



**NOTICE OF MEETING AND AGENDA**

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, and Chapter 107 of the Session Acts of 2022, notice is hereby given of a public meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

**Monday | December 12<sup>th</sup>, 2022 | 1:30 p.m.**  
**VIA REMOTE ACCESS: 1-646-741-5292**  
**MEETING ID/ PARTICIPANT CODE: 112 172 7116**  
**All meetings are streamed live at [www.massgaming.com](http://www.massgaming.com).**

Please note that the Commission will conduct this public meeting remotely utilizing collaboration technology. Use of this technology is intended to ensure an adequate, alternative means of public access to the Commission’s deliberations for any interested member of the public. If there is any technical problem with the Commission’s remote connection, an alternative conference line will be noticed immediately on [www.massgaming.com](http://www.massgaming.com).

All documents and presentations related to this agenda will be available for your review on the morning of the meeting date by visiting our website and clicking on the News header, under the Meeting Archives drop-down.

**PUBLIC MEETING - #410**

1. Call to Order
2. Investigations and Enforcement Bureau – Loretta Lillios, Director
  - a. Encore Boston Harbor Service Exemption Request – David MacKay, Supervisor, Licensing Division. **VOTE**
3. Promo Play-
  - a. Discussion Regarding Promo Play for Sports Wagering **VOTE**
4. Commissioner Updates
5. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

December 6<sup>th</sup>, 2022

*Cathy Judd-Stein*  
 Cathy Judd-Stein, Chair



Massachusetts Gaming Commission

I certify that this Notice was posted as “Massachusetts Gaming Commission Meeting” at [www.massgaming.com](http://www.massgaming.com) and emailed to [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us). Posted to Website: December 8, 2022 | 10:00 a.m. EST

*If there are any questions pertaining to accessibility and/or further assistance is needed, please email [crystal.beauchemin@massgaming.gov](mailto:crystal.beauchemin@massgaming.gov).*



Massachusetts Gaming Commission

TO: Chair Judd-Stein and Commissioners Hill, Maynard, O'Brien and Skinner  
FROM: David MacKay, Licensing Supervisor  
CC: Loretta Lillios, IEB Director and Kara O'Brien, Licensing Division Chief, MGC  
DATE: December 5, 2022  
RE: Gaming Service Employee (SER) Exemption Request: Encore Boston Harbor

---

**Overview:** This service employee exemption request for three new positions at Encore Boston Harbor is presented by the Licensing Division to the Commission for consideration and approval. (Further detail is available in the attached Exemption Request Summary).

Pursuant to G.L. c. 6, § 172(o) and 205 CMR 134.03(4), the Commission may exempt a job position from categorization as a gaming service employee.

**Action Requested:** The Licensing Division is asking the Commission for a vote on the matter.

**Recommendation:** The Licensing Division recommends that the Commission support the exemption.

TO: Chair Judd-Stein and Commissioners Hill, Maynard, O'Brien and Skinner

FROM: David MacKay, Licensing Supervisor

CC: Loretta Lillios, IEB Director and Kara O'Brien Licensing Division Chief, MGC

DATE: December 5, 2022

RE: Encore Boston Harbor Exemption Request Summary

---

**Summary:** Encore Boston Harbor would like to request three new positions: one title would create career progression for an existing position and two titles would add available amenities for guests. The positions are as follows:

- Currently, the Stewarding Department within the Food & Beverage Division has a Kitchen Stewards Porter position which is already exempt. The department would like to add a Lead Kitchen Stewards Porter position. This position would offer a promotional track for the existing position.
  - Lead Kitchen Stewards Porter - Position #: 00011448, Department: Stewarding, Property Access Level: N<sup>1</sup>
- Currently, the Hotel Front Services – Transportation, Shuttles, Boats department has three exempt positions: Transportation Attendant, Dock Assistant, and Department Supervisor. The Department would like to add two (2) Car Detailer positions, which would enable the offering of car detailing services.
  - Car Detailer - Position #: 00011425, Department: Hotel Front Services, Property Access Level: N<sup>1</sup>
  - Car Detailer SE “Part-Time” - Position #: 00011426, Department: Hotel Front Services, Property Access Level: N<sup>1</sup>

The Licensing Division worked with Kara Henson, Asst. Director of Recruiting & Employment, Encore Boston Harbor, to obtain the necessary information to develop this request, including: the required Exemption Identification Forms, complete job descriptions, and complete the Gaming Licensee Certifications.

<sup>1</sup> Access level “N” is described as: “No access to secure casino back-of-house without security escort.”

**Background:** On November 2, 2017, Governor Baker signed a statutory amendment which granted the Massachusetts Gaming Commission the authority to exempt certain "Gaming Service Employee" level job positions from the mandatory registration process. At the January 18, 2018, meeting, the Massachusetts Gaming Commission provided staff with a process for considering any potential exemptions. Additionally, the Commission endorsed the following factors for consideration when making exemption determinations:

- Work performed on the gaming floor
- Managerial responsibilities in any department
- Supervisory responsibilities in Human Resources, Sales and Marketing
- Responsibilities for alcohol sales, distribution, service and/or storage
- Access to secure casino back-of-the-house areas (including executive offices) without security escort
- Responsibilities for accounting and/or finance relating to the gaming establishment
- "Write" access to gaming-related casino databases
- Responsibilities that potentially impact the integrity of gaming operations, including access to confidential or sensitive information



## MASSACHUSETTS GAMING COMMISSION

### IDENTIFICATION OF POTENTIAL POSITIONS FOR EXEMPTION FROM THE REGISTRATION REQUIREMENT BY THE MGC

The Massachusetts Gaming Commission may exempt a job position from categorization as a gaming service employee. See G.L. c. 6, § 172(o); 205 CMR 134.03(4).

