision on the Category 2 license, our intention is that if we pick a Category 1 winner for Regions A and B, that we will offer the award contingent upon compliance with the law as it exists at the time. The Commission has never discussed how it will respond to a license winner if it sets changes in the law as preconditions for acceptance of the award. However, we have considered the substance of these issues to prepare ourselves for the possibility of license negotiations. And most importantly, we have considered these issues in order to provide the Governor and the Legislature with our best judgment as to whether these issues actually would require legislative action for resolution; and if so, whether the MGC believes such action is desirable.

It is particularly time sensitive that we deal with all of the issues related to the present $600 threshold for income tax withholding (found in Chapter 62B, Section 2, and previously addressed by the Commission), since the Legislature is awaiting our advice on these issues before it undertakes its own analysis. And there are several other sections that would require change to be harmonized with the Chapter 62B, Section 2 change, if it is adopted.

Following are the two major suggestions for Legislative action that have been brought to our attention, and our recommendations for Legislative response:

Legislative Changes Recommended:

1. Chapter 23K, Section 28(B) and (C): Reports of complimentary services.
   Section 28 (b) *Gaming licensees shall submit quarterly reports to the commission covering all complimentary services offered or engaged in by the gaming licensee during the immediately preceding quarter. The reports shall identify regulated complimentary services and the costs of those services, the number of people who received each service or item and such other information as the commission may require. The report shall also document any services or items valued in excess of $2,000 that were provided to patrons, including detailed reasons as to why they were provided.* ***(c)*** *Complimentary services or items shall be valued in an amount based upon the retail price normally charged by the gaming licensee for the service or item. The value of a complimentary service or item not normally offered for sale by a gaming licensee or provided by a third party on behalf of a gaming licensee shall be the cost to the gaming licensee of providing the service or item, as determined under rules adopted by the commission.*

   Both Wynn and MGM call for repeal of these sections as administratively burdensome, incompatible with other jurisdictions, and an invasion of their customers' privacy. This requirement is quite similar to a New Jersey requirement, and other jurisdictions have reporting requirements at certain thresholds. At this point the Commission does not envision a compelling use for this data. **We recommend that the Legislature amend Section 28(b) by deleting the first sentence and replacing it with the following: "Gaming licensees shall maintain records covering all complimentary services offered or engaged in by the gaming licensee during the**

immediately preceding quarter, and the Commission may require gaming licensees to submit quarterly reports of such records."

1a. Chapter 23K, Section 51: Past-due child support or tax liability constraint on disbursement of cash in excess of $600.

Section 51 (a) *Prior to disbursement of cash or a prize in excess of $600, a gaming licensee shall review information made available by the IV-D agency, as set forth in chapter 119A and by the department of revenue to ascertain whether the winner of the cash or prize owes past-due child support to the commonwealth or to an individual to whom the IV-D agency is providing services and to ascertain whether the winner of the cash or prize owes any past-due tax liability to the commonwealth.* ***(b)*** *If the winner of the cash or prize owes past-due child support or has a past-due tax liability, the gaming licensee shall notify the IV-D agency or the commonwealth, respectively, of the winner's name, address and social security number. Subsequent to statutory state and federal tax withholding, the gaming licensee shall first disburse to the IV-D agency the full amount of the cash or prize or such portion of the cash or prize that satisfies the winner's past-due child support obligation.* ***(c)*** *If funds remain available after the disbursement to the IV-D agency or if no such obligation to the IV-D agency is owed, the gaming licensee shall disburse to the department of revenue the full amount of the cash or prize or such portion of the cash prize that satisfies the winner's past-due tax liability. The licensee shall disburse to the holder only that portion of the prize, if any, remaining after the holder's past-due child support obligation and the holder's past-due tax liability have been satisfied.*

Both Wynn and MGM urge repeal of this section. However, there are similar requirements in many other jurisdictions and the Commission supports the policy objectives in this section. The problem is that DOR does not yet have an online, 24/7 capacity to check for such information on an expeditious and absolutely current basis. Such a system will probably not be available when the Category 2 license becomes operational and until such a system is available, any manual system has the potential for embarrassing mistakes and operational problems. **The Commission recommends that both Sections 51 and 52 (see #3 below) be made compatible with our proposed amendment to Chapter 62B, Section 2 (see below #4) and amended to withhold implementation of Section 51 until an on-line real-time system is available at DOR. Our proposed amendment follows (amendments in red):**

Section 51. (a) Prior to disbursement of cash or a prize in excess of $1200 which is subject to withholding or reporting in accordance with Chapter 62B, Section 2, a gaming licensee shall review information made available by the IV-D agency, as set forth in chapter 119A and by the department of revenue to ascertain whether the winner of the cash or prize owes past-due child support to the commonwealth or to an individual to

whom the IV-D agency is providing services and to ascertain whether the winner of the cash or prize owes any past-due tax liability to the commonwealth.

(b) If the winner of the cash or prize owes past-due child support or has a past-due tax liability, the gaming licensee shall notify the IV-D agency or the commonwealth, respectively, of the winner's name, address and social security number. Subsequent to statutory state and federal tax withholding, the gaming licensee shall first disburse to the IV-D agency the full amount of the cash or prize or such portion of the cash or prize that satisfies the winner's past-due child support obligation.

(c) If funds remain available after the disbursement to the IV-D agency or if no such obligation to the IV-D agency is owed, the gaming licensee shall disburse to the department of revenue the full amount of the cash or prize or such portion of the cash prize that satisfies the winner's past-due tax liability. The licensee shall disburse to the holder only that portion of the prize, if any, remaining after the holder's past-due child support obligation and the holder's past-due tax liability have been satisfied.

(d) This section shall not take effect until a written finding is made by the commission, in consultation with the department of revenue, that the manner the information is made available for purposes of this section by the IV-D agency and the department of revenue will enable a gaming licensee to access the information in real-time.

1b. Chapter 23K, Section 52: Reports of winnings in excess of $600.

Section 52 *Gaming licensees shall, on a monthly basis, transmit to the department of transitional assistance and to the IV-D agency, as set forth in chapter 119A, a list of all persons who were awarded cash winnings or a prize in excess of $600 in the prior month. The information shall be provided in a format which is compatible with the automated data processing systems of the department and the IV-D agency to ensure the immediate identification of persons who may be receiving public assistance benefits. The information provided shall include the name, address and social security number of the person who was awarded the cash or prize valued in excess of $600.*

Wynn and MGM call for repeal of this section as administratively burdensome, inconsistent with other gaming jurisdictions, and of questionable public policy wisdom.

