

CHAPTER 69L

TAXES

Authority

N.J.S.A. 5:12-69, 70, 76, and 144.

Source and Effective Date

R.2011 d.312, effective December 19, 2011.
See: 43 N.J.R. 2510(a), 43 N.J.R. 3451(a).

Chapter Expiration Date

Chapter 69L, Taxes, expires on December 19, 2018.

Chapter Historical Note

Chapter 69L, Taxes, was adopted as new rules by R.2011 d.312, effective December 19, 2011. See: Source and Effective Date.

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SUBCHAPTER 1. GROSS REVENUE TAX

13:69L-1.1 Description of tax

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

13:69L-1.2 Definitions

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

“2008 agreement” means the agreement dated August 13, 2008, between the New Jersey Sports and Exposition Authority and the Casino Association of New Jersey and other relevant parties for the benefit of the horse racing industry.

“Agreement costs” means amounts actually paid by the participating casino operators pursuant to the terms of the

2008 agreement (“payments”) together with interest to the extent that payments exceed the tax value of eligible promotional gaming credits during the recoupment period. Interest shall be calculated based on the “prime rate” on the first business day of each calendar month as identified in the H.15 Statistical Release issued by the Federal Reserve Board, plus two percent.

“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 defined in this section.

“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 revenue 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.

“Deduction threshold” means the value of promotional gaming credits that must be wagered in the casinos of all casino operators during a calendar year before any casino operator is entitled to take a deduction from gross revenue for promotional gaming credits during that year. The deduction threshold shall be \$90 million for each calendar year.

“Division” means the Division of Gaming Enforcement.

“Division of Taxation” means the State agency authorized to collect the gross revenue tax on gaming operations.

“Eligible promotional gaming credit” means any promotional gaming credit that is wagered in the casino of a casino operator during a calendar year in excess of the deduction threshold and therefore available as a deduction from gross revenue.

“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.

“Participating casino operator” means a casino operator that is a signatory participant/obligor to the 2008 agreement.

“Participating casino operator sharing percentage” means payments made pursuant to the 2008 agreement by a particular participating casino operator compared pro rata to the payments made pursuant to the 2008 agreement by all participating casino operators, expressed as a percentage. For example, if a particular participating casino operator has made payments of \$6 million pursuant to the 2008 agreement, and all participating casino operators have collectively made payments of \$60 million pursuant to the 2008 agreement, the participating casino operator sharing percentage of that particular participating casino operator would be 10 percent.

“Promotional gaming credit” means a slot machine credit or other item approved by the Division that is issued by a casino operator to a patron for the purpose of enabling the placement of a wager at a slot machine in its casino. The slot machine credit or other item shall be non-cashable unless an alternative form of slot machine credit has been approved by the Division. No such credit shall be reported as a promotional gaming credit by a casino operator unless the casino operator can establish that the credit was:

1. Issued by the casino operator; and
2. Received from a patron as a wager at a slot machine in its casino on or after August 14, 2008.

“Proportionate share” means the value of the promotional gaming credits wagered in the casino of a particular casino operator during a tax year or portion thereof compared pro rata to the value of the promotional gaming credits wagered in the casinos of all casino operators during the same tax year of portion thereof, expressed as a percentage. For example, if \$15 million in promotional gaming credits are wagered in the casino of a particular casino operator during a tax year, and \$100 million in promotional gaming credits are wagered in the casinos of all casino operators during the same tax year, the proportionate share of that particular casino operator would be 15 percent.

“Recoupment period” means the period commencing on August 14, 2008, and ending on the date that the tax value of eligible promotional gaming credits deducted by participating casino operators equals the agreement costs.

“Tax value of eligible promotional gaming credits” means each dollar of deductions for eligible promotional gaming credits shall be valued at an amount equal to the tax rate on gross revenue set forth in N.J.S.A. 5:12-144a to be applied against each dollar of the agreement costs. For example, if the eligible promotional gaming credits in a tax year equal \$100 million, and the tax on gross revenue equals 8 percent, the tax value of the eligible promotional gaming credits would be \$8 million for that tax year.

13:69L-1.3 Tax year

For purposes of the tax on gross revenue, 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.

13:69L-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 therefore. In the event of a transfer of operations to a different casino operator, the transferor-operator will be obligated to file a return and to pay all taxes based upon gross revenue derived by the said transferor 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 Division of Taxation or the Division 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.

13:69L-1.5 Payment of tax

(a) In accordance with subsection 148a of the Act, the gross revenue tax shall be due and payable annually on or before the 15th calendar day of March except that if the 15th calendar day of March is a Saturday, Sunday or legal holiday, the due date shall be advanced to the next regular business day. The gross revenue tax shall be based upon the gross revenue derived by the casino operator during the previous tax year.

(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 Division of Taxation pursuant to subsection 145b 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. The amount of gross revenue upon which the weekly tax payment is based shall be filed with the Division concurrently with the payment to the State Treasurer.

(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 revenue 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. Any casino operator that estimates slot machine drop pursuant to N.J.A.C. 13:69L-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.