**GAMING LICENSEE:** Exempt

**JOB POSITON (AND UNIQUE JOB CODE):** Lead Kitchen Stewards Porter position #0001148

<b>JOB DESCRIPTION</b>	<p><b>EFFECTIVE DATE OF JOB DESCRIPTION: 10/31/2022</b>  <i>(The Licensee shall immediately notify the Bureau of changes to any job description for an exempted position.)</i></p>
<p><b>The Encore Boston Harbor Lead Kitchen Stewards Porter</b> will be responsible for monitoring and maintaining cleanliness, sanitation and organization of assigned kitchen work areas, kitchen equipment, and surfaces to ensure they are properly cleaned, maintained, and ready for the culinary team.</p> <p><b>JOB RESPONSIBILITIES:</b></p> <ul style="list-style-type: none"> <li>• Adheres to all Encore Boston Harbor core values and property and department standards.</li> <li>• Actively contributes to departmental performance, and the accuracy, confidentiality, and thoroughness of departmental policies and procedures; records and reports.</li> <li>• Follows that all applicable internal policies, federal and state laws, rules, regulations and property-wide controls within the department.</li> <li>• Delivers and maintains a maximum level of property-wide service and satisfaction.</li> <li>• Contributes to company-wide communication and best practices.</li> <li>• Assists in providing training opportunities for team members.</li> <li>• Keeps informed of all new developments within the department.</li> <li>• Manages multiple priorities simultaneously and meets deadlines, often in stressful and high-pressure situations.</li> <li>• Uses correct chemicals for designated items for cleaning and sanitizing various surfaces according to OSHA regulations and hotel requirements</li> <li>• Operate and maintain various machines such as dish washing machines, garbage disposals, sinks, grills, broilers, pots, pans, utensils and a</li> </ul>	

(Continue to Page 2)

### GAMING LICENSEE CERTIFICATION

The Commission considers the following non-exhaustive list of factors when determining whether or not to exempt a job position. Please indicate information about each factor for the position that has been identified as potentially eligible for exemption.

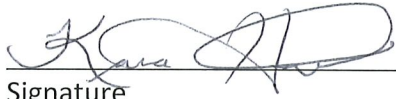
**JOB POSITON (AND UNIQUE JOB CODE):** Lead Kitchen Stewards Porter position #0001148

FACTOR	DESCRIPTION / EXPLANATION
Work performed on gaming floor	n/a
Managerial responsibilities in any department	n/a
Supervisory responsibilities in Human Resources or Sales and Marketing	n/a
Responsibilities for alcohol sales, distribution, service, and/or storage	n/a
Access to secure casino back-of-the house areas (including executive offices) without security escort	n/a
Responsibilities for accounting and/or finance relating to the gaming establishment	n/a
“Write” access to gaming-related casino databases	n/a
Responsibilities that potentially impact the integrity of gaming operations, including access to confidential or sensitive information	n/a
Other (please set forth other relevant information for exemption consideration)	n/a

(Continue to Page 3)

JOB POSITON (AND UNIQUE JOB CODE): Lead Kitchen Stewards Porter position #0001148

The undersigned states that the information herein is true and accurate.



Signature

/ KARA HENSON  
/ Printed Name

10.31.2022

Date





## MASSACHUSETTS GAMING COMMISSION

### IDENTIFICATION OF POTENTIAL POSITIONS FOR EXEMPTION FROM THE REGISTRATION REQUIREMENT BY THE MGC

The Massachusetts Gaming Commission may exempt a job position from categorization as a gaming service employee. See G.L. c. 6, § 172(o); 205 CMR 134.03(4).

**GAMING LICENSEE:** Exempt

**JOB POSITON (AND UNIQUE JOB CODE):** Car Detailer 000011425 ; 000011426

<b>JOB DESCRIPTION</b>	<p><b>EFFECTIVE DATE OF JOB DESCRIPTION:</b> 09/19/2022  <i>(The Licensee shall immediately notify the Bureau of changes to any job description for an exempted position.)</i></p>
<p><b>The Encore Boston Harbor Car Detailer</b> will clean vehicles according to company standards or client specifications, which may include performing detail inspections, thoroughly washing, buffing, and waxing exteriors, vacuuming, steaming, and deodorizing interiors, and keeping records of condition of the vehicle.</p> <p><b>JOB RESPONSIBILITIES:</b></p> <ul style="list-style-type: none"> <li>• Ensures all Encore Boston Harbor core values and property and department standards are implemented and applied.</li> <li>• Ensures the execution of short-and long-term departmental goals, objectives, policies, and operating procedures; monitors and evaluates operational effectiveness; effects changes required for improvement. Identifies key drivers of success.</li> <li>• Responsible for staying up to date with the departmental performance, and the accuracy, confidentiality, and thoroughness of departmental policies and procedures; records and reports.</li> <li>• Management of detailing strategy and ensuring coordination with other departments.</li> <li>• Has Knowledge of various cleaning materials, methods to ensure cleanliness, safety, and overall best results.</li> <li>• Maintaining all Encore Standards; and ensuring excellent guest and team member experience.</li> <li>• Performs highest standard cleaning interior and exterior of vehicles using a variety of products and methods.</li> <li>• Perform inspections to ensure that each step of the cleaning process has been completed.</li> <li>• Delivers and maintains a maximum level of property-wide service and satisfaction.</li> <li>• Assists in management of inventory and ordering of supplies.</li> <li>• Perform other tasks as assigned by management</li> </ul>	

(Continue to Page 2)

### GAMING LICENSEE CERTIFICATION

The Commission considers the following non-exhaustive list of factors when determining whether or not to exempt a job position. Please indicate information about each factor for the position that has been identified as potentially eligible for exemption.

**JOB POSITON (AND UNIQUE JOB CODE):** Car Detailer 000011425 ; 000011426

FACTOR	DESCRIPTION / EXPLANATION
Work performed on gaming floor	N/A
Managerial responsibilities in any department	N/A
Supervisory responsibilities in Human Resources or Sales and Marketing	N/A
Responsibilities for alcohol sales, distribution, service, and/or storage	N/A
Access to secure casino back-of-the house areas (including executive offices) without security escort	N/A
Responsibilities for accounting and/or finance relating to the gaming establishment	N/A
“Write” access to gaming-related casino databases	N/A
Responsibilities that potentially impact the integrity of gaming operations, including access to confidential or sensitive information	N/A
Other (please set forth other relevant information for exemption consideration)	

(Continue to Page 3)

JOB POSITON (AND UNIQUE JOB CODE): Car Detailer 000011425 ; 000011426

The undersigned states that the information herein is true and accurate.