The Commonwealth accepts the public policy objective of having licensees report significant winnings to DTA and DOR, and the Commission agrees with this requirement. **The Commission recommends changing the $600 threshold to match the $1200 threshold we have recommended elsewhere, and requires reporting only on those winnings subject to withholding or reporting under Chapter 62B, Section 2. Otherwise, the Commission does not believe legislative action is required. [Redo]**

1c. Chapter 62B, Section 2: Withholding of taxes on winnings of $600 or greater.
The Commission has already submitted a proposal to the Legislature on this issue, which recommends adopting the Internal Revenue Service's standards for tax reporting and withholding, including raising the threshold to $1200 (See **Attachment A**). **We further recommend that if the Legislature decides to replace this section with a section mirroring the federal IRS standards, that the Legislature change all the other $600 thresholds in Chapter 23K (including Sections 51 and 52) to match the federal $1200 threshold.**

2. CORI modifications**.**
A number of groups have expressed concern that CORI standards in the expanded gaming law (specifically the "automatic disqualifiers" identified in G.L. c.23K, §16) will preclude many people in the targeted groups for employment, and that they are unnecessarily rigid in protecting the integrity of the gaming process. **We have researched this issue thoroughly, including soliciting an opinion from our gaming consultant Michael & Carroll, found in Attachment B. This opinion documents best practices in other jurisdictions, and concludes that the present Massachusetts statute is inconsistent with those best practices. The Commission agrees, as do our applicants. Accordingly, the Commission recommends that the Legislature amend Section 16(b) in the following manner (amendments in red):**

Section 16. (a) *The commission shall deny an application for a gaming license or a license for a key gaming employee issued under this chapter, if the applicant: (i) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; (ii) submitted an application for a license under this chapter that contains false or misleading information; (iii) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license under this chapter; or (iv) has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the commonwealth in awarding a gaming license to the applicant.*

(b) *The commission shall deny an application for a license or registration, other than a gaming license or a license for a key gaming employee, under this chapter if the applicant: (i) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; provided, however, that in the case of an applicant for a gaming employee license, for convictions which occurred before the 10-year period immediately preceding application for licensure, an applicant may demonstrate, and the commission shall consider, the applicant's rehabilitation and whether such conviction should not be an automatic disqualification under this section; provided further, that in the case of an applicant for a registration or license other than a gaming employee license, key gaming employee license, or gaming license an applicant may demonstrate, and the commission shall consider, the applicant's rehabilitation and whether such conviction should not be an automatic disqualification under this section; (ii) submitted an application for a license under this chapter that contains false or misleading information; (iii) committed prior acts which*

have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license under this chapter; or (iv) has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the commonwealth in awarding a gaming license to the applicant.

No Legislative Changes Recommended:

1. Pending Repeal Referendum.
   Both MGM and Wynn have expressed concern about their considerable financial exposure in the case of a license award which is followed by repeal of the gaming legislation (should the SJC permit the ballot question to go forward, and should it be successful in the November election). There are 2 categories of financial issues that will be triggered by the license award and/or a delay caused by awaiting the outcome of the repeal initiative:

   A. Costs under the control of the Gaming Commission.
      The Gaming Commission has four different fees it is authorized to assess upon the award of the gaming license, and a fifth category of costs it can influence, associated with construction:

      - $85M one time licensing fee
      - Slot machine fee of $600 per unit
      - Gaming assessment fee to cover operating costs
      - Public Health Trust Fund fee
      - Project construction and costs, schedule penalties, 10% investment deposit, and site acquisition requirements

      In previous discussions, the Commission has provided itself flexibility to make license awards provisional or contingent, in a manner that would enable it to compromise on the date of assessing these fees, and modify construction constraints, if the Commission believes it is appropriate to do so. **While we have expressed our opinion that legislative action promising to return the $85M license fee in the event of a subsequent repeal would be a reasonable action, we do not believe that legislative action is required to provide relief for these five cost categories.**

   B. Costs not within the control of the Commission.
      There are at least three costs which the Commission cannot control:

      - Contingent project site payments
      - Certain project construction costs

- Certain costs associated with Host Community Agreements and Surrounding Community Agreements.

MGM acknowledges that there may be little direct relief the Commission can provide for these potential costs, and requests that the Commission provide "guidance" for an appropriate form of relief. **We have not yet pursued what, if any, guidance we could provide here, but we do not believe that legislative action is required or appropriate in helping to deal with these issues**.

2. Chapter 23K, Section 18: On-site child daycare program.
Section 18. *In determining whether an applicant shall receive a gaming license, the commission shall evaluate and issue a statement of findings of how each applicant proposes to advance the following objectives:* ***(9)*** *establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:* ***(iii)*** *establishes an on-site child day-care program.*

Both Wynn (calling for a repeal) and MGM (calling for amendment permitting a facility in proximity to the site) find this requirement unacceptable. However, on close reading of Section 18 (9)(iii), it is clear that providing a facility is not a requirement, but rather something the Commission should consider in determining whether an applicant shall receive a gaming license. **We believe the Commission can address this issue through its regulatory authority, and it will not require legislative action.**

3. Chapter 23K, Section 55(a): Tax Rates.
Section 55 (a) *A category 1 licensee shall pay a daily tax of 25 per cent on gross gaming revenues.*

Both Wynn and MGM call for assurances that the present 25% tax rate on gross gaming revenues will not be changed during the licensing period (for 15 years). The Commission does not have any authority relative to setting the tax rate. We have checked with other jurisdictions, and except for rare circumstances (like an underlying contract in Kansas), all tax rates are subject to Legislative change. **It is our view that it is unlikely that the present Legislature can or would bind a future Legislature vis a vis guaranteeing the present tax rate.**

4. License Parameters.
MGM expresses concern that the Legislature might allow the Category 2 licensee to offer table games, and that such a change would create an unfair competitive environment for the Category 1 license holders by changing the landscape, and accordingly the economics, on which they have relied in crafting their proposed projects. If this change were to occur, MGM asks that the Commission consider a variety of types of relief, including reducing the Category 1 table game tax rate.

The Commission does not have any authority relative to setting the tax rate or reducing the Category 1 table game tax rate. Further, as mentioned above, it is unlikely that the present Legislature can or would bind a future Legislature vis a vis prohibiting a change (such as adding table games to Category 2) in the future. **Accordingly, we do not believe that either Commission or legislative action is called for on this issue at this point. The Commission does believe that equity and the best interests of the Commonwealth require that there be no material changes to key licensing parameters during the 15 year license period.**

5. Chapter 23K, Section 21(A)(4): Capital Expenditures.
Section 21 (a) *The commission shall prescribe the form of the gaming license, which shall include, but not be limited to, the following license conditions for each licensee. The licensee shall:* ***(4)*** *make, or cause to be made, capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5 per cent of the net gaming revenues derived from the establishment; provided, however, that a gaming licensee may make capital expenditures in an amount less than 3.5 per cent per year as part of a multi-year capital expenditure plan approved by the commission*

Both Wynn and MGM interpret this section to require a minimum 3.5% *annual* investment of "net gaming revenues derived from the establishment" in renewing the capital infrastructure of the facility. Wynn calls for replacing the 3.5% with a qualitative standard, and MGM calls for repeal.

