Public Comment

February 27, 2016 to March 31, 2016

Griffin, Tina (GMB)

From: Monty Harmon <montyharmon@juno.com>
Sent: Tuesday, March 29, 2016 5:00 PM
To: Griffin, Tina (GMB)
Subject: Amusement game rules

Tina,

Thank you for requesting input on the Amusement Rules.

I would like the following changes to the proposed rules:

WAC 230-13-005 - Please eliminate section 4.b.iii

Staff does not need to restrict the token record systems. We developed a system separate from other player reward accounts that should be allowed under the rules and not prohibited.

WAC 230-13-005 (6) please amend the last sentence to read "Coupons, Tickets or Tokens awarded as prizes cannot be used to play amusement games once dispensed. Once dispensed from a machine they must only be redeemed for merchandise prizes.

Thank you

Monty Harmon

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Griffin, Tina (GMB)

From: Mary Magnuson <mmagnuson@thejacobsonlawgroup.com>
Sent: Tuesday, March 29, 2016 3:34 PM
To: Griffin, Tina (GMB)
Subject: FW: Message from KMBT_C450
Attachments: SKMBT_C45016032917330.pdf

Hi Tina- Attached please find some additional comments and proposed language for the group 12 rule. I apologize if I am not entirely on point with the comments. I listened to the meeting on the phone link, but at the end, I was not certain what direction was given to the staff for the development of new language. Please let me know if you have any questions.

Mary B. Magnuson | Shareholder
Jacobson, Magnuson, Anderson & Halloran PC
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On 3/29/16, 5:34 PM, "jbmah1234@gmail.com" <jbmah1234@gmail.com> wrote:

>

NATIONAL ASSOCIATION OF FUNDRAISING TICKET MANUFACTURERS

180 East Fifth Street
Suite 940
Saint Paul, Minnesota 55101
Tel: 651-644-4710
Website: www.naftm.org

March 29, 2016

Ms. Tina Griffin
Assistant Director
Washington State Gambling Commission
P.O. Box 42400
Olympia, Washington 98504

Dear Ms. Griffin:

Thank you for the opportunity to submit additional comments and proposed rule language for the Group 12 Amusement Device rule. I was not able to attend the March Commission meeting in person, and while I listened to the meeting by phone, I remain uncertain as to the scope of the proposed language to be developed before the April meeting. However, from what I was able to determine, it appears the Commission is now interested in allowing credits to be played and gift certificates of an indeterminate monetary value to be awarded as prizes. This is despite adopting "Option A" (which prohibits both) at the February meeting.

We have previously commented on the proposed rules and in the past have opposed adoption of any language that would permit the award of gift cards or gift certificates as prizes. We want to reiterate that opposition. RCW 9.46.0201 defines an amusement game as a game played **for entertainment** in which the outcome depends on a material degree of skill and only merchandise prizes are awarded.

Merchandise prizes, as currently defined in "Option A" include toys, novelties, retail items as well as food and beverages and other items sold by the operator as a normal part of their business. In other words, hard merchandise. The change proposed to "Option A" would include gift cards and gift certificates within the definition of merchandise prizes. This is inconsistent with the statute and inconsistent with the type of prizes traditionally awarded in amusement games *for entertainment.* As noted by Representative Hurst in his January 26, 2016 letter to the Commission: "Many businesses throughout the state are currently awarding gift cards that function as cash cards. These cards, in some instances, are worth hundreds of

dollars. The establishment then allows a patron to buy a nominal item with the card and receive his or her change in cash. **This is very disturbing considering that we now have a game that looks like a slot machine paying back cash to the players like a slot machine."**

Gift cards are not merchandise and defining them as such would, in our opinion, conflict with the statute. Gift cards are the equivalent of cash. In fact, pursuant to RCW 19.240.020, cash is *required* to be provided when the amount remaining on the card after redemption is $5.00 or less. If the amount remaining is over $5.00, cash may be provided at the option of the operator. This will permit (as is currently the practice in the state) a player to redeem a gift certificate for a nominal item, and then take the "change" in cash. It makes no difference if the value of the gift certificate is limited to $40.00, $50.00, $100.00 or more as was proposed by some Commissioners. The fact remains, regardless of the value of the gift certificate, a cash award is at least an option to be provided. And this violates the statute.