/ Kara Henson

Signature

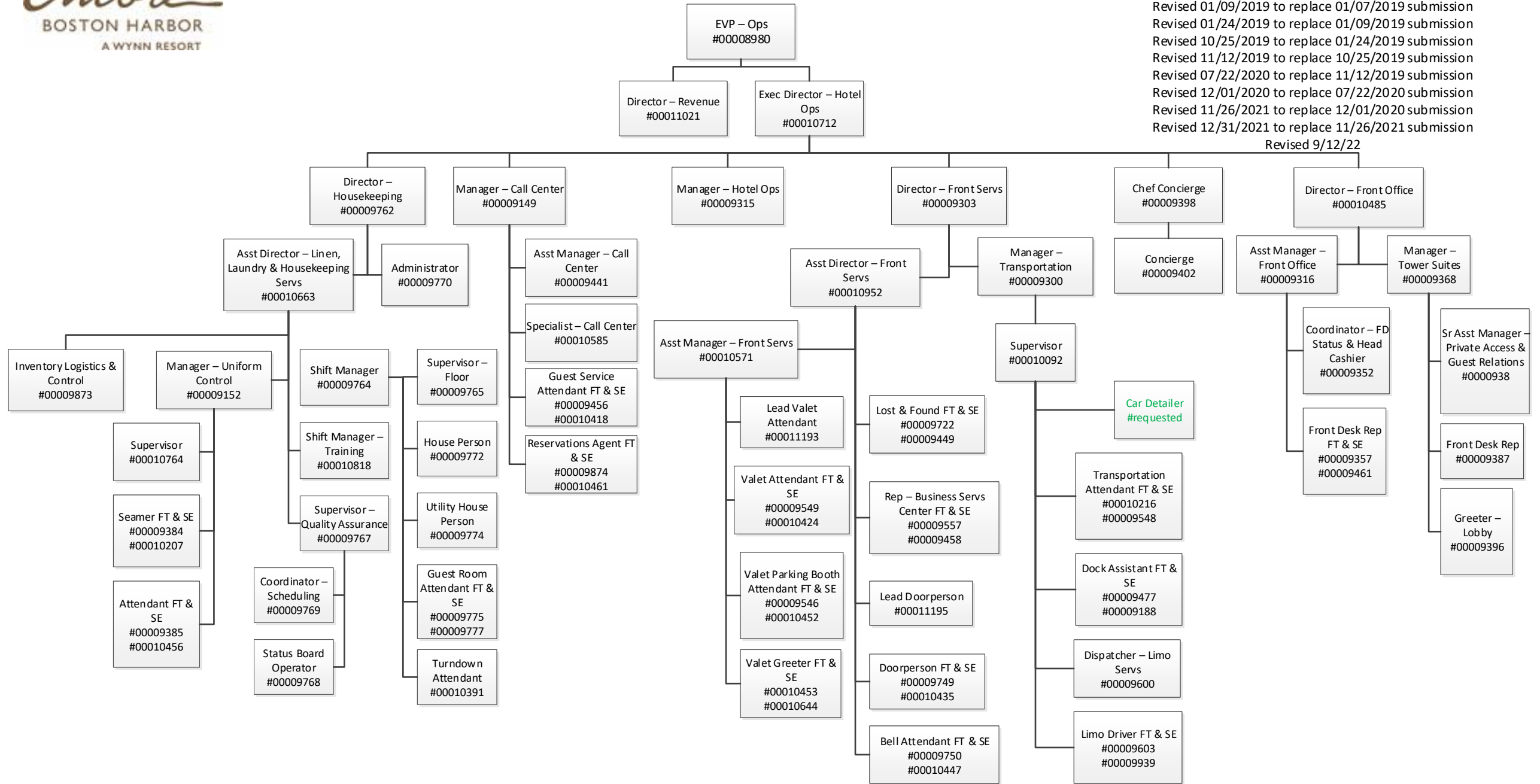
/ Printed Name

09/20/2022

Date

# Hotel Operations

Original Submission Date: 09/28/2018 ~~Packet Page 12~~  
 Revised 01/07/2019 to replace 11/01/2018 submission  
 Revised 01/09/2019 to replace 01/07/2019 submission  
 Revised 01/24/2019 to replace 01/09/2019 submission  
 Revised 10/25/2019 to replace 01/24/2019 submission  
 Revised 11/12/2019 to replace 10/25/2019 submission  
 Revised 07/22/2020 to replace 11/12/2019 submission  
 Revised 12/01/2020 to replace 07/22/2020 submission  
 Revised 11/26/2021 to replace 12/01/2020 submission  
 Revised 12/31/2021 to replace 11/26/2021 submission  
 Revised 9/12/22





## Lead Kitchen Stewards Porter

### POSITION SUMMARY

The **Encore Boston Harbor Lead Kitchen Stewards Porter** will be responsible for monitoring and maintaining cleanliness, sanitation and organization of assigned kitchen work areas, kitchen equipment, and surfaces to ensure they are properly cleaned, maintained, and ready for the culinary team.

#### JOB RESPONSIBILITIES:

- Adheres to all Encore Boston Harbor core values and property and department standards.
- Actively contributes to departmental performance, and the accuracy, confidentiality, and thoroughness of departmental policies and procedures; records and reports.
- Follows that all applicable internal policies, federal and state laws, rules, regulations and property-wide controls within the department.
- Delivers and maintains a maximum level of property-wide service and satisfaction.
- Contributes to company-wide communication and best practices.
- Assists in providing training opportunities for team members.
- Keeps informed of all new developments within the department.
- Manages multiple priorities simultaneously and meets deadlines, often in stressful and high-pressure situations.
- Uses correct chemicals for designated items for cleaning and sanitizing various surfaces according to OSHA regulations and hotel requirements
- Operate and maintain various machines such as dish washing machines, garbage disposals, sinks, grills, broilers, pots, pans, utensils and all other kitchen equipment and surfaces including the breakdown of machines
- Assists with the execution of preventative maintenance procedures and ensures they are properly conducted on the assigned shift
- Transports garbage containers and all other debris from the kitchen area to designated dumpsters
- Provides outstanding customer service in a timely manner to both guests and fellow employees
- Maintains a hygienic kitchen, cleaning and sanitizing all work and food stations.
- Works with safety as a priority, and follows department and company safety standards.
- Maintains relevant knowledge of industry through continuing education and training.
- Performs any other job-related duties as assigned.

#### JOB REQUIREMENTS:

To perform this job successfully, an individual must be able to perform each job responsibility satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

#### Age, Gaming and Certifications:

21 years of age or above.

Will be required to obtain and maintain registration or a license issued by the Massachusetts Gaming Commission.

ServSafe or equivalent certification preferred.

#### Education and/or Experience:

High school degree or equivalent preferred.  
 Minimum 3 years in food & beverage sanitation experience in a stewarding department preferred.

**Language Skills:**

Ability to read, analyze, and interpret documents, such as policy and procedure manuals, maintenance instructions, and other related documents. Ability to respond to common inquiries from other employees or guests. Conversational English required, second language a plus. Ability to write instructions. Ability to present information.