The Commission believes that Wynn and MGM have applied an overly narrow reading to this section: notably, the first part of Section 21(a)(4) does not use the word "annual" (though it could be imputed given the context). In the second section, the Commission is granted authority to approve expenditures of a lesser amount than 3.5% per year as part of a multi-year capital expenditure plan. **We believe that the Commission can handle this issue in its regulations, and there is no need for legislative action**.

(Incidentally, it is not clear to the Commission what the Legislature intended by "net gaming revenues derived from the establishment," and we would welcome clarification should the Legislature see fit to do so. But absent further actions by the Legislature, the Commission is fully prepared to use its statutory authority to interpret this clause.)

6. Chapter 23K, Sections 9(A)(8) and 21(A)(16): On-site space for mental health treatments.
Section 9 (a) *The commission shall prescribe the form of the application for gaming licenses which shall require, but not be limited to:* ***(8)*** *an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including: (ii) providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission.*
Section 21. (a) *The commission shall prescribe the form of the gaming license, which shall*

include, but not be limited to, the following license conditions for each licensee. The licensee shall: ***(16)*** *provide complimentary on-site space for an independent substance abuse, compulsive gambling and mental health counseling service and establish a program to train gaming employees in the identification of and intervention with customers exhibiting problem gaming behavior.*

Wynn expresses concern that these sections require the licensees to provide comprehensive substance abuse, compulsive gambling and mental health counseling/treatment services. The Commission believes that the statute only requires that the licensee provide "complimentary on-site space" and that what services, if any, go in the space is determined by the Commission. **We believe that this issue can be managed within the Commission's regulatory authority, and does not require legislative action**.

7. Chapter 23K, Section 25(G): Gratuities

Section 25 (g) *A dealer may accept tips or gratuities from a patron at the table game where such dealer is conducting play; provided, however, that such tips or gratuities shall be placed in a pool for distribution among other dealers. The commission shall determine how tips and gratuities shall be set aside for the dealer pool as well as the manner of distribution among dealers. No key gaming employee or any other gaming official who serves in a supervisory position shall solicit or accept a tip or gratuity from a player or patron in the gaming establishment where the employee is employed.*

Wynn proposes that this section be changed to permit the licensee to determine how tips are pooled and distributed (though excluding participation of "the employers"). Several unions testified at the Region A surrounding community hearing against any modification of this law.

There are two issues: one can be handled by way of regulation, one would require legislative action. First, it has been suggested that tip pooling should be left to the gaming licensee (and any labor organization where applicable) to determine the manner in which tips should be distributed. The Commission is authorized to determine the manner in which tips and gratuities shall be set aside and distributed among *dealers*. As such, it could, if it so chose, authorize by regulation the licensee and labor organization to resolve the issue amongst themselves. Secondly, it has been suggested that there are certain employees who may assist dealers, but who are not in fact dealers, and who are not in a managerial or supervisory position, who should be allowed a cut, though not a full dealer share, of the tips. **Addressing the issue of who may be included in the distribution of the pooled tips would require legislative action; however, it does not seem to the Commission that this is an important enough issue for the Legislature to take action.**

8. Chapter 23K, Section 29: Cashless wagering.

Section 29 *A gaming establishment offering a cashless wagering system shall allow individuals to monitor and impose betting limits on their cashless wagering. The gaming establishment shall allow individuals to set betting limits on their cashless wagering including, but not limited to, per bet limits, hourly limits, daily limits, weekly limits and monthly limits. An individual may lower limits and increase limits; provided, however, that the individual shall not increase betting limits more than once in a 24-hour period. The gaming establishment shall issue to each patron who has been issued a rewards card or who participates in a cashless wagering system by the gaming establishment a monthly statement, mailed to the patron at the patron's physical mailing address, which shall include the patron's total bets, wins and losses; provided, however, that a patron shall be given the opportunity to decline receiving a monthly statement at the time the rewards card is issued or during initial participation in a cashless wagering system; provided further, that a patron may later opt out of receiving monthly statements by providing a written request to cease monthly statements to the gaming establishment. A gaming licensee who has implemented such a program or system shall annually report to the commission the amount of money spent and lost by patrons who have been issued a rewards card or who participated in a cashless wagering system, aggregated by zip code. Activity under this section shall be monitored by the commission. Individuals on the list of excluded persons shall not be permitted to participate in a cashless wagering system.*

Both Wynn and MGM call for repeal of this section as administratively burdensome, ultimately counterproductive and an invasion of privacy. As best we can determine, none of our applicants intends to use a "cashless wagering system" as defined in Section 2. There has been mixed reaction to the requirement of offering a monthly report to rewards card holders. **But at this point, we do not see a need for Legislative action on this matter.**

9. Chapter 23K, Section 56(C)(D) and (E): Commission costs and Public Health Trust Fund.

Section 56 (c) *Any remaining costs of the commission necessary to maintain regulatory control over gaming establishments that are not covered by: (i) the fees set forth in subsections (a) and (b); (ii) any other fees assessed under this chapter; or (iii) any other designated sources of funding, shall be assessed annually on gaming licensees under this chapter in proportion to the number of gaming positions at each gaming establishment. Each gaming licensee shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the commission.* ***(d)*** *If the fees collected in subsections (a) and (b) exceed the cost required to maintain regulatory control, the surplus funds shall be credited in proportional shares against each gaming licensee's next assessment.* ***(e)*** *In addition to the fees collected under this section and any additional costs of the commission, the commission shall assess an annual fee of not less than $5,000,000 in proportional shares against each gaming licensee in proportion to the number of gaming positions at each gaming establishment for the costs of service and public health programs dedicated to addressing problems associated with compulsive gambling or other addiction services. Such assessed fees shall be deposited into the Public Health Trust Fund established in section 58.*

Generally these sections refer to the authority given to the Commission to assess its operating costs (not covered by the $600 slot license fee and investigatory fees) by a proportional assessment on the licensees, as well as the assessment of an annual fee of not less than $5M for the Public Health Trust Fund. MGM and Wynn find the uncertainty as to the potentially limitless amounts associated with each assessment to be unsettling and recommend deleting the authority to assess remaining operating costs on the licensees; replacing the open ended assessment with a fixed fee; and freezing the Public Health Fund assessment at $5M.

The Commission has already indicated its intent to involve a licensee advisory group in oversight of the Commission's operating budget, and has expressed no expectations of assessing a Public Health Trust Fund fee higher than $5M. **Furthermore, the Commission believes that this kind of funding mechanism for regulatory and public health costs is one of the strengths of the expanded gaming legislation, and we would not recommend that it be revisited by the Legislature.**

10. Parity of tax rate.

    Both Wynn and MGM express concern that a tribal casino could be authorized in Massachusetts, and operate at a tax rate significantly below the tax rate on the Massachusetts license holders. In various ways, they each call for matching the tax rate of commercial casinos to the tax rate of tribal casinos and reserve their right to lobby accordingly for such changes.

