

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

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

Source and Effective Date

R.1995 d.28, effective December 15, 1994.
See: 26 N.J.R. 4181(a), 27 N.J.R. 387(a).

Executive Order No. 66(1978) Expiration Date

Pursuant to Executive Order No. 66(1978), Chapter 54, Taxes, expires on December 15, 1999.

Chapter Historical Note

This chapter was adopted pursuant to authority of N.J.S.A. 5:12-1 et seq. and was filed and became effective on May 25, 1978 as R.1978 d.174. See: 10 N.J.R. 210(c), 10 N.J.R. 305(f). Amendments became effective on March 31, 1980 as R.1980 d.134. See: 11 N.J.R. 656(a), 12 N.J.R. 294(e). This chapter was readopted pursuant to Executive Order No. 66(1978) effective April 15, 1983. See: 15 N.J.R. 328(b), 15 N.J.R. 699(b).

Subchapter 2 was adopted effective February 21, 1984 as R.1984 d.33. See: 15 N.J.R. 1838(a), 16 N.J.R. 381(b), 16 N.J.R. 3064(b). Amended by R.1984 d.136, effective April 16, 1984, and R.1988 d.34, effective January 19, 1988. See: 16 N.J.R. 362(a), 16 N.J.R. 927(b); 19 N.J.R. 1890(a), 20 N.J.R. 205(a).

Subchapter 3 was adopted as an Emergency Adoption and Concurrent Proposal effective December 17, 1985 (expired February 15, 1986) as R.1985 d.675. See: 18 N.J.R. 108(a). Subchapter 3 was readopted effective April 7, 1986 as R.1986 d.78. See: 18 N.J.R. 108(a), 18 N.J.R. 708(a).

This chapter was readopted effective March 24, 1988 as R.1988 d.179. 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Subchapter 2, Section 144 Investment Obligation Alternative Tax, was repealed by R.1993 d.146, effective April 5, 1993 (operative May 5, 1993). Subchapter 3, Section 144.1 Investment Tax Credits, was reclassified as Subchapter 2.

Pursuant to Executive Order No. 66(1978), Chapter 54 was readopted as R.1995 d.28. See: Source and Effective Date.

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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), 24 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Deleted outdated text no longer included in Casino Control Act regarding adjustment of gross revenue tax rate.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), 24 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), 24 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 transferror-operator will be obligated to file a return and to pay all taxes based upon gross revenues derived by the said transferror 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), 24 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.

(d) The amount of deposits required for a given month shall be the amount determined by subtracting the total amount of deposits made by the casino operator in the current tax year up to and including the month preceding the given month 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 tax year to the end of the gaming day which commenced on the last calendar day of the given month.

(e) In the event that the total amount of deposits made for the entire tax year is determined to be less than the annual tax liability for the entire year, the casino operator shall remit the requisite additional payment to the State Treasurer. In the event that the total amount of such deposits is determined to be greater than the annual tax liability, the casino operator may be allowed to reduce the amount of its weekly deposits in the succeeding tax year by the amount of the overpayment, provided, however, that the casino operator shall not claim any such credit against deposits unless the Commission first certifies the existence and amount of the overpayment. Nothing in this section shall limit any authority of the Commission under sections 149 and 150 of the Act and the "State Tax Uniform Procedure Law," Section 9 of Title 54 of the Revised Statutes, including the authority to determine the insufficiency of any deposit or deposits, to require payments of penalties and interest or to allow or disallow any claim for refund due to overpayment of taxes.

Amended by R.1993 d.146, effective April 5, 1993.
See: 25 N.J.R. 280(a), 24 N.J.R. 1524(a).

In (c) and (d), deleted paragraphs 1 and 2, revising text and adding new language to describe calculation process using the casino operator's total tax liability, based on changes to the Act.

In (e), deleted reference to annual tax return and changed "monthly" to "weekly" regarding deposits to reflect statutory changes.

Stylistic revisions throughout.

19:54-1.6 Computation of tax

(a) The gross revenue tax shall be eight percent of gross revenue. The gross revenue for the tax year, or portion thereof, shall be the amount obtained from the following calculation:

1. The total of all sums for the tax year, or portion thereof, that are actually received by a casino operator from its gaming operations, which sums include, but are not limited to, cash, slot tokens, prize tokens counted at face value pursuant to N.J.A.C. 19:45-1.41 and 19:45-1.43, checks received by a casino operator pursuant to N.J.S.A. 5:12-101 whether collected or not, and coupons counted pursuant to N.J.A.C. 19:45-1.33 regardless of validity, less only the total of all sums paid out as winnings to patrons;

2. Minus only the lesser of the following:

- i. Four percent of the sum total derived in (a)1 above; or
- ii. The amount shown in the casino department account entitled "Provision for Uncollectible Patron Checks," which account shall be maintained in accordance with generally accepted accounting principles as part of the uniform chart of accounts required for casino departments pursuant to N.J.S.A. 5:12-70m and N.J.A.C. 19:45-1.2(b).