**Mathematical Skills & Reasoning Ability:**

Ability to compute basic mathematical calculations. Ability to decipher various reports and maintain reports upon request.

**Physical Demands:**

The physical demands described here are representative of those that must be met by the Team Member to successfully perform the essential functions of this job.

While performing the duties of this job, the employee is regularly required to talk and hear. The employee is also regularly required to stand, walk, sit, and use hands to finger, handle, or feel objects, tools or controls. The employee is occasionally required to reach with hands and arms, and to sit, climb or balance, and stoop, stretch, bend, kneel, crouch, or crawl.

Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus. Essential responsibilities include moderate physical ability such as lift or maneuver at least fifty (50) pounds, and varied instances of standing/walking.

**Work Environment:**

The work environment characteristics described here are representative of those that exist while Team Members are performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- The noise level in the work environment is typically moderate. When on the kitchen floor or some back of house areas, the noise level increases to loud. Must be able to interact with internal and external guests in a professional manner.
- Due to the unpredictable nature of the hospitality/entertainment industry, Team Members must be able to work varying-schedules to reflect the business needs of the property.

Position #000011425; 000011426  
 Submission Date: 09/20/2022



## Car Detailing Services

### POSITION SUMMARY

The **Encore Boston Harbor Car Detailer** will clean vehicles according to company standards or client specifications, which may include performing detail inspections, thoroughly washing, buffing, and waxing exteriors, vacuuming, steaming, and deodorizing interiors, and keeping records of condition of the vehicle.

### JOB RESPONSIBILITIES:

- Ensures all Encore Boston Harbor core values and property and department standards are implemented and applied.
- Ensures the execution of short-and long-term departmental goals, objectives, policies, and operating procedures; monitors and evaluates operational effectiveness; effects changes required for improvement. Identifies key drivers of success.
- Responsible for staying up to date with the departmental performance, and the accuracy, confidentiality, and thoroughness of departmental policies and procedures; records and reports.
- Management of detailing strategy and ensuring coordination with other departments.
- Has Knowledge of various cleaning materials, methods to ensure cleanliness, safety, and overall best results.
- Maintaining all Encore Standards; and ensuring excellent guest and team member experience.
- Performs highest standard cleaning interior and exterior of vehicles using a variety of products and methods.
- Perform inspections to ensure that each step of the cleaning process has been completed.
- Delivers and maintains a maximum level of property-wide service and satisfaction.
- Assists in management of inventory and ordering of supplies.
- Perform other tasks as assigned by management.
- Keeps informed of all new developments within the department.
- Knowledge of different make and model of vehicles including luxury models.
- Able to work a flexible schedule that varies according to business demands.
- Works with safety as a priority and follows department and company safety standards.

### JOB REQUIREMENTS:

To perform this job successfully, an individual must be able to perform each job responsibility satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

#### Age, Gaming and Certifications:

21 years of age or above.

Requires valid Massachusetts Drivers License.

**Education and/or Experience:**

High school degree or equivalent required.

Minimum 5 years of car detailing, or related experience required.

Requires minimal computer skills and proficiency in Microsoft Office.

Must possess outstanding organizational, interpersonal, and administrative skills, as well as excellent attention to detail.

**Language Skills:**

Ability to read, analyze, and interpret documents, such as policy and procedure manuals, maintenance instructions, and other related documents. Ability to respond to common inquiries from other employees or guests. Fluency in English required, second language a plus. Ability to write detailed instructions and correspondence. Ability to effectively present information in one-on-one and group situations.

**Mathematical Skills & Reasoning Ability:**

Ability to work with mathematical concepts such as probability and statistical inference. Ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations. Ability to define problems, collect data, establish facts, and draw valid conclusions. Ability to decipher various reports and create and maintain reports upon request.

**Physical Demands:**

The physical demands described here are representative of those that must be met by the Team Member to successfully perform the essential functions of this job.

While performing the duties of this job, the employee is regularly required to talk and hear. The employee is also regularly required to stand, walk, sit, and use hands to finger, handle, or feel objects, tools or controls. The employee is occasionally required to reach with hands and arms, and to sit, climb or balance, and stoop, stretch, bend, kneel, crouch, or crawl.

Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus. Essential responsibilities include moderate physical ability such as lift or maneuver at least thirty (50) pounds, and varied instances of standing/walking.

**Work Environment:**

The work environment characteristics described here are representative of those that exists while Team Members are performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- The noise level in the work environment is typically moderate. When on the property floor or some back of house areas, the noise level increases to loud. Must be able to interact with internal and external guests in a professional manner.
- Due to the unpredictable nature of the hospitality/entertainment industry, Team Members must be able to work varying-schedules to reflect the business needs of the property.
- Reliable, consistent, and punctual attendance is required.



