

CHAPTER 54**TAXES****Authority**

N.J.S.A. 5:12-63c, 70e, 144a and f and 144.1c.

Source and Effective Date

R.2000 d.19, effective December 15, 1999.
See: 31 N.J.R. 3060(a), 32 N.J.R. 312(a).

Executive Order No. 66(1978) Expiration Date

Chapter 54, Taxes, expires on December 15, 2004.

Chapter Historical Note

Chapter 54, Taxes, was adopted as R.1978 d.174, effective May 25, 1978. See: 10 N.J.R. 210(c), 10 N.J.R. 305(f).

Pursuant to Executive Order No. 66(1978), Chapter 54, Taxes, was readopted as R.1983 d.131, effective April 15, 1983. See: 15 N.J.R. 328(b), 15 N.J.R. 699(b).

Subchapter 2, Section 144 Investment Obligation Alternative Tax, was adopted as R.1984 d.33, effective February 21, 1984. See: 15 N.J.R. 1838(a), 16 N.J.R. 381(b), 16 N.J.R. 3064(b).

Subchapter 3, Section 144.1 Investment Tax Credits, was adopted as Emergency New Rules by R.1985 d.675, effective December 17, 1985, expired February 15, 1986. See: 18 N.J.R. 108(a).

Subchapter 3, Section 144.1 Investment Tax Credits, was adopted as new rules by R.1986 d.78, effective April 7, 1986. See: 18 N.J.R. 108(a), 18 N.J.R. 708(a).

Pursuant to Executive Order No. 66(1978), Chapter 54, Taxes, was readopted as R.1988 d.179, effective March 24, 1988. See: 20 N.J.R. 383(a), 20 N.J.R. 930(c).

Pursuant to Executive Order No. 66(1978), Chapter 54, Taxes, was readopted by R.1993 d.146, effective March 5, 1993. See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Subchapter 2, Section 144 Investment Obligation Alternative Tax, was repealed and Subchapter 3, Section 144.1 Investment Tax Credits, was recodified as Subchapter 2 by R.1993 d.146, effective April 5, 1993 (operative May 5, 1993). See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Pursuant to Executive Order No. 66(1978), Chapter 54, Taxes, was readopted as R.1995 d.28, effective December 15, 1994. See: 26 N.J.R. 4181(a), 27 N.J.R. 387(a).

Pursuant to Executive Order No. 66(1978), Chapter 54, Taxes, was readopted as R.2000 d.19, effective December 15, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GROSS REVENUE TAX**19:54-1.1 Description of tax**

Subsection 144(a) of the Act imposes an annual tax on gross revenues, as defined in section 24 of the Act, in the amount of eight percent of such gross revenues.

Amended by R.1993 d.146, effective April 5, 1993.
See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Deleted outdated text no longer included in Casino Control Act regarding adjustment of gross revenue tax rate.

19:54-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Casino licensee” or “licensed casino” includes the holder of a casino license or interim casino authorization.

“Casino management agreement” means a written agreement between one or more casino licensees and another casino licensee whereby the latter agrees to provide complete management of a casino in accordance with section 82 of the Act.

“Casino management licensee” means a casino licensee which provides complete management of a casino pursuant to a casino management agreement, as herein defined.

“Casino operator” means:

1. Where there is no casino management agreement with regard to the casino hotel facility, the casino operator shall be the casino licensee which is responsible for submitting and maintaining the internal controls required by section 99 of the Act; or

2. Where there is a casino management agreement with regard to the casino hotel facility, the casino operator shall be the casino management licensee, if said licensee has supplied capital at risk in the gaming operations of the casino. If the casino management licensee has supplied none of the capital at risk in the gaming operations of the casino, the casino operator shall be the licensee designated in paragraph 1 of this definition, as though no casino management agreement existed.

“Casino Revenue Fund” means a separate special account established in the Department of the Treasury for deposit of

all revenues from the tax imposed by subsection 144a of the Act, the investment alternative taxes imposed by subsections 144e and 144.1a of the Act, any interest earned pursuant to paragraph 2 of subsection 144.1a or section 145.1 of the Act and any penalties payable to the Casino Revenue Fund pursuant to section 145 of the Act.

"Lease" or "lease agreement" means a written agreement for the lease of the approved hotel in accordance with section 82 of the Act, including any such lease which is capitalized under generally accepted accounting principles.

Amended by R.1993 d.146, effective April 5, 1993.
See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Revised definitions of "Casino licensee" or "licensed casino"; "Casino Revenue Fund"; and "Lease" or "lease agreement".

Added "Gaming day" definition, deleting definition of "Day".