(b) The methodology used to determine the amount of the "Provision for Uncollectible Checks" shall be delineated in the casino operator's accounting and internal controls

submission required by section 99 of the Act and N.J.A.C. 19:45-1.3.

1. The methodology shall include the consideration of historical data related to uncollectible checks. The data shall be derived from:

- i. The casino operator's statistics;
 - ii. New Jersey casino industry statistics maintained by the casino operator; or
 - iii. New Jersey casino industry statistics provided to the casino operator by the Commission.
2. The methodology shall, at the discretion of the casino operator, focus on uncollectible patron checks as:
 - i. A percentage of credit issued;
 - ii. A percentage of casino receivables; or
 - iii. Multiple percentages applied to an aging of accounts receivable.

3. The methodology may consider other factors considered relevant by the casino operator provided that any resultant departures from the historical data are contemporaneously documented. The correlation between the other factors and the adjusted amount shall be included in the documentation. Such other factors may, without limitation, include:

- i. Information related to specific obligors or groups of obligors;
- ii. An appraisal of current economic conditions;
- iii. A change in the character of the casino receivables;
- iv. The experience of the collection manager, chief financial officer, or other expert; and
- v. A change in collections policy.

4. On an annual basis, the Commission shall provide to the accounting department of each casino operator New Jersey casino industry statistics on uncollectible checks. The statistics will be based upon calendar year data and shall cover the most recent five year period. The following New Jersey casino industry statistics shall be provided for each of the five years and for the five year cumulative period:

- i. Uncollectible checks as a percentage of credit issued;
- ii. Uncollectible checks as a percentage of undeposited checks; and
- iii. Uncollectible checks as a percentage of returned checks.

5. Each casino operator shall submit and obtain approval of the internal controls required by this section by March 20, 1994.

(c) Nothing in this section shall be construed to limit the authority of the Commission to redetermine the amount of tax liability or to require adjustments or corrections to the accounts of the casino operator.

(d) Each casino operator shall treat each check which it receives in that year but which is invalid and unenforceable pursuant to N.J.S.A. 5:12-101f as cash received from gaming operations, and no deduction for the amount thereof shall be allowed in computing gross revenue.

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

See: 25 N.J.R. 280(a), 24 N.J.R. 1524(a).

In (a) and (a)1: revised text to read "eight percent of gross revenues" rather than "12 percent ...". Deleted outdated text and added text regarding casino department accounts for "any other authorized games ...".

Amended by R.1993 d.656, effective December 20, 1993.

See: 25 N.J.R. 4475(a), 25 N.J.R. 5944(b).

Amended by R.1994 d.504, effective October 3, 1994.

See: 26 N.J.R. 2872(a), 26 N.J.R. 3253(a), 26 N.J.R. 4089(a).

19:54-1.7 Return and reports

(a) The casino operator shall file with the Commission an annual tax return for purposes of the gross revenues tax. The return shall be filed no later than March 15 following the tax year. Filing of the annual tax return shall satisfy the reporting of gross revenues requirement imposed by subsection 148a of the Act. The annual tax return shall be made on a form promulgated and distributed by the Commission pursuant to section 151 of the Act. The casino operator shall provide all information required on the form and shall attest to the accuracy of such information. The annual tax return shall be signed by the chief executive officer, chief financial officer, treasurer, or controller if the casino operator is a corporation; by a general partner if the operator is a partnership; by the chief executive officer if the operator is any other form of business association; or by the proprietor if the operator is a sole proprietorship.

(b) On or before the 10th calendar day of each month, the casino operator shall file with the Commission a monthly gross revenue tax report which shall reflect the amount of gross revenues derived during the preceding month, the amount of tax deposits required for that month, the amount of gross revenues derived during the year to the end of the preceding month, and the tax liability for the year calculated to the end of the preceding month. The monthly gross revenue tax report shall be on a form promulgated and distributed by the Commission, pursuant to section 151 of the Act. The casino operator shall provide all information requested on the form which shall be sworn to and signed by the same individual designated in (a) above to sign the annual return.

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

See: 25 N.J.R. 280(a), 24 N.J.R. 1524(a).

Revised rule to reflect statutory changes to the Act. In (a): deleted "State Treasurer" and added "Commission" and added "annual tax return" to clarify filing requirements. In (b): clarified filing requirements for gross revenue tax.

19:54-1.8 Examination of accounts and records

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 an 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.

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

See: 25 N.J.R. 280(a), 24 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

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), 24 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 who shall fail to file its return when due or to pay the tax or deposit when the same becomes due shall be subject to such penalties and interest as provided in the "State Tax Uniform Procedure Law", Subtitle 9 of Title 54 of the Revised Statutes.

(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 licensee which violates any of the provisions of the Act or these regulations regarding the gross revenues 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), 24 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).

19:54-1.11 (Reserved)

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

See: 25 N.J.R. 280(a), 24 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), 24 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), 24 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), 24 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), 24 N.J.R. 1524(a).