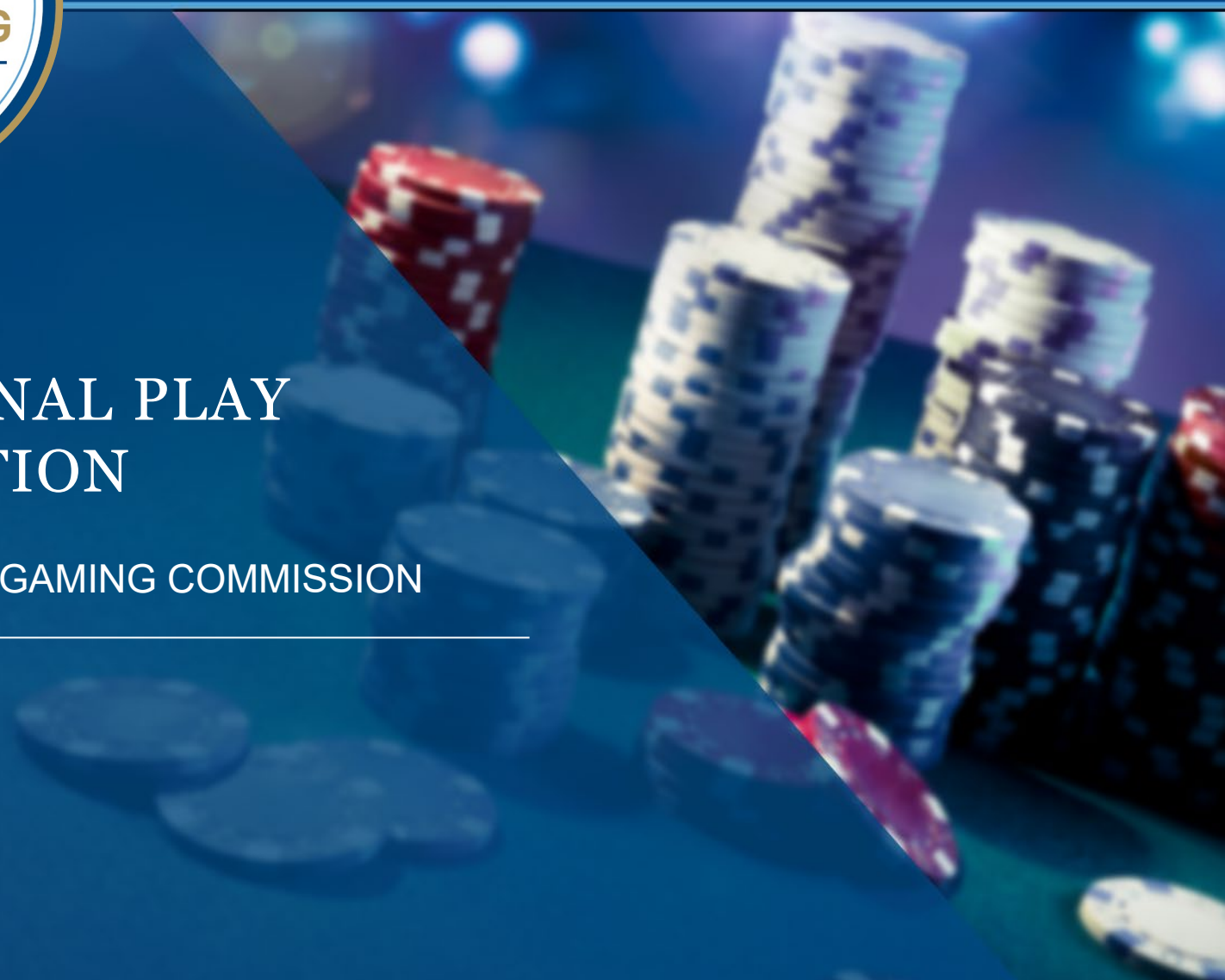


# PROMOTIONAL PLAY PRESENTATION

MASSACHUSETTS GAMING COMMISSION

---

DECEMBER 11, 2022



# What is promotional play or free play?

## **Promotional Play or Free Play –**

Is a way a casino or online operator can invite a known player to return or a new player to sign-up or create an account. It takes one of many forms of credits toward playing a slot machine, table game, or sports wager. In order to use it a player must wager it and if won it turns into real money from cashing out or it is placed into their account.

# is it used by operators?

An operator uses promotions to ensure customers are aware of the operator's existence in a competitive market place as well as to achieve the following:

- Increase brand awareness
- Provide appropriate information
- Increase Customer Traffic
- Build sales and profits

Promotions also help operators to introduce products easily in the ever-so-competitive market.

USE PROMO CODE  
WIN AND RECEIVE A  
\$1,000 DEPOSIT  
BONUS.

Bet \$5 get \$200

**\$1,500  
bonus for  
World Cup**



# A & K Presentation



# States that allow and don't allow promotional bets to be deducted from the taxable win.

MONTH AND YEAR	NUMBER OF STATES WITH COMMERCIAL SPORTS BETTING	NUMBER OF STATES THAT ALLOW UNTAXED PROMOTIONAL CREDITS	GAMING GROSS REVENUE (GGR)	ADJUSTED GROSS REVENUE (AGR)	DIFFERENCE IN DOLLARS (GGR-AGR)
Feb-22	26	9	\$387,507,164	\$262,989,268	\$124,517,896
Dec-21	26	8	\$375,176,988	\$259,156,688	\$116,020,300
Oct-21	24	8	\$446,890,754	\$334,338,789	\$112,551,965

34.6%



State	Tax Rate		Allow Promo deduction or %
	Retail	Online	
<b>Arizona</b>	8.0%	10.0%	Are allowed to deduct up to 20% of their revenue for promotions such as "free bets" in the first two years they are open.
<b>Colorado</b>	10.0%	10.0%	At first allow total deduction. Now they are tiering it down to eventually 1.75% of their monthly handle
<b>Michigan</b>	8.4%	8.4%	Can deduct all
<b>New Jersey</b>	8.5%	13.0%	A4002 specifies that promotional credits for land-based sportsbooks can only be deducted for betting credits in excess of \$8 million each year. For online books, the tax break kicks in after \$12 million in gaming credits are issued.
<b>New York</b>	Falls under casino's tax rate	51%	No deduction allowed
<b>Pennsylvania</b>	36%	36%	Can deduct all promotional play and bonuses
<b>Virginia</b>	15%	15%	Started with full deduction of promo. Passed law in July 2022 to stop all deductions from the tax responsibilities.



Sports Betting

## Colorado Ending Tax Breaks For Sports Betting Promo Spend

Written By  
Brad Allen

Updated on  
May 24, 2022

<https://www.legalsportsreport.com/70580/no-more-tax-breaks-colorado-sports-betting-promos/#:~:text=Per%20the%20bill%2C%20tax%20write,be%20deducted%20as%20free%20bets.>

\$6.6 million in its first full year of legal sports betting, equivalent to a 4% net tax rate. (From the previous slide Colorado's tax rate is 10%)

four months.

100% net tax rate.



# The new policy licensees in Colorado must follow



### Included in Gross Sports Wagering Receipts and Not Deducted for Taxation:

- Maximizes Tax Revenue
- Minimizes Profit of Operators
- Not Consistent with Treatment of Promotional Play with Other Tax Applications

### Excluded from the Gross Sports Wagering Receipts, and Deduction for Taxation:

- Maximizes Operator Profits
- Potential to Create a Perverse Incentive to Minimize Taxes
- Closer Treatment to Corporate Tax Structure

### Partial Exclusion From the Gross Sports Wagering Receipts and Partially Deducted for Taxation:

- A Tool Other Jurisdictions are Utilizing
- Attempts to Balance Operator Profits with Tax Receipts
- Eliminates any Potential Perverse Incentive to Minimize Taxes



**Adjusted Gross Fantasy Wagering Receipts:**

The total gross receipts from fantasy contests as defined in section 11M1/2 of chapter 12, less only the total of all cash prizes paid to participants in the fantasy contests; provided, however, that the total of all cash prizes paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.