    The Commission in its discussions to date clearly understands the potential challenges posed by a Tribal casino operating under the presently approved Compact, and the nearly insurmountable conundrums raised by the range of Tribal options. We will continue to discuss this issue in public, and will wrestle with the reconciliation of these competing interests with the same transparency with which we have approached our other work. **At this point, however, we do not see any action that the Commission should take other than to continue judiciously with the commercial process, and wait out the Tribal process. Any change in the tax rate would obviously require Legislative action, but the Commission does not recommend that the Legislature consider any action on this issue at this time.**

11. Chapter 23K, Section 27(E): Credit

    No person, other than a gaming licensee, shall issue credit to a patron in a gaming establishment.

    MGM reads this section to possibly preclude ATM's located in the gaming establishment from being utilized for a cash advance. **Since the Commission does not interpret the section to preclude such transactions, no legislative action is required.**

ATTACHMENT A

Massachusetts Gaming Commission

MEMORANDUM

Date: 1/30/14

To: The Honorable Deval Patrick; the Honorable Therese Murray; The Honorable Robert DeLeo

From: Stephen P. Crosby, Chairman, Massachusetts Gaming Commission

Re: $600 Withholding and Reporting Requirement

I. THE ISSUE

The enabling Legislation for expanded gaming in Massachusetts, Chapter 194 of the Acts of 2011, includes sections that establish standards for withholding Massachusetts income tax from gambling winnings.

Although the Department of Revenue has not issued regulations concerning these sections, nor has the Commission or any other official body discussed the intention of these sections, it has been widely believed and accepted in the gaming industry (including pari-mutuel gambling, slots and table games in casino gambling, and the Lottery) that these sections require gaming operators to report and withhold Massachusetts state income tax on any gambling winnings of $600 or greater. There is no offset in Massachusetts law for gambling losses, or, at least in most cases, the price of the wager, to the withholding tax assessment.

The relevant sections are as follows:

> SECTION 27. Section 5A of chapter 62 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "commonwealth", in line 24, the following words:-, including gaming winnings acquired at or through a gaming establishment licensed under chapter 23k.
>
> SECTION 28. The seventh paragraph of section 2 of chapter 62B of the General Laws, as so appearing, is hereby amended by striking out the first 2 sentences and inserting in place thereof the following 2 sentences:- Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery or wagering winnings which are subject to tax under chapter 62 and which are subject withholding under section 3402 of the internal Revenue Code, without the

exception for slot machines, keno and bingo played at licensed casinos in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of $600 or greater notwithstanding any contrary provision of the Internal Revenue Code. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

Many gaming operators have raised strong concerns that this requirement is non-standard in the industry, and will put Massachusetts gaming operators at a serious competitive disadvantage, and may even make expanded gaming in Massachusetts non-viable.

II. INDUSTRY NORMS

Federal law governing the reporting and withholding of gaming winnings on the federal level comes from two sources: the Internal Revenue Code ("IRC") and IRS regulations (26 CFR). The IRC provides the withholding rules while the CFR provides the reporting rules. The Federal Internal Revenue Service (IRS) standard on reporting and withholding on gambling winnings has been in place since 1973 and has the following principal terms, as they pertain to winnings in Massachusetts gaming:

- At slots machine winnings of $1200 or greater, the operator must report winnings on a form W2-G, while verifying the identity of the winner; in the event of a non-resident winner, withholding will be made on site, and a 1099 issued.
- Gaming operators are required to both report and withhold on winnings which are greater than $5,000 and which are won against odds greater than 300-1.
- Gaming operators are required to report with issuance of a W2-G any other gambling winnings of $600 or more, and which result from bets with greater than 300-1 odds. As a practical matter, this eliminates reporting or withholdings on table games, since virtually no table games have odds greater than 300-1. However, due to the multiple "exotic" bets in pari-mutuel gambling, the $600 threshold at 300-1 odds does generate significant transactions in pari-mutuel gambling.
- Importantly, when filing federal tax returns, the taxpayer may offset taxable winnings with gambling losses, so long as the losses can be documented.

The full Internal Revenue Code and regulations can be found in Attachment A.

III. WITHHOLDING AND REPORTING IN OTHER STATE JURISDICTIONS

There are 23 states which permit commercial casino gambling (non-tribal), in which the state law regulates the payment of the state withholding taxes. In at least 18 of those jurisdictions, the state withholding either mirrors the federal standard (16 states) or has no withholding requirements whatsoever. The remaining 5 jurisdictions have some

idiosyncratic features, but none have withholding or reporting standards as rigorous as those in the Massachusetts laws.

Furthermore, of the surrounding jurisdictions to Massachusetts—Maine, Rhode Island, Connecticut and New York—all use the federal standard for withholding.

A detailed description of the withholding requirements in other states is attached as Attachment B.

IV. PROBLEMS CREATED BY THE MASSACHUSETTS LAW

After considerable research and deliberation, the Gaming Commission has concluded that the concerns about this withholding standard raised by the horseracing and casino gambling industries have considerable merit. The particular problems are as follows:

1. Competitive disadvantage. Since one of the major objectives of the expanded gaming law is to repatriate gambling dollars presently spent by Massachusetts citizens in neighboring jurisdictions, our operators have been directed by the Legislature and the Gaming Commission to focus on this objective. Forcing Massachusetts operators to not only report winnings at the $600 threshold (rather than the federal standard of $1200) but also to actually collect withholding taxes, will dramatically disrupt the flow of gambling at slot machines (where frequently a player will go up and down by $600 within the same sitting.) Furthermore, calculating winnings in real-time at multi-player, multi-hand/play table games is virtually impossible. There is a strong commonsense argument to support the gaming operators' concerns that more sophisticated and well-to-do players, i.e. the most "profitable" players, for both the operator and the Commonwealth, will take their gambling to nearby out-of-state jurisdictions which don't have this reporting and withholding requirement.
2. Administrative and operational costs. According to various gaming operators, each time a slot machine win occurs at $1200 or more, and a staff person is dispatched to execute the $1200 IRS reporting, the transaction takes 15 minutes of the staff person's time. Lowering the threshold to $600, and adding the requirement of actually withholding the tax, will both increase the amount of administrative time at each transaction, and vastly increase the number of reportable/withholding transactions—all those winnings between $600 and $1200. This is an administrative and cost burden not borne by operators in any other jurisdiction in the country.

   Similarly, since the implementation of the $600 threshold in pari-mutuel gambling, there has been a 60% increase in taxable transactions from the prior year—an unwelcome administrative burden for already cash-strapped race tracks.

3. Revenue lost to the Commonwealth. The Gaming Commission's financial consultants, HLT Advisory, a consulting firm with extensive experience in the Hospitality and Gaming

industries, estimates that the implementation of the $600 winnings threshold will likely have a negative effect on revenue paid to the Commonwealth. As stated in a January 13 memorandum to the Commission, HLT concluded, "as a result, while the 5% State tax withholding requirement at a $600 threshold was enacted with a view to capturing additional tax revenue to the State, it is very likely that such a move will result in a reduction of overall taxation revenue to the State. . . . . We estimate that the implementation of the withholding and reporting requirements under the Act will cost the State between $28.8M and $57.5M in lost taxation revenues."