Amended by R.1994 d.31, effective January 18, 1994.

See: 25 N.J.R. 4866(a), 26 N.J.R. 486(a).

19:54-1.3 Tax year

For purposes of the tax on gross revenues, the tax year shall be the calendar year. In the year in which a casino operator commences gaming operations, the tax year for that casino operator shall begin with the commencement of operations and terminate on the last gaming day of the current calendar year.

Amended by R.1993 d.146, effective April 5, 1993.

See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Added "gaming" to describe day in final sentence of text.

19:54-1.4 Tax payer

(a) The obligation to file returns and reports and to pay the gross revenue tax and any investment alternative taxes shall be upon the casino operator who shall be primarily liable therefor. In the event of a transfer of operations to a different casino operator, the transferrer-operator will be obligated to file a return and to pay all taxes based upon gross revenues derived by the said transferrer during the tax year in which the transfer occurred. The appointment of a conservator under the Act shall not be deemed a transfer to a different casino operator but, for the duration of the conservatorship, the conservator shall file all returns and pay all taxes on behalf of the former or suspended casino licensee who shall remain primarily liable therefor.

(b) In accordance with section 82 of the Act, each casino licensee which is a party to either a casino management agreement or a lease with the casino operator, shall be individually and severally liable for any acts, omissions and violations by the casino operator regarding the taxation obligations imposed by the Act regardless of actual knowledge of such act, omission or violation and notwithstanding any provision of such agreement or lease to the contrary.

(c) In the event of a sale or other transfer by the casino operator of its interest in the licensed premises to another casino licensee, the transferee shall be liable for any default by the former casino operator in its taxation obligations with respect to the licensed premises. The liability of the transferee shall not, however, release any other party from potential liability.

(d) Nothing in this section shall be construed to limit the authority of the State Treasurer or the Commission to enforce any tax obligation by way of a lien against the property of a taxpayer or otherwise as provided by the "State Tax Uniform Procedure Law", Subtitle 9 of Title 54 of the Revised Statutes, by the Act or by any other applicable law.

Amended by R.1993 d.146, effective April 5, 1993.

See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

In (a): added the phrase "and any investment alternative taxes".

Stylistic revisions in (b)-(d).

19:54-1.5 Payment of tax

(a) In accordance with subsection 148(a) of the Act, the gross revenues tax shall be due and payable annually on or before the 15th calendar day of March except that if the 15th day of March is a Saturday, Sunday or legal holiday, the due date shall be advanced to the next preceding regular business day. The gross revenues tax shall be based upon the gross revenues derived by the casino operator during the previous tax year. The amount of the annual tax shall be computed in accordance with N.J.A.C. 19:54-1.6.

(b) The annual nature of the tax notwithstanding, the casino operator shall make weekly deposits of the tax at such times, under such conditions, and in such depositories as shall be prescribed by the State Treasurer pursuant to subsection 145(b) of the Act, provided that deposits for a given week shall be made no later than the Monday of the succeeding week. If such Monday is a legal holiday, the deposit shall be made on the next business day. In the event that the week for which the weekly deposit is being made includes gaming days from two calendar months, the casino operator shall deposit and report separately, the amount of the deposit attributable to the gaming days of each month. The deposits shall be deposited to the credit of the Casino Revenue Fund.

(c) The amount of the required weekly deposit for a given week shall be determined by subtracting the total amount of deposits made by the casino operator in the current tax year up to and including the week preceding the given week from the total tax liability incurred by the casino operator for the current tax year. The total tax liability for the current tax year shall be based upon the gross revenues derived by the casino operator from the commencement of the current tax year to the end of the gaming day which commenced on the Friday of the given week.

1. Any casino operator that estimates slot machine drop for purposes of the monthly gross revenue tax report pursuant to N.J.A.C. 19:54-1.7(c) shall include a weekly slot machine drop estimate, calculated in accordance with methodology approved pursuant to that subsection, in each weekly tax deposit required by this section.

(b) The casino operator shall permit duly authorized representatives of the Commission to examine the operator's accounts and records for the purpose of certifying gross revenues. In the event that any records or documents deemed pertinent by a Commission examiner are in the possession of another licensee or entity, the casino operator shall be responsible for making those records or documents available to the examiner. Further, the casino operator shall be individually and severally liable for any relevant accounts, records or documents maintained or required to be maintained by any other licensee or entity with regard to the casino.

(c) The Commission's annual gross revenue tax examination shall be conducted in accordance with standards and practices established by the Director of the Commission's Division of Financial Evaluation. A copy of such standards and practices shall be made available upon request to all casino operators.