**Adjusted Gross Sports Wagering Receipts:**

The total gross receipts from sports wagering less the sum of: (i) the total of all winnings paid to participants; and (ii) all excise taxes paid pursuant to federal law; provided, however, that the total of all winnings paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.

**Promotional Gaming Credit:**

A sports wagering credit or other item issued by an operator to a patron to enable the placement of a sports wager.

Adjusted Gross Sports Wagering Receipts:

$$(Gross Sports Wagering Receipts) - (Payouts to Players) - (Federal Excise Tax)$$

Included in Gross Sports Wagering Receipts and Not Deducted for Taxation:

- **Gross Sports Wagering Receipts** = (Player Funded Bets) + (Promotional Funded Bets)
- **AGSWR** = ((Player Funded Bets) + (Promotional Funded Bets)) - (Payouts to Players) - (Federal Excise Tax)

Excluded from the Gross Sports Wagering Receipts, and Deduction for Taxation:

- **Gross Sports Wagering Receipts** = (Player Funded Bets) + (Promotional Funded Bets) - (Promotional Funded Bets)
- **AGSWR** = ((Player Funded Bets) + (Promotional Funded Bets) - (Promotional Funded Bets)) - (Payouts to Players) - (Federal Excise Tax)

Partial Exclusion From the Gross Sports Wagering Receipts and Partially Deducted for Taxation:

- **Gross Sports Wagering Receipts** = (Player Funded Bets) + (Promotional Funded Bets) - (% of Handle)
- **AGSWR** = ((Player Funded Bets) + (Promotional Funded Bets) - (% of Handle)) - (Payouts to Players) - (Federal Excise Tax)



## Assumptions for Scenarios of How Treatment of Promotional Play Impacts Taxes

- Handle = \$1,000,000,000
- Player Bets = \$960,000,000
- Promotional Bets = \$40,000,000 (4% of Handle)
- Hold = \$60,000,000 (6% of Handle)
- Partial Deduction for Promotional Play for Taxation Scenario is up to 2.5% of Handle
- Tax Rate of 20% (equal to mobile and digital operators)

# Promotional Play Scenarios (For Discussion Only)

Revenue	Coupons/ Promotional	Handle (player + promo)	Payouts	Hold	Without Promotional Play Deducted (Total Bet-Player Win)	
Player Bet	Promo Bet	Total Bet	Player Win	Hold	Taxable Base	Taxes
960,000,000.00	40,000,000.00	1,000,000,000.00	940,000,000.00	60,000,000.00	60,000,000.00	12,000,000.00
96.000%	4.000%		94.000%	6.000%		

## Scenario 2: Promo Fully Deducted

Revenue	Coupons/ Promotional	Handle (player + promo)	Payouts	Hold	With Promotional Play Deducted (Total Bet-Promo-Player Win)	
Player Bet	Promo Bet	Total Bet	Player Win	Hold	Taxable Base	Taxes
960,000,000.00	40,000,000.00	1,000,000,000.00	940,000,000.00	60,000,000.00	20,000,000.00	4,000,000.00
96.000%	4.000%		94.000%	6.000%		

## Scenario 3: Promo Deducted up to 2.5% of Handle

Revenue	Coupons/ Promotional	Handle (player + promo)	Payouts	Hold	With Partial Promotional Play Deducted (Total Bet-2.5% of Handle-Player Win)	
Player Bet	Promo Bet	Total Bet	Player Win	Hold	Taxable Base	Taxes
960,000,000.00	40,000,000.00	1,000,000,000.00	940,000,000.00	60,000,000.00	35,000,000.00	7,000,000.00
96.000%	4.000%		94.000%	6.000%		



- Demonstrate the Discussion Around Promotional Play Minimizing or Eliminating Taxes.
- Demonstrate the Impact of a Theoretical Multiplier for Use of Promotional Play to the Tax Base.



c. 23N Section 14b (4) allows an operator to carry negative amounts of Adjusted Gross Sports Wagering Receipts to subsequent months for purposes of calculating taxes:

(4) When an operator’s adjusted gross sports wagering receipts for a month is a negative number because the winnings paid to wagerers and excise taxes paid pursuant to federal law exceed the operator’s total gross receipts from sports wagering, the commission shall allow the operator to carry over the negative amount to returns filed for subsequent months. The negative amount of adjusted gross sports wagering receipts shall not be carried back to an earlier month and taxes previously received by the commission shall not be refunded unless the operator surrenders its license and the operator’s last return reported negative adjusted gross sports wagering receipts.







November 18, 2022

**BY EMAIL ONLY (caroline.torrisi@massgaming.gov)**

Massachusetts Gaming Commission  
c/o Caroline Torrisi, Esq.  
Deputy General Counsel  
101 Federal Street, 12th Floor  
Boston, Massachusetts 02210

Re: Regulation Comment

Dear Members of the Massachusetts Gaming Commission:

As one of the largest gaming establishments in the Commonwealth and a prospective Category 1 sports wagering license applicant, MGM Springfield submits this rulemaking comment on 205 CMR 240:00 *et seq.*, governing the computation of adjusted gross sports wagering revenue. We appreciate the opportunity to provide input and urge the Commission to adopt policies that will promote and ensure the success of the Commonwealth's future sports wagering industry.

Such policies include providing the Commonwealth's prospective sports betting operators the tools necessary to compete, not just with bordering states that have legalized sports betting industries, but also with a fully entrenched illegal market that continues to take wagers from Massachusetts residents. In particular, we strongly advocate exclusion from the definition of taxable "gross sports wagering revenues" the dollar value of bonuses or promotions extended by a regulated operator to bettors as an incentive to place a wager or as a result of their having placed sports betting wagers.

Clarifying such a tax exclusion in the regulations is 1) consistent with generally acceptable accounting practices, 2) removes a disincentive to operators to promote and market their legal products, 3) puts Massachusetts operators on an even playing field vis-à-vis out-of-state operators and illegal platforms, and 4) ultimately benefits brick-and-mortar gaming establishments, such as MGM Springfield, which stand to benefit from a robust and successful regulated sports betting market in the Commonwealth.