Gift cards and gift certificates are considered cash equivalents, not merchandise. Consider this explanation as found on *bankingmyway.com:* "When someone writes you a check, even before you deposit it into your bank account the check is as good as cash....If you wanted, you could sign the check over to someone else as a payment, just like paying with cash. Gift certificates and gift cards operate in the same way. All of these instruments are cash equivalents."[1] The IRS considers gift cards and gift certificates similarly. According to a publication issued by Washington State University, "The IRS has recently issued an opinion that gift certificates, gift cards, gift coupons which have a face value on them are considered cash equivalents..." This opinion arose in the context of employer awarded gift certificates and concludes that gift certificates are subject to employment taxes without regard to value. This is "because cash and cash equivalent fringe benefits, like gift certificates, have a readily ascertainable value..."[2] A similar conclusion was reached by the accounting firm Olsen Thielen. "Tax law says that because gift certificates and gift cards are cash equivalents, or easily convertible to cash, they do not meet the requirements to be excluded from income."[3]

Many people provided testimony to the Commission on the need for gift cards and gift certificates, claiming that the devices would not be economically viable without this cash equivalent option. That may be so, but the Commission cannot simply define merchandise prizes to include gift certificates and gift cards without running afoul of the statute. Simply put, a change in the statute is necessary to permit the award of anything other than hard merchandise in the play of an amusement device.

Accordingly, we propose that if the Commission adopts a Group 12 Amusement Device rule that rule provides in relevant part:

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[1] http://www.bankingmyway.com/save/savings/understanding-cash-and-cash-equivalents
[2] http://payroll.wsu.edu/deptpay/taxGiftCert.htm
[3] http://www.otcpas.com/gift-cards-and-gift-certificates

WAC 230-13-005

(5) Amusement games must not:

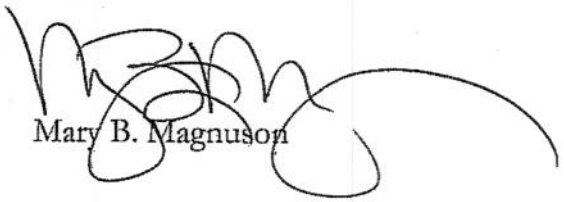
(a) Award additional plays as prizes; or
(b) Allow coupons, tickets, tokens on electronic token cards that are awarded to be replayed; or
(c) Result in any cash payment being awarded.

(6) Amusement games must only award merchandise prizes.

(a) Merchandise prizes means non-cash and non-cash equivalent prizes including toys, novelties, retail items such as electronic goods, clothing, accessories, as well as food, beverages and other items sold by the operator as a normal part of their business in compliance with all other state laws and regulations.
(b) Pull-tabs and other gambling activities, gift certificates or gift cards do not constitute merchandise prizes.

Thank you for the opportunity for additional input into the drafting of the rule. Please feel free to contact me if you have any questions.

Very truly yours,



Mary B. Magnuson

Griffin, Tina (GMB)

From: Ezra Eickmeyer <ezra@olypen.com>
Sent: Tuesday, March 29, 2016 3:29 PM
To: Trujillo, Dave (GMB); Griffin, Tina (GMB); Hunter, Amy (GMB)
Subject: WAMOA Proposed Option A Amendment
Attachments: Stakeholder Amendment to Option A.pdf

Tina,

Attached is language that the WA Amusement & Music Operators Association would support as an option A amendment. If it is included in Option A, WAMOA would then also support passage of Option A. We are very pleased to have worked out language that can limit cash out options to $5 or less from gift certificates without violating consumer protection statutes. Please feel free to call anytime with questions or concerns. We look forward to continuing stakeholder discussion. Thank you.

Sincerely,
Ezra Eickmeyer
360-301-1842
WAMOA

STAKEHOLDER AMENDMENT TO OPTION A:

This amendment prohibits cash prizes, and clarifies additional plays are permitted.

WAC 230-13-005 IS AMENDED AS FOLLOWS:

Amusement games authorized.

(1) We authorize the approved groups of amusement games set forth in this chapter. Operators must only operate amusement games that meet the standards of at least one of the authorized groups.
(2) Commercial businesses or nonprofit or charitable organizations may apply for licenses for amusement games.
(3) Charitable or nonprofit organizations also may conduct amusement games without a license when authorized to do so under RCW 9.46.0321 and 9.46.0331.
(4) Operators must operate amusement games as either:
(a) An attended amusement game.
(i) An "attended amusement game" means an amusement game that requires the presence or assistance of a person (attendant) in the regular operation of the game; and
(ii) These games must award a merchandise prize to players if players achieve the objective with one cost of play; or
(b) A coin, cash, or token activated amusement game.
(i) A "coin, cash, or token activated amusement game" means an amusement game that uses a mechanical, electronic, or electro-mechanical machine to allow the player to activate the game by inserting coins, cash, or tokens; and
(ii) These games may dispense merchandise prizes, or coupons, tickets, or tokens redeemable for merchandise prizes. Merchandise prizes are not currency. Licensees may not convert a merchandise prize to currency. If a purchase is made at a location with a merchandise prize that is a gift certificate for an amount that is less than the value of the gift certificate, the licensee must make the remaining value available to the bearer in a gift certificate. If after the purchase the remaining value of the gift certificate is less than five dollars and the bearer demands the balance, the licensee shall redeem the balance in currency as required under RCW 19.240.020. Licensees shall maintain records documenting each redemption in currency of a gift certificate that has a remaining value of less than five dollars.
(5) Amusement games must not award additional plays as prizes. Additional plays must be purchased with coin, cash, or token.