In addition to the concerns raised by the industry and the Commission's gaming consultants, the Commission also believes that the Massachusetts withholding requirement is fundamentally inequitable in its failure to permit a casual gambler (the rules are different for professional gamblers, who may offset winnings against losses) from being unable to offset winnings with their losses. On a two-day trip to a casino for example, a gambler might lose $2,000 one day, and win $600 the next. The gambler will be required to pay income tax on the $600, despite actually being $1400 in the hole.

V. THE LOTTERY ANOMALY

It is possible that extending the $600 threshold to all gambling winnings was done by the Legislature in an attempt to create equity with the withholding threshold for the Lottery, which has been in place at $600 or more since 2004. The Lottery's situation is significantly different from pari-mutuel and casino gambling. The Lottery requires all of its winners of $600 or more to bring their ticket to the Lottery office for payment; and it doesn't really have an alternative payment system, since most small retailers that sell Lottery tickets would be unable and/or unwilling to make these payments. Furthermore, unlike the slots requirement, the Lottery gambler can continue to play—that is, to buy Lottery tickets. And the Lottery itself and its retailers have no functional competitive alternative, as most Lottery ticket buying is done on a convenience basis near peoples' home and work.

Most lotteries also use the federal threshold of $1200 or more for state withholding, although a few have a lower threshold. Only 2 use the $600 threshold—Iowa and Missouri. **Please see Attachment C for details of slots withholding requirements for Lottery winnings.**

VI. SOLUTIONS

The Commission's initial reaction to this issue when it came before us was to be reluctant to suggest a change, since raising the threshold seems to in some way be supporting an effort to avoid paying income taxes. We continue to have that concern, and will do everything within our authority to be sure that the income taxes are paid appropriately. Accordingly, we initially considered whether there was some kind of regulatory—or other— "fix" to this problem, which would not require Legislative action, and could mitigate the negative effects

while not eliminating its presumed legislative intent.

- Regulatory interpretation. The Commission does believe that it would be possible, in collaboration with the Department of Revenue, to clarify this law in a way that might preclude the application of withholding requirements to table games. It may also be appropriate to use interpretation of the key word "payment" in the statute to minimize the administrative imposition, and perhaps even to mitigate it's applicability to pari-mutuel gaming. However, we see no regulatory fix that fully addresses the concerns raised in the previous section, particularly the substantial imposition on slots play and tax equity.

- Technological solutions. In an attempt to promote taxpaying by maintaining the lower threshold, while alleviating the administrative burden and at least mitigating to some extent the negative competitive impact, the Commission explored with Mr. Steve Kastner (Executive Director for Product Compliance at International Gaming Technology (IGT), one of the leading designers and testers of gaming equipment) whether there could be a way to automate the reporting and withholding requirement, at least as far as it impacts slots games. However, although gaming designers would like to find an automated solution to sell to gaming operators for use even at the $1200 threshold, no such automated solution is plausible. Federal law requires in-person verification of a player with a government ID, and the implementation of the state law will require similar verification of the individual's identity and taxpayer ID. Further, the player needs to be given a W-2G on site and must actually pay the tax at the time of the transaction, both of which are impossible to automate.

  As a practical matter, there is no way to automate the withholding of state income tax, even in slot machine winnings.

VII. CONCLUSION

After considering all of the various issues, and alternative solutions, to challenges imposed by the state withholding requirement, the Commission has concluded that the best solution is to adopt the federal withholding standard, including and adding a reporting and/or withholding of the state income tax at the federal threshold.

VIII. PROPOSED LEGISLATIVE AMENDMENT

A proposed legislative amendment that will adopt the federal standard for pari-mutuel and casino gambling winnings is found in Attachment D.

ATTACHMENT A

The applicable section of the Internal Revenue Code is as follows:

IRC- 26 USC 3402(q) - Extension of withholding to certain gambling winnings

(1) General rule

Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment.

(2) Exemption where tax otherwise withheld

In the case of any payment of winnings which are subject to withholding made to a nonresident alien individual or a foreign corporation, the tax imposed under paragraph (1) shall not apply to any such payment subject to tax under section 1441(a) (relating to withholding on nonresident aliens) or tax under section 1442(a) (relating to withholding on foreign corporations).

(3) Winnings which are subject to withholding

For purposes of this subsection, the term "winnings which are subject to withholding" means proceeds from a wager determined in accordance with the following:

(A) In general

Except as provided in subparagraphs (B) and (C), proceeds of more than $5,000 from a wagering transaction, if the amount of such proceeds is at least 300 times as large as the amount wagered.

(B) State-conducted lotteries

Proceeds of more than $5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries

Proceeds of more than $5,000 from—

(i)a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii)a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount wagered.

(4) Rules for determining proceeds from a wager

For purposes of this subsection—

(A)proceeds from a wager shall be determined by reducing the amount received by the amount of the wager, and

(B)proceeds which are not money shall be taken into account at their fair market value.

(5) Exception for bingo, keno, and slot machines

The tax imposed under paragraph (1) shall not apply to winnings from a slot machine, keno, and bingo.

(6) Statement by recipient

Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

(7) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

The applicable section of the Code of Federal Regulations is as follows:

26 CFR 7.6041–1 - Return of information as to payments of winnings from bingo, keno, and slot machines.

(a) In general. On or after May 1, 1977, every person engaged in a trade or business and making a payment in the course of such trade or business of winnings (including winnings which are exempt from

withholding under section 3402(q)(5)) of $1,200 or more from a bingo game or slot machine play or of $1,500 or more from a keno game shall make an information return with respect to such payment.

(b) Special rules. For purposes of paragraph (a) of this section, in determining whether such winnings equal or exceed the $1,200 or $1,500 amount--

(1) In the case of a bingo game or slot machine play, the amount of winnings shall not be reduced by the amount wagered;

(2) In the case of a keno game, the amount of winnings from one game shall be reduced by the amount wagered in that one game;

(3) Winnings shall include the fair market value of a payment in any medium other than cash;

(4) All winnings by the winner from one bingo or keno game shall be aggregated; and

(5) Winnings and losses from any other wagering transaction by the winner shall not be taken into account.

(c) Prescribed form. The return required by paragraph (a) of this section shall be made on Form W–2G and shall be filed with the Internal Revenue Service Center serving the district in which is located the principal place of business of the person making the return on or before February 28 of the calendar year following the calendar year in which the payment of winnings is made. Each Form W–2G shall contain the following:

(1) Name, address, and employer identification number of the person making the payment;

(2) Name, address, and social security number of the winner;

(3) General description of two types of identification *(e.g.,* "driver's license", "social security card", or "voter registration card") furnished to the maker of the payment for verification of the winner's name, address, and social security number;

(4) Date and amount of the payment; and

(5) Type of wagering transaction.