First, a free bet extended to bettors comes from the operator's own treasury funds. If the wager is in turn lost by the bettor – thus *recovered* by the operator, it is not recognized as "revenue," based upon how that term is defined under generally accepted accounting principles (GAAP) or by the Securities and Exchange Commission (SEC). No monies actually exchanged hands in that scenario; the promotional credit is not fungible;<sup>1</sup> the patron cannot withdraw the

---

<sup>1</sup> In typical promotional campaigns, bettors are awarded free plays with a number of conditions, including a prohibition on withdrawing the dollar amount of the free bets, unless they are first wagered and won; an expiration date on the validity of the promotion; and any minimum-odds restrictions.



promotional credit and convert it to actual cash, without first wagering and winning it; and the operator does not collect actual revenue from bettors in place of any promotional credit. This concept is not dissimilar from the tax treatment of free play in the casino gaming context: Under Massachusetts law, the dollar value of promotional gaming credits received from a patron as a wager is not included in computation of gross gaming revenue (GGR).<sup>2</sup>

It is also important to note that, if the bettor wins a wager using promotional credits, the operator is on the hook to pay the bettor with actual money. Therefore, free bets must be excluded from taxable revenue in order to ensure fairness and that an operator is being taxed only for the money that it actually collects from patrons.

As illustrated in Table 1, not permitting operators to exclude promotional credits translates to a significant increase in the operator’s effective tax rate, since the operator would be liable to pay taxes on its own money. In the example provided below, the effective tax rate **doubles**, to 30% (if the wager is made in person) or 40% (if the wager is made online).

**Table 1.** In the following scenario, the bettor loses a \$100 wager, of which \$50 was from the bettor’s own cash funds and \$50 from the operator’s own money in the form of promotional credits.

	Operators allowed to exclude promo play	No tax exclusions
Cash from bettor	\$50.00	\$50.00
Promo credit from operator	\$50.00	\$50.00
Handle	\$100.00	\$100.00
Promo tax exclusion	<b>-\$50.00</b>	0
Taxable revenue	\$50.00	\$100.00
Retail tax (15%)	\$7.50	<b>\$15.00</b>
Online tax (20%)	\$10.00	<b>\$20.00</b>
<b>Retail effective tax rate if promo is not excluded</b>		<b>30%</b>
<b>Online effective tax rate if promo is not excluded</b>		<b>40%</b>

A regime that does not permit tax exclusions for promo play would essentially exact significant penalties on operators for promoting and developing their legal products. Taxing promotional play also distorts economic incentives in a way that severely undermines the state’s public policy objectives in legalizing and regulating sports wagering in the first place, including capturing to the greatest extent possible existing demand that is currently flowing into the illegal sports betting market.

Unregulated operators do not pay taxes, do not invest in responsible gaming programs, do not provide consumer protections, and do not face the same regulatory, integrity, and compliance overhead costs that licensed operators take on. Faced with minimal cost pressures, illegal operators are well positioned to deploy and concentrate resources toward marketing and product

<sup>2</sup> 205 CMR 140.02(e)



development, including attracting customers with generous promotions. Thus, a tax treatment that effectively penalizes Massachusetts-licensed operators for awarding promotional credits and free play makes channeling demand into the legal market – and away from unregulated operators – all the more challenging.

We also would like to underscore the importance of developing a successful and robust sports wagering industry in Massachusetts that is competitive with our neighboring states. Such an industry benefits, not just sports betting operators, but also generates positive economic impacts for brick-and-mortar gaming establishments, like MGM Springfield, and their employees. When Massachusetts legalized sports wagering last legislative session, and casino gambling nearly a decade ago, it did so in an effort to repatriate gaming and sports wagering revenues that were going out of state. As a Massachusetts gaming establishment situated in proximity to the Connecticut border, we are particularly keen on re-capturing demand for online and retail sports betting that currently flows out of state. Connecticut has legalized and launched sports wagering as well as online casino gaming. Sports betting operators in the state are subject to a tax rate of 13.75 percent and are allowed certain tax exclusions for promotional gaming credits. The Commission has an opportunity through this rulemaking to adopt a tax treatment on promotions that keeps the Commonwealth's own operators competitive vis-à-vis their out-of-state counterparts. If Massachusetts operators cannot offer competitive sports betting promotions, we risk losing sports bettors who, once in Connecticut, may also engage in online casino gaming, instead of patronizing retail gaming establishments in Massachusetts.

In anticipation of the exciting opportunities sports wagering will undoubtedly bring, we are partnered with BetMGM, a world-class sports betting and online gaming operator. We also have undertaken significant capital expenditures at our gaming establishment, including a \$4 million investment in building out our state-of-the-art sports book, a sports lounge on our casino floor, and a VIP viewing area at our sports bar. Based upon the experience of other legalized jurisdictions, restaurants, bars, hotels and other retail establishments stand to gain from the increased economic activity, spend, and fan engagement that sports betting generates around games and sporting events. In our sister MGM Resorts properties, from Las Vegas to Detroit, retail sports books serve as an anchor to bars and restaurants and have increased visitation and foot traffic into hotels and casino gaming facilities.

At MGM Springfield, we will be ready to seize these exciting opportunities the moment sports betting is finally greenlit and launched in our Commonwealth. But we will not be able to unlock the full economic potential of sports betting unless we are fully competitive with neighboring states and their operators. We and our sports betting partner need a conducive tax regime in which we are not penalized for attracting customers to our platforms and retail outlets, or else we will lose patrons to neighboring states and the illegal market.



We appreciate and thank you for the opportunity to provide our comments on this important regulatory and policy issue. Please do not hesitate to contact us should you have any questions about any points raised in this comment or any other outstanding rulemaking issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Augustine Kim", with a long horizontal flourish extending to the right.

Augustine Kim  
Vice President and Legal Counsel



November 21, 2022

**Via Electronic Mail ([caroline.torrissi@massgaming.gov](mailto:caroline.torrissi@massgaming.gov))**

Massachusetts Gaming Commission  
101 Federal Street, 12th Floor  
Boston, MA 02110  
Attn: Ms. Caroline Torrissi, Deputy General Counsel

**RE: 205 CMR 240:02: Computation of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts**

Dear Ms. Torrissi:

In response to the regulations proposed by the Massachusetts Gaming Commission (“Commission”), DraftKings, Inc. (“DraftKings”) submits the following comments for consideration.

**Rule Reference: 205 CMR 240:02(1), Sports Wagering**

Rationale: DraftKings respectfully requests that the Commission explicitly exclude promotional gaming credits<sup>1</sup> from Adjusted Gross Sports Wagering Receipts. Including promotional gaming credits would result in the Commonwealth levying taxes on totals that do not reflect actual revenue earned by a sports wagering operator. Excluding promotional credits is the fairest way to tax sports wagering operators, and is the policy chosen by a significant number of online sports wagering states.