(d) An examination pursuant to this section may incorporate audit work performed by a casino operator's internal audit department provided that:

1. Such audit work is conducted in accordance with minimum standard internal audit procedures which have been submitted to and approved by the Commission, including, at a minimum, a detailed description of the audit tests to be performed;

2. The casino operator submits to the Commission by January 31 of each year an annual audit plan specifying the scheduled audit dates for that upcoming calendar year; and

3. The casino operator submits to the Commission, no later than March 15 of each year, copies of all internal audit reports and any other reports directly relating to the reporting of gross revenue for the preceding tax year.

(e) The Commission shall:

1. Notify the casino operator in accordance with N.J.A.C. 19:54-1.9 of any tax deficiencies disclosed during a gross revenue tax examination;

2. Record all deviations from regulatory or internal control requirements concerning revenue-related transactions which are discovered during a gross revenue tax examination, which record shall be provided to the casino operator on an annual basis; and

3. Refer any such deviations to the Division of Gaming Enforcement for investigation and any other action which the Division deems appropriate.

Amended by R.1993 d.146, effective April 5, 1993.

See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Revised text by deleting references to audits and charging to "Examination of accounts." Deleted outdated text. Adding phrase, "... for the purpose of certifying gross revenues ..."

Amended by R.1995 d.626, effective December 4, 1995.

See: 27 N.J.R. 3309(b), 27 N.J.R. 4913(a).

19:54-1.9 Determination of tax liability; notice; disputes; hearings

(a) If a return or deposit required by section 145 of the Act or by these regulations with respect to the gross revenue tax is not filed or paid, or if a return or deposit when filed or paid is incorrect or insufficient in the opinion of the Commission, the amount of tax due or deposit shall be determined by the Commission through an examination of the casino licensee's books and records. The Commission is empowered to determine whether a casino operator or other casino licensee has fully satisfied its obligations with regard to the gross revenues tax and to require that a casino operator or casino licensee make additional payments, including the payment of interest or penalty, or take additional steps to comply.

(b) If the Commission determines that the casino operator has not satisfied its obligation as to payment of tax or deposit, a notice of such determination shall be given to the casino operator and to other licensees liable for the payment under N.J.A.C. 19:54-1.4. Such determination shall finally and irrevocably fix the tax unless within 30 days after receiving notice of such determination, the casino operator or any other licensee liable for the payment shall apply to the Commission for a hearing, or unless the Commission on its own motion shall redetermine the same. Any Commission hearing will be governed as to notice and procedure by the general hearing rules of the Commission (see N.J.A.C. 19:42).

(c) In discharging its responsibilities under this Act, the Commission shall have all the authority granted by the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes, and all proceedings shall be conducted in accordance with said law, except to the extent that a specific provision of the Act or these regulations may be in conflict therewith. Nothing herein shall prevent the Commission from employing additional procedures including informal conferences with a licensee at which the licensee may present legal and factual contentions to the Commission. Such informal conferences shall not, however, be a substitute for a formal hearing as defined and described in the said "State Tax Uniform Procedure Law."

Amended by R.1993 d.146, effective April 5, 1993.

See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Section revised based on statutory changes to the Casino Control Act. In (a)-(c), deleted reference to State Treasurer and added text regarding the Commission and the determination of tax liability process.

19:54-1.10 Penalties and sanctions

(a) A casino operator which fails to file its return when due or to pay the tax or deposit when due shall be subject to such penalties and interest as provided in the "State Tax Uniform Procedure Law," N.J.S.A. 54:48-1 et seq. Interest shall be calculated from the date the tax was originally due through the actual date of payment, provided, however, that if the deficiency is paid within 10 business days from the date of the Commission's tax deficiency notice, interest shall be calculated through the date of such notice.

(b) If the Commission determines that any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In this regard, a monthly deposit shall be considered part of the tax required to be shown on a return.

(c) Any person failing to file a return to pay the tax or deposit, or filing or causing to be filed, or making or causing to be made, or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by the Act, or rules or regulations adopted thereunder which is willfully false, or failing to keep any records required by the Act or rules and regulations adopted thereunder, shall, in addition to any other penalties herein or elsewhere prescribed, be guilty of a misdemeanor and subject to not more than three years imprisonment or a fine of \$100,000 or both.

(d) In addition to the foregoing, any casino operator or other casino licensee which violates any of the provisions of the Act, the rules of the Commission or its approved internal controls regarding the gross revenue tax shall be liable to any sanction, penalty or other consequence which the Commission may be authorized to impose, such as those delineated in sections 111, 129 and 130 of the Act.