In addition, in the case of a bingo or keno game, Form W–2G shall show any number, color, or other designation assigned to the game with respect to which the payment is made. In the case of a slot machine play, Form W–2G shall show the identification number of the slot machine.

ATTACHMENT B

State Withholding Taxes on Gaming Winnings

American Gaming Association

January 22, 2014

Federal / IRS	**Reportable Gambling Winnings** The Internal Revenue Service (IRS) requires certain gambling winnings to be reported on Form W-2G if: 1. The winnings (not reduced by the wager) are $1,200 or more from a bingo game or slot machine. 2. The winnings (reduced by the wager) are $1,500 or more from a Keno game. 3. The winnings (reduced by wager or buy-in) are more than $5,000 from a poker tournament. 4. The winnings (except winnings from bingo, slot machines, keno and poker tournaments) reduced, at the option of the payer, by the wager are: a. $600 or more, and b. At least 300 times the amount of the wager, or 5. The winnings are subject to federal income tax withholding (either regular gambling withholding or backup withholding).
Colorado	State withholding requirements are the same as federal thresholds
Delaware	State withholding requirements are the same as federal thresholds, with the exception of Keno. DE issues a W-2G for Keno winnings of $600 or more, not reduced by the wager.
Florida	State withholding requirements are the same as federal thresholds
Illinois	No state withholding requirements. Patron is given the option to request state withholding if he or she desires it after a gaming win that meets or exceeds federal thresholds.
Indiana	State withholding requirements are the same as federal thresholds
Iowa	State withholding requirements are the same as federal thresholds
Kansas	State withholding requirements are the same as federal thresholds
Louisiana	
Maine	State withholding requirements are the same as federal thresholds
Maryland	If winnings total more than $5,000, Maryland income taxes will automatically be withheld. If prize money totals between $500 and $5,000, one must file Maryland **Form 502D** and pay the tax on that income within 60 days from the time you receive the prize money. If win is less than $500, one doesn't have to file Form 502D, but they still must report the winnings and pay tax on it when they file their annual state income tax return.
Michigan	State withholding requirements are the same as federal thresholds
Mississippi	State withholding requirements are the same as federal thresholds. State withholding tax is 3%.
Missouri	State withholding requirements are the same as federal thresholds

Nevada	No state withholding requirements
New Jersey	State withholding requirements are the same as federal thresholds
New Mexico	State withholding requirements are the same as federal thresholds
New York	Winning is reportable if the prize reduced by the wager is $600 or more **and** the prize is at least 300 times the amount of the wager. Prizes over $600 but less than $5,000 with no tax ID # are subject to backup withholding. Finally, there is a mandatory withholding on all prizes over $5,000. Any winnings of $600 or more are subject to the following offsets (in order): - Child Support: 100% of the prize after mandatory withholding - Public Assistance: 50% of the prize after mandatory withholding - NY State Tax Arrears: 100% of the prize after mandatory withholding
Ohio	State withholding requirements are the same as federal thresholds (for casino gaming), and operator shall deduct and withhold OH income tax from person's winnings at a rate of four percent.
Oklahoma	State withholding requirements are the same as federal thresholds
Pennsylvania	
Rhode Island	State withholding requirements are the same as federal thresholds
South Dakota	State withholding requirements are the same as federal thresholds
West Virginia	

ATTACHMENT C

MEMORANDUM

To: Chairman Crosby
From: Artem Shtatnov
Date: January 27, 2014
RE: Lottery Withholdings

Question

At what thresholds do states automatically withhold taxes from distributions of lottery winnings?

Answer

All states are required to withhold 25% for the payment of federal taxes when winnings are above $5,000.[1] Many states withhold their state taxes starting at the same threshold. Several states also withhold past due taxes and other amounts, such as overdue child support, before distributing winnings.

The IRS requires disclosure via a W-2G form of all winnings that are both over $600 and at least 300 times the amount wagered but does not require any automatic withholding.[2] Several states use the lower $600 threshold for withholding state taxes. States with a withholding threshold different from the federal threshold are marked in bold below.

State	Deduction Threshold	Notes
Alabama		
Alaska		
Arizona		
Arkansas		
California		
Colorado	$5,000	http://www.coloradolottery.com/WINNER-SECTION/WINNERS/FINANCIAL-COUNSEL/
Connecticut	$5,000	Conn. Gen. Stat. § 12-829 http://www.ct.gov/drs/cwp/view.asp?A=1510&Q=493772
Delaware	$5,000	http://www.delottery.com/faqs.asp#7

[1] 26 U.S.C. § 3402.
[2] http://www.irs.gov/instructions/iw2g/ar02.html

DC	$5,000	http://dclottery.com/aboutus/faq.aspx#node7
Florida	$5,000	http://www.flalottery.com/faq.do
Georgia	$5,000	http://www.galottery.com/help/faqs#14 $2,500 threshold for unpaid liabilities
Hawaii		
Idaho	$5,000	http://www.idaholottery.com/theIdahoLottery/faqs.aspx
Illinois	**$1,000**	http://www.illinoislottery.com/en-us/Faq.html
Indiana		
Iowa	**$600**	http://www.ialottery.com/FAQs/FAQ-ClaimingPrizes.asp
Kansas	$5,000	http://www.kslottery.com/aboutus/faq.aspx
Kentucky		
Louisiana	$5,000	http://www.louisianalottery.com/index.cfm?md=faq&tmp=home&navID=115&cpID=0&cfmID=0&catID=7#Q27
Maine	$5,000	36 M.R.S.A. § 185 18-553 CMR Ch. 30, Pt. II, § 3.0 http://mainelottery.com/howdoi/index.html
Maryland	$5,000	http://mdlottery.com/winners/how-to-claim/
Massachusetts	**$600**	http://www.masslottery.com/winners/faqs.html M.G.L. c. 10 § 28A
Michigan	$5,000	https://www.michigan.gov/lottery/0,4603,7-110-29196_32094---,00.html
Minnesota	$5,000	http://www.mnlottery.com/claim_a_prize/claim_your_prize/ $600 threshold for unpaid liabilities
Mississippi		
Missouri	**$600**	http://www.molottery.com/whenyouwin/whenyouwin.shtm
Montana	$5,000	http://montanalottery.com/faq?print
Nebraska	$5,000	http://www.nelottery.com/claim.xsp
Nevada		
New Hampshire	$5,000	N.H. Rev. Stat. § 287-F:10 N.H. Code Admin. R. Sw 902.01 http://www.nhlottery.com/Winners/Prize-Claiming.aspx
New Jersey		N.J.S.A. 54A:6-11 N.J.A.C. 17:42-1.4 N.J.A.C. 17:43-1.4
New Mexico	$5,000	http://www.us-lotteries.com/New_Mexico/nm-lottery-info.asp
New York	$5,000	N.Y. Tax Law § 1613-c http://nylottery.ny.gov/wps/wcm/connect/nysl+content+library/nysl+internet+site/quick+help/legal/general+rules $600 threshold for unpaid liabilities
North Carolina		
North Dakota	$5,000	https://www.lottery.nd.gov/faqs/
Ohio	$5,000	R.C. § 5747.062
Oklahoma	$5,000	http://www.lottery.ok.gov/faq.asp