Promotional gaming credits in the sports wagering context refers to bonuses or promotional credits provided to players by sports wagering operators in order to encourage players to place wagers on an operator’s platform and transition players from (and keep them off of) the illegal sports wagering market.

When the Massachusetts sports wagering market launches, sports wagering operators will undoubtedly offer different types of bonuses to players. A typical example of such a promotion is a deposit match, in which a player making a deposit would receive some amount of corresponding promotional credits. For example, a 1:1 deposit match, could result in a player depositing \$100 receiving \$100 of promotional credits. These credits have no actual dollar value to the operator. A player may not exchange promotional credits for cash. As such, an operator receives no revenue from a wager placed with promotional credits.

Excluding promotions from the “adjusted gross sports wagering receipts” definition would place sports wagering operators on equal footing to other gaming licensees in the Commonwealth.<sup>2</sup>

---

<sup>1</sup> Defined in Mass. General Laws c.23N § 3

<sup>2</sup> Mass General Laws c.23K § 2 defines “gross gaming revenue” with a baseline of “the total of all sums actually received by a gaming licensee less the total of all sums paid out as winnings to patrons...” The wording of that

Many states that license online sports wagering have granted operators tax relief on promotional play, especially during the first few years of operation, and without an explicit deduction, Massachusetts would be an outlier.

Furthermore, the exclusion of promotions is authorized under the law, and the Commission has precedent to exclude the value of a “promotional gaming credit” from an adjusted gross revenue calculation similar to how the Commonwealth’s current gaming operations are taxed. This analysis also practically aligns with the definition of “adjusted gross sports wagering receipts”,<sup>3</sup> as promotional credits do not carry any cash equivalent value, nor do payouts of cash equivalents have any value awarded as a prize until they are actually cash in a player’s sports wagering account.

Exclusion is also supported by important policy arguments, many of which were foundational in discussions by the General Court in passing sports wagering. Artificially increasing an operator’s effective tax rate is especially concerning when comparing the framework codified in the enabling legislation to status quo sports wagering in the Commonwealth, which is done through the illegal market. Promotions are a vital way to transition players to the regulated legal market and sustain their presence. Illegal operators effectively offer promotions to attract bettors to their unregulated platforms and including promotional credits in the tax base would further disadvantage licensed sports wagering operators, as they would be required to pay taxes on actual revenue **and** phantom promotional revenue, while illegal operators pay on neither. Additionally, when bettors place wagers with a legal operator, law and regulation ensure they are provided consumer protections that are unavailable to those betting with illegal operators. Legal operators also provide tax revenue to the Commonwealth, while illegal operators provide none.

For the foregoing reasons, DraftKings respectfully requests the Commission consider the below amendment to the relevant provision of the proposed regulations.

Existing Rule Language/Proposed Rule Language:

*(1) Sports Wagering: In accordance with M.G.L. c. 23N, § 3, Adjusted Gross Sports Wagering Receipts shall be the total gross receipts from sports wagering less the sum of: (i) the total of all winnings paid to participants; **(ii) promotional gaming credits;** and ~~(ii)~~**(iii)** all excise taxes paid pursuant to federal law; provided, however, that the total of all winnings paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.*

**Rule Reference: 205 CMR 240:02(2), Fantasy Contests**

Rationale: DraftKings respectfully requests that the Commission correct the taxation model applied to fantasy contests to align with all other jurisdictions.

---

definition could be interpreted as precedent that the Commonwealth intends to only tax actual revenue in other gaming verticals.

<sup>3</sup> Mass. General Laws c.23N § 3

Fantasy sports contests differ from sports wagering in that fantasy contests are conducted on an interstate basis. Participants join the same contests from various jurisdictions, resulting in total entry fees collected (and thus total prizes distributed to the winners) not being equal across all jurisdictions. For example, imagine a fantasy contest with a top prize of one million dollars and a total of two hundred thousand entries, only one of which is from Massachusetts. If that Massachusetts player wins the prize, Massachusetts would see a significant loss under the current revenue calculation because the entry fee received from that one player would be significantly less than the one million dollars in prizes received.

The solution, which every other fantasy contest jurisdiction has adopted, is to accurately reflect the adjusted gross fantasy contest receipts by only calculating those entries that came from within Massachusetts. By applying the tax based on the location of the entry, as opposed to the location of the payout, the tax obligation is appropriately allocated. This avoids a scenario where one jurisdiction may have a small number of actual entrants and an outsized tax payout, or many entrants but without correlated tax payment because of a significant payout within the jurisdiction. For these reasons, DraftKings respectfully requests the Commission consider the below amendment to the relevant provision of the proposed regulations.

Recommended Amendment to the Emergency/Proposed Rule Language:

*(2) Fantasy Contests: In accordance with M.G.L. c. 23N, § 3, Adjusted Gross Fantasy Wagering Receipts shall be the total gross receipts from fantasy contests as defined in section 11M ½ of chapter 12, less only the total of all cash prizes paid to participants in the fantasy contests; provided, however, that the total of all cash prizes paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.*

*(a) Adjusted Gross Fantasy Wagering Receipts shall be calculated daily and in accordance with the person or entity offering fantasy contests' approved system of internal controls.*

*(b) Any amount that a person or entity offering fantasy contests is unable to collect pursuant to any credit issued to a patron to take part in fantasy contests in accordance with 205 CMR, et seq. shall be deemed an amount actually received for purposes of calculating gross fantasy wagering receipts.*

*(c) Adjusted Gross Fantasy Wagering Receipts shall not include any amount received by a person or entity offering fantasy contests from credit extended or collected by the person or entity for purposes other than fantasy contests.*

*(d) The accrual method of accounting shall be used for the purposes of calculating the amount of the tax owed.*



**(e) Adjusted Gross Fantasy Wagering Receipts subject to tax in 205 CMR 240.01(3) shall equal the total Adjusted Gross Fantasy Wagering Receipts from all participants entering fantasy contests, multiplied by the Location Percentage. The “Location Percentage” means the percentage, rounded to the nearest tenth of a percent, of the total entry fees collected from all fantasy contest players located in the Commonwealth, divided by the total entry fees collected from all fantasy contest players in fantasy contests.**

\* \* \* \* \*

Thank you for your consideration of DraftKings’ comments regarding the Commission’s proposed regulations. Please feel free to contact us should you or anyone else at the Commission have any questions about our submission, or our experience in other regulated jurisdictions.

Sincerely,

DraftKings Inc.