[Statutory Authority: RCW 9.46.070 and 9.46.0331. WSR 15-15-063 (Order 713), § 230-13-005, filed 7/10/15, effective 8/10/15. Statutory Authority: RCW 9.46.070. WSR 07-15-064 (Order 612), § 230-13-005, filed 7/16/07, effective 1/1/08.]

Griffin, Tina (GMB)

From: Jay Gerow <jayg@zdigaming.com>
Sent: Tuesday, March 29, 2016 3:06 PM
To: Griffin, Tina (GMB); Amy Blume Hunter; Trujillo, Dave (GMB)
Subject: Proposed amendment to option A
Attachments: Stakeholder Amendment to Option A.pdf

Attached you will find an amendment to Option A that is being brought forth by the ADOW group, we would like to see this put before the commissioners at the April meeting.

Thank you,

Jay Gerow
ZDI Gaming Inc.
2124 196th St. SW
Lynnwood, Wa 98036

(425)775-7991 office
(425)775-8433 fax

STAKEHOLDER AMENDMENT TO OPTION A:

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Griffin, Tina (GMB)

Subject: FW: Stakeholder Agreed Language
Attachments: Stakeholder Amendment to Option A.pdf

From: Joan Mell [mailto:joan@3brancheslaw.com]
Sent: Tuesday, March 29, 2016 2:47 PM
To: Kernutt, Matt (ATG)
Subject: Stakeholder Agreed Language

Joan K. Mell
III Branches Law, PLLC
1019 Regents Blvd. Ste. 204
Fircrest, WA 98466
253-566-2510 (p)
253-973-1810 (c)
281-664-4643
joan@3brancheslaw.com

STAKEHOLDER AMENDMENT TO OPTION A:

This amendment prohibits cash prizes, and clarifies additional plays are permitted.

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Griffin, Tina (GMB)

Subject: FW: Followup comments from 3-11-16 Commission meeting

From: Cameron Baker [mailto:cameronb1@earthlink.net]
Sent: Sunday, March 13, 2016 10:30 PM
To: Trujillo, Dave (GMB) <dave.trujillo@wsgc.wa.gov>
Subject: Followup comments from 3-11-16 Commission meeting

Thank you Director Trujillo, for the opportunity to offer my comments to you, your staff and the Commissioners, at Friday's meeting.

1) The suggested motion for a change at the meeting, from ***not*** allowing re-plays to allowing them in Option A of WAC 230-13-005 (5b) should also consider that re-plays would be considered reportable Gross Receipts and a taxable event for local taxing jurisdictions. This would tend to support the idea that re-plays are a "cash equivalent", which can purchase a play on amusement game machines. This would contradict section 5c, which prohibits awarding cash prizes. Either choice should be made with the fullest information.
2) As part of the discussion during Maureen Greeley's Responsible Gaming Training, Senator Conway and Commissioner Patterson identified a desire to gather more information about gambling addiction impacts currently being dealt with in Pierce County's drug courts. They are apparently assessing alcohol, drug and gambling addiction status of defendants in those drug court cases. What I mentioned to you at the meeting was that Supreme Court Chief Justice Madsen volunteers her available time in Pierce County courts as a substitute judge, to reduce case backlogs (due to judge illness, vacations, surges in case numbers, etc. according to Inside Olympia interview on TVW). Therefore, she would likely be aware of the processes currently in place in Pierce County courts. She could be a valuable ally and advocate for greater information collection and reporting, for better Problem Gambling research and treatment. WSGC could contact the Administrative Office of the Courts (AOC) agency (which operates under the supervision of the Chief Justice of the Supreme Court) to investigate the current status of reporting and whether any additional reporting processes could be implemented without significant budget impacts. Alternatively, WSGC could contact Chief Justice Madsen directly to invite her assistance with what was characterized in Friday's meeting as a means to reduce both gambling addiction and the general level of crimes being committed.

I hope these ideas may be of assistance to you and the WSGC.
Thank you.