Oregon	$5,000	http://www.oregonlottery.org/About/FAQ/
Pennsylvania	$5,000	72 P.S. § 3761-312 http://www.palottery.state.pa.us/Games/How-to-Claim-Your-Prize-Games.aspx
Rhode Island	$5,000	R.I. Code R. 60-1-155:1 Mirrors federal: 26 CFR 31.3402(q)-1
South Carolina		
South Dakota	$5,000	https://lottery.sd.gov/look/claim/
Tennessee	$5,000	http://www.state.tn.us/revenue/faqs/indincome.shtml
Texas	$5,000	http://www.txlottery.org/export/sites/lottery/FAQ/#prize
Utah		
Vermont	$5,000	http://www.vtlottery.com/faq/winning.aspx 15 V.S.A. § 792 $500 threshold for child support
Virginia	$5,000	https://www.valottery.com/claimprize/ $100 threshold for back taxes or unpaid child support
Washington	$5,000	http://walottery.com/WinningNumbers/ClaimYourPrize/Default.aspx
West Virginia		
Wisconsin	**$1,999**	http://www.wilottery.com/faqs.aspx
Wyoming		

http://www.usamega.com/powerball-faq.htm

ATTACHMENT D

AN ACT RELATIVE TO THE PERSONAL TAXATION OF GAMING REVENUES

SECTION 1. The seventh paragraph of section 2 of chapter 62B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery winnings which are subject to tax under chapter 62 and which are subject to withholding under section 3402 of the Internal Revenue Code, without the exception for keno and bingo in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of $600 or greater notwithstanding any contrary provision of the Internal Revenue Code.

SECTION 2. Section 2 of chapter 62B, as so appearing, is hereby amended by inserting after the seventh paragraph the following paragraph:- Every gaming establishment licensed in accordance with chapter 23K and any racing meeting licensee licensed under chapter 128A making a payment of winnings of $1200 or more from slot machine play or pari-mutuel wagering shall file a form W-2G with respect to such payment. For purposes of this section, in determining whether such winnings equal or exceed the $1200 amount, the amount of winnings shall not be reduced by the amount wagered. Every gaming establishment licensed in accordance with chapter 23K and any racing meeting licensee licensed under chapter 128A making a payment of winnings which are subject to tax under chapter 62 and subject to withholding under section 3402 of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to 5 per cent of such payment. Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

SECTION 3. Section 3 of chapter 62, as so appearing, is hereby amended by inserting after section (B)(a)(16) the following provision:- (17) losses from wagering transactions, that were incurred at a gaming establishment licensed in accordance with c.23K or at any racing meeting licensee licensed under chapter 128A, only to the extent of the gains from such transactions.

ATTACHMENT B

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REPLY TO: POINT PLEASANT OFFICE ☐
ATLANTIC CITY OFFICE ☐

MEMORANDUM

TO: Stephen Crosby, Chairman

FROM: Michael & Carroll

SUBJECT: Gaming Service Employee Licensing Standards

DATE: March 27, 2014

You have asked us to review the present standards established under M.G.L. Chapter 23K ("Act"). You have further requested that we compare those standards to those utilized in other jurisdictions and then provide you with our suggestions about whether it might be useful to revise them in order to better achieve the aims of the Gaming law.

For the reasons that follow, we do recommend that the Commission suggest legislative changes that would provide the agency with greater discretion in determining the qualification of applicants for gaming service employee registration.[1]

1. Present Statutory Standards

Section 30(c) of the Act provides that:

[1] We have taken the information contained here from the applicable statutes and regulations. It is our experience that sometimes gaming agencies will promulgate informal policies beyond the words of the published rules. These policies are also often changed. We cannot speak definitively regarding every state's informal practice. We have tried to make this review as comprehensive as possible, but we note this caveat.

All other employees in a gaming establishment who are not considered to be gaming employees, key gaming employees or who have restricted access to an area of the gaming establishment or knowledge of security procedures, shall be required to register with the bureau as a gaming service employee and shall produce such information as the bureau may require to become registered under this chapter.

Thus, "gaming service employees" are those persons whose work at the gaming establishment is the least sensitive in terms of the integrity of operations. When determining the qualifications of these persons for permission to work in these positions, Section 16(b) of the Act, in part, requires the Commission to deny registration if the applicant:

. . . . . has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; provided, however, that for convictions which occurred before the 10-year period immediately preceding application for licensure, an applicant may demonstrate, and the commission shall consider, the applicant's rehabilitation and whether such conviction should not be an automatic disqualification under this section . . . . .

Accordingly, under this scheme, reading these two statutory provisions together, the Commission is now required to deny permission to persons who want to assume the least sensitive jobs in a casino if those persons have felony or other theft or fraud convictions within ten years of their application. This rule should be analyzed in the context of one of the principle, enunciated purposes of casino legalization in the Commonwealth. Section 1((5) of the Act establishes that:

the Commonwealth must provide for new employment opportunities in all sectors of the economy, particularly opportunities for the unemployed . . . .

It is our view that the mandatory disqualification of gaming service employees who have convictions of the type described in Section 16(b) works at cross -purposes with the Legislature's policy declaration at Section 1(5). We also believe that, given the nature of the non-gaming functions served by casino service employees, the restrictions of Section 16(b) are not necessary in order to maintain the appropriate degree of honesty and efficiency in in a casino.

We buttress these opinions with a survey of the standards now utilized by other jurisdictions. In the following section, we will explain those standards.

2. Survey of Other Jurisdictions

We do not offer the comparisons below as an exhaustive list. To do so would be unnecessary and duplicative. We have chosen what we consider the major gaming jurisdictions in the United States. Should you want additional jurisdictional comparisons, please let us know.

New Jersey

Historically, New Jersey licensed all facility employees, including those working solely within the hotel. Gradually, New Jersey lowered those standards. First, the state reduced the standard to registration only. Recently, all pre-approval requirements were dropped. At present, employees who work in non-gaming capacities (analogous to casino service employees in the Commonwealth) are not licensed or registered at all.

In fact, the present licensing system in New Jersey does not even require the licensing of casino employees (defined in New Jersey as those, generally who perform services in the gaming areas, including dealers, et al). This category of employees is only registered and their registration standards include rehabilitation without any mandatory disqualifications.

Nevada

Nevada registers only its "gaming employees" This category is defined to include those positions traditionally associated with direct involvement in gaming activity. It expressly excludes "barbacks or bartenders whose duties do not involve gaming activities, cocktail servers or other persons engaged exclusively in preparing or serving food or beverages." The standard for registration of these employees is discretionary. The Board is not required to deny any applicant. The regulations establish standards within which the Board "may" deny a registration. Approval of persons who work at the gaming facility but are not "gaming employees" are not handled by the Board. Some are required to obtain only Sheriff's work cards.

