



## **GAMING TAX BULLETIN 2024-01**

**Issued: February 26, 2024**

### **Department of Revenue Policy Concerning Credits and Refunds for Interactive Gaming and Sports Wagering Charge-Backs**

The Department of Revenue ("Department") issues this Gaming Tax Bulletin to address credits and refunds sought for charge-backs.<sup>1</sup> Registered interactive gaming and sports wagering players may place wagers from their gaming account. Those gaming accounts may be funded through various means, including the use of the registered player's credit card, the registered player's debit card, and automated clearing house ("ACH") transfers. 58 Pa. Code § 812a.7(a); 58 Pa. Code § 1408a.14. If a player disputes the transaction that funded its gaming account, a financial institution may charge back the credit that was deposited into the registered player's gaming account. 15 U.S.C. § 1666; 15 U.S.C. § 1693f; 13 Pa.C.S. § 4214. The charge-back may occur after the related funds were used to wager and the resulting tax was paid to the Department. In such instances, certificate holders have sought a credit or refund of the resulting tax. This Gaming Tax Bulletin addresses such instances.

For interactive gaming and sports wagering, tax is imposed upon gross revenue. The definitions of gross interactive gaming revenue and gross sports wagering revenue both provide that gross revenue does not include amounts "taken in a fraudulent act perpetrated against a...certificate holder for which the...certificate holder is not reimbursed." 4 Pa.C.S. § 1103; 4 Pa.C.S. § 13C01. Accordingly, certificate holders may seek a credit or refund related to charge-backs in certain circumstances. In addition to the statutory requirements, certificate holders must follow all applicable regulations, rules, internal controls, and accounting controls of the Pennsylvania Gaming Control Board ("PGCB") and Department. Moreover, the certificate holder has the burden of proof to establish that it is entitled to a credit or refund. 72 P.S. § 9705.

As an initial matter, a credit or refund may only be sought if tax was paid on the related charge-back. Gross revenue includes funds received on wagers—not amounts deposited with certificate holders. Likewise, it must be shown that the charge-back was a fraudulent act perpetrated against the certificate holder. For example, a charge-back may be launched if the incorrect amount of funds was transferred to the gaming account, e.g., \$1,000.00 is transferred instead of the \$100.00 that was intended. 15 U.S.C. § 1666(b)(1); 15 U.S.C. § 1693f(f)(2). Such charge-backs are not considered fraudulent. For charge-backs that are fraudulent, the certificate holder must abide by all requirements for fraud and cheating so that the integrity of gaming is maintained.<sup>2</sup> Those requirements include, but are not limited to, the following:

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<sup>1</sup> Black's Law Dictionary defines a "charge-back" as "[t]he reversal of a credit-card transaction. If a credit card is fraudulently used, the issuing bank is typically entitled to a charge-back of the dollar amount credited to the merchant bank, which would then typically charge back the dollar amount credited to the merchant." Black's Law Dictionary (10<sup>th</sup> ed. 2014).

<sup>2</sup> "Cheat" is defined as "[t]o defraud or steal from any player, slot machine licensee or the Commonwealth while operating or playing a slot machine, table game or authorized interactive game...." 4 Pa.C.S. § 1103.



- A certificate holder's procedures must ensure that appropriate measures are in place to deter, detect, and prevent fraud. 58 Pa. Code § 501a.2; 58 Pa. Code § 811a.2(b)(20); 58 Pa. Code § 1408a.3(b)(19).
- A certificate holder's compulsive and problem gambling plan must include procedures for those engaging in, attempting to engage in, or reasonably suspected of fraud. 58 Pa. Code § 814a.3(b)(11); 58 Pa. Code § 1408a.8(b)(4); 58 Pa. Code § 1410a.1. This includes excluding those who commit fraud as well as suspending and closing their gaming account. 58 Pa. Code § 511a.3(a)(4)(i); 58 Pa. Code § 812a.12; 58 Pa. Code § 1408a.14.
- A certificate holder must periodically review all adjustments to a player's gaming account of less than \$500.00, including those related to a charge-back, and all larger adjustments must be authorized by supervisory personnel. 58 Pa. Code § 812a.7(f); 58 Pa. Code § 1408a.14.
- A certificate holder must notify the PGCB of a player committing, attempting to commit, or reasonably suspected of committing fraud, including the submission of Internet Fraud Forms. 58 Pa. Code § 811a.6(e)(1); 58 Pa. Code § 1408a.7(e)(1).

In addition, the definitions of gross interactive gaming revenue and gross sports wagering revenue require the certificate holder to establish that it was not reimbursed for funds related to a fraudulent charge-back. Requiring that only unreimbursed funds can be removed from gross revenue *ipso facto* means that a certificate holder must attempt to recover funds taken in a fraudulent act. See also 4 Pa.C.S. § 13B28 (no interactive gaming certificate holder...shall...[r]elease or discharge any debt...without maintaining a written record thereof in accordance with regulations of the [PGCB]"). For fraudulent charge-backs, the law provides for recovery in the form of a counterclaim. See 12 C.F.R. § 1026.12(c); 12 C.F.R. § 1026.13. As a result of the requirement that only unreimbursed amounts can be deducted and the law's commands that certificate holders and the Commonwealth must be protected against fraud, a certificate holder's internal controls must specify its process for filing counterclaims against fraudulent charge-backs. As such, when seeking a credit or refund, a certificate holder must establish that the internal controls have been followed and no additional options exists for reimbursement other than the efforts of a collection agency. If a certificate holder is reimbursed for amounts related to a fraudulent charge-back after a refund or credit has been obtained, the related tax must be reported on a monthly reconciliation return within six months of reimbursement.

Certificate holders must maintain supporting documentation related to charge-backs for at least five years, including player information, deposit information, amount of gross revenue attributable to each type of gaming, and detailed player transaction history. 58 Pa. Code Ch. 465a; 58 Pa. Code § 811a.8; 58 Pa. Code § 1408a.11. Nothing contained within this Gaming Bulletin shall be construed to limit the PGCB's nor the Department's authority to audit, investigate, or verify credits or refunds sought, taken, or obtained.

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