Amended by R.1993 d.146, effective April 5, 1993.
See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Revised rule text based on statutory changes to the Act. Revised text to delete references to the State Treasurer and added Commission. Deleted (d) and recodified existing (e) as new (d).

Amended by R.1995 d.626, effective December 4, 1995.
See: 27 N.J.R. 3309(b), 27 N.J.R. 4913(a).

Amended by R.2000 d.19, effective January 18, 2000.
See: 31 N.J.R. 3060(a), 32 N.J.R. 312(a).

Rewrote (a).

19:54-1.11 (Reserved)

Repealed by R.1993 d.146, effective April 5, 1993.
See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Section was "Delegation by State Treasurer".

19:54-1.12 (Reserved)

Repealed by R.1993 d.146, effective April 5, 1993.
See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Section was "Exchange of information".

19:54-1.13 (Reserved)

Repealed by R.1993 d.146, effective April 5, 1993.
See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

Section was "Commission authority and responsibility".

SUBCHAPTER 2. SECTION 144.1 INVESTMENT TAX CREDITS**19:54-2.1 Definitions**

As used in this subchapter, the following words and terms shall have the meaning herein ascribed to them unless a different meaning clearly appears from the context.

"Authority" or "CRDA" means the Casino Reinvestment Development Authority established pursuant to the provisions of N.J.S.A. 5:12-153.

"Extreme financial hardship" is defined in N.J.A.C. 19:54-3.2(c).

Recodified from N.J.A.C. 19:54-3.1 by R.1993 d.146, effective April 5, 1993.

See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).

19:54-2.2 Deferral petitions: Determination of extreme financial hardship

(a) In accordance with the provisions of N.J.S.A. 5:12-144.1(c), a contract between a casino licensee and the CRDA may provide for the deferral of the payment for and delivery of bonds otherwise required to be purchased by the licensee or for the deferral of the making of approved eligible investments otherwise required to be made by the licensee. A deferral of a casino licensee's obligation to purchase bonds or make other approved eligible investments may not be granted by the CRDA unless, among other things, the licensee obtains a determination from the Commission that the purchase of the bonds or the making of the approved eligible investments would cause extreme financial hardship to the casino licensee.

(b) A casino licensee shall apply for a deferral pursuant to N.J.S.A. 5:12-144.1(c) by filing a petition with the CRDA in accordance with its rules and regulations. Copies of this petition and all application materials submitted to the CRDA by the licensee shall be simultaneously filed with the Commission and the Division. The CRDA shall give notice of its receipt of a petition for deferral to the Commission and Division within three days of the date on which the licensee files the petition. The Commission shall render a decision on whether the licensee has established extreme financial hardship within 60 days after notice of the petition has been received from the CRDA. Notwithstanding the foregoing, the Commission shall not consider any request for a determination of extreme financial hardship unless the petitioning casino licensee demonstrates that the contract required by N.J.S.A. 5:12-144.1(c) and (a) above has been executed.

(c) In order to obtain a determination of extreme financial hardship from the Commission, a licensee shall be required to demonstrate by a preponderance of the evidence that the economic effect of purchasing the bonds or making the investments which are sought to be deferred would be to increase materially the risk that the licensee would be unable to maintain its qualification for a casino license under the financial stability criterion of N.J.S.A. 5:12-84(a).

(d) In addition to supplying the Commission and Division with any documentation or information filed with the CRDA in support of its petition for deferral, it shall be the affirmative obligation of the casino licensee to produce or cooperate in the production of any other information, documentation or assurances relating to the assets, liabilities, resources and operating performance of the licensee, its holding and intermediary companies and any other related entity which is required to qualify or hold a casino license under the Act, necessary to establish its entitlement to a determination of extreme financial hardship. A casino licensee shall promptly provide any information or assistance requested by the Commission or Division within the time period specified. Failure to provide in a timely manner any such information or assistance to the Commission and Division upon request by either agency may, in the discretion of the Commission, result in the information being excluded from consideration and an adverse inference being drawn against the interests of the casino licensee.

(e) A determination of extreme financial hardship shall be decided on the basis of the information submitted by the casino licensee with its petition and any other information or documentation requested by the Commission or Division or previously obtained from the casino licensee unless the casino licensee requests in writing that a hearing be provided in accordance with the relevant provisions of N.J.A.C. 19:42; provided, however, the Commission may on its own motion direct that a hearing be held. Unless otherwise permitted by the Commission for good cause shown, a licensee shall submit its written request for a hearing simultaneously with the filing of its petition pursuant to (b) above.

Recodified from N.J.A.C. 19:54-3.2 by R.1993 d.146, effective April 5, 1993.

See: 25 N.J.R. 280(a), 25 N.J.R. 1524(a).