Ohio

Many years after the New Jersey initial experience, Ohio commenced its operations by licensing only key employees and casino gaming employees. In its definition of "casino gaming employee," the legislation expressly exempts, "an individual whose duties are related solely to non-gaming activities such as entertainment, hotel operations, maintenance, or preparing or serving food and beverage." This description would apply to Massachusetts' "gaming service

employees." Therefore, Ohio does not require pre-approval of "casino service employees", let alone require any mandatory disqualification for this category.

Pennsylvania

Pennsylvania issues permits to those persons considered non-gaming employees. Under the controlling legislation, this category includes, "bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages, clerical or secretarial personnel, parking attendants, janitorial, stage, sound and light technicians and other nongaming personnel as determined by the board." These employees would be considered "casino service employees" in Massachusetts.

Applicants for these permits are addressed under a discretionary standard otherwise applicable to all applicants. The governing regulation states in its introduction to the disqualification criteria that:

An application for issuance or renewal of a license, permit, certification or registration may be denied; or a license, permit, certification or registration may be suspended or revoked if...."

Accordingly, Pennsylvania provides for no automatic mandatory disapproval of persons who would, under Massachusetts parlance, be considered "casino service employees."

Mississippi

The Mississippi system requires that those considered "gaming employees' obtain licenses. For this category of employee, the law does contain mandatory disqualification for a wide variety of criminal conduct. However, the definition of "gaming employee" to whom these standards would apply states that, "gaming employee does not include bartenders, cocktail waitresses or other persons engaged in preparing or serving food or beverages unless acting in some other capacity." There are no pre-qualification requirements for those persons exempted from the "gaming employee" category. Thus, here, too, those who would be considered "gaming service employees" in Massachusetts would have no mandatory disqualifications applied to them.

Missouri

Missouri does contain a mandatory disqualification standard for employees. The State divides employees into two Categories. Category Level I are those who would be considered key employees. Level II includes those who would clearly be considered gaming-related persons, but it also is broad enough to potentially include, at the discretion of the Gaming Commission, some employees who might be considered "gaming service employees" in Massachusetts. The mandatory disqualification applies to both Level I and Level II employees. However, it is temporally more limited than the mandatory terms of the Commonwealth.

Level I and Level II employee applications may be denied for, among other things, any criminal record. However, those applications must be denied for convictions **within 5 years** for convictions for offenses involving generally gambling, theft, fraud or dishonesty. Thus, while Missouri, like Massachusetts, includes a mandatory disqualification requirement for persons who may be similar to "casino service employees', that standard applies only to those within 5 years of application, not 10 years as in the Commonwealth.

Iowa

Iowa is somewhat like Missouri. All persons working on the riverboat casinos must be licensed. There is also a mandatory disqualification requirement for convictions for felonies; theft or fraudulent practices in excess of $500; using an alias for fraud; illegal bookmaking; and for certain serious or repeated misdemeanors. . However, like Missouri, the mandatory criteria apply only for convictions within 5 years. If the conviction is more than 5 years old, then a showing of rehabilitation is available.

Michigan

Michigan establishes three levels of employee licensure. Level III, the lowest level, includes persons who directly effect gaming but do not come in contact with gaming. Examples include beverage servers, wait staff, maintenance staff and housekeeping personnel, but only those with access to the areas where gaming is conducted. On this basis alone, the Michigan licensing scheme does not include persons who would be "casino service employees" in Massachusetts. However, the system does allow the Board to designate others for licensing in this category at its discretion.

The standards for licensing employees of all Levels are the same and they DO include mandatory disqualification. The rules prevent issuance of a license to any applicant with a felony conviction or with misdemeanor convictions for gambling, theft, or fraud.[2] Therefore, Michigan could be said to be similar in its treatment of "casino service employees", but only in the case of the Board reaching out specially for one of those persons and including them as a special Level III licensee. In the main, Michigan does not provide an automatic disqualification for persons who would be "casino service employees".

Indiana

Indiana is the only state on our list that does provide for automatic disqualification of persons who would be "casino service employees" in Massachusetts. Like Michigan, Indiana has three levels of employee license. Level 3 is the lowest level. Unlike Michigan, however, the category of Level 3 is much broader. Not only can the regulators designate anyone to require Level 3 scrutiny, but the Level 3 designation applies to "any employee of a riverboat gambling operation whose duties are performed on the riverboat . . ." Accordingly, this would apply to many, if not all, "casino service employees."

In addition, the standard applied to all Levels of employee, including Level 3, contains a mandatory denial for any felony conviction. There is no rehabilitation available and there is no time limit.

3. Conclusion

Based on our experience, and on the above analysis of other jurisdictions, we believe that the present statutory standard for the issuance of casino service employee registration is too harsh. We say this with a full appreciation for the need to strictly control casino operations and the people who staff them. However, we come to this conclusion for three basic reasons:

1. The type of work that will be undertaken by casino service employees will not directly impact on the integrity of casino operations. The focus of gaming control should be on the conduct of gaming. Casino service employees will not be involved in that activity.

[2] There is also a provision in the Michigan statute that seems to contradict the mandatory standard. It provides only that the Board "may" deny applicants on the basis of these convictions. We have used here the most restrictive interpretation.

2. It is an important stated policy of the Act to foster new employment opportunities for the disadvantaged and the unemployed. Often, sadly, those within this demographic will be more likely to have had some involvement with law enforcement in their past. It is, therefore, counter-productive to render the job possibilities created by the Act to be unavailable to the people who need them most.

3. The experience of other jurisdictions has illustrated that rigid licensing standards for the casino service employee category are not necessary for effective gaming regulation. Most major jurisdictions either don't license this type of employee at all or do so with discretionary standards. We point especially to the experience of New Jersey where the level of scrutiny of this type of employee has continually lessened. It has gone from full licensing to now, no pre-qualification whatsoever.

4.Recommendation

Based on all of the above, we would recommend two potential changes to the Act as it applies to the standards for casino service employees.

Our first recommendation is, we recognize, likely too extreme at this time. It is common at the outset of gaming in any jurisdiction that stricter standards are more popular. It takes a period of successful experience before those standards can be loosened. However, if feasible, we would recommend that the requirement for registration of casino service employees be removed In its entirety. To do so would not interfere with the integrity of gaming. In fact, it could conceivably improve it by allowing the Commission to focus its attention on more sensitive matters.

Our second recommendation would be to make a less radical revision to the present language. We suggest the following:

"Section 16(b) The commission shall deny an application for a *gaming* license [or registration, other than a gaming license] or a license for a key gaming employee under this chapter if the applicant: has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; provided, however, that (a) for *an applicant for a casino employee license,* convictions which occurred before the 10-year period immediately preceding application for licensure, *and (b) for applicants for casino service employee registrations, convictions which occurred at any time,* an applicant may demonstrate .....[remainder remain unchanged] "

We hope this information is helpful to you. We are, of course available to discuss this with you at your convenience. Thank you.