(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 revenue 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 Division of Taxation. In the event that the total amount of such deposits is determined

to be greater than the annual tax liability, the casino operator may 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 Division of Taxation first certifies the existence and amount of the overpayment. Nothing in this section shall limit any authority of the Division of Taxation 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.

13:69L-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: 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. 13:69D-1.41 and 1.43, the value of electronic credits withdrawn from patron accounts pursuant to N.J.A.C. 13:69D-1.37A, checks received by a casino operator pursuant to N.J.S.A. 5:12-101, whether collected or not, gaming vouchers and coupons counted pursuant to N.J.A.C. 13:69D-1.33 and documents evidencing credit and debit card chip transactions processed pursuant to N.J.A.C. 13:69D-1.18A regardless of validity, less only the total of all sums paid out as winnings to patrons.

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

(c) For each tax year, the amount recorded on each document evidencing a section 100k credit or debit card transaction and counted pursuant to N.J.A.C. 13:69D-1.33 shall be included in the totals "actually received by a casino operator from its gaming operations" referred to in (a) above, and no adjustment thereof shall be allowed in the event the taxpayer does not receive full and final payment of the amount charged to a credit card account.

(d) For purposes of calculating the tax on gross revenue pursuant to (a) above, a casino operator shall be entitled to a deduction from gross revenue for the value of eligible promotional gaming credits:

1. Allocable to the casino operator in accordance with the provisions of N.J.A.C. 13:69L-1.11(a) or (d); or
2. Wagered in the casino of the casino operator in accordance with the provisions of N.J.A.C. 13:69L-1.11(e).

13:69L-1.7 Return and reports

(a) The casino operator shall file with the Division and the Division of Taxation an annual tax return for purposes of the gross revenue 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 revenue requirement imposed by subsection 148a of the Act. The annual tax return shall be made on a form promulgated and distributed by the Division of Taxation pursuant to section 151 of the Act.

(b) On or before the 10th calendar day of each month, the casino operator shall file a monthly gross revenue report with the Division, and a monthly gross revenue tax return with the Division of Taxation, which shall reflect the amount of gross revenue derived during the preceding month, the amount of tax deposits required for that month, the amount of gross revenue 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.

1. The monthly gross revenue report shall be on a form promulgated and distributed by the Division, pursuant to section 145 of the Act.

2. The monthly gross revenue tax return shall be on a form promulgated by the Division of Taxation, and shall be filed and paid by electronic means.

(c) For purposes of the monthly gross revenue reports required in (b)1 above and the monthly gross revenue tax return required in (b)2 above, the casino operator may estimate slot machine drop provided that:

1. Such estimates are calculated through an approved system of reading and recording slot machine meters pursuant to N.J.A.C. 13:69D-1.42(o);

2. Such estimates are calculated in accordance with methodology approved by the Division;

3. The approved methodology is utilized for each monthly gross revenue report, except that the casino operator may discontinue use of such methodology upon 30 days prior written notice to the Division and with prior Division approval; and

4. The casino operator complies with the requirements of N.J.A.C. 13:69L-1.5(c).

13:69L-1.8 Examination of accounts and records

(a) The Division may perform audits of the books and records of a casino licensee, at such times and intervals as it deems appropriate, in order to certify gross revenue.

(b) The casino operator shall permit duly authorized representatives of the Division to examine the operator's accounts and records for the purpose of certifying gross revenue. In the event that any records or documents deemed pertinent by a Division 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 gross revenue certification process 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 Division, including, at a minimum, a detailed description of the audit tests to be performed;

2. The casino operator submits to the Division 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 Division, 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.

(d) The Division shall notify the casino operator of any tax deficiencies disclosed during the gross revenue certification process.

13:69L-1.9 through 13:69L-1.10 (Reserved)**13:69L-1.11 Deduction for promotional gaming credits**

(a) During the recoupment period, a participating casino operator shall be entitled to a deduction from gross revenue equal to its participating casino operator sharing percentage times:

1. Until the tax value of eligible promotional gaming credits deducted by participating casino operators equals the amount paid in accordance with the 2008 agreement, the value of the eligible promotional gaming credits wagered in the casinos of all casino operators during the tax year or portion thereof; and

2. For the remainder of the recoupment period, the value of the eligible promotional gaming credits wagered in the casinos of all participating casino operators during the tax year or portion thereof, in addition to any deduction to which a participating casino operator may be entitled pursuant to (d) below.

(b) A participating casino operator which ceases gaming operations prior to the full recovery of its pro rata share of the costs of the 2008 agreement shall:

1. Continue to have the right to such allocation of eligible promotional gaming credits and the right to deduct the value of same from gross revenue; and

2. Have the right, subject to Division approval, to transfer and assign such rights to another casino operator,

which shall thereafter have the right to deduct the value of the eligible promotional gaming credits from its gross revenue as if it were the participating casino operator entitled to the allocation of the eligible promotional gaming credits pursuant to (a) above.

(c) Based upon the information reported pursuant to (f) below, the Division shall, on or before the seventh calendar day after month-end, advise all casino operators when the tax value of eligible promotional gaming credits deducted by participating casino operators equals:

1. Amounts paid in accordance with the 2008 agreement, thereby signifying that casino operators may be eligible to take a deduction from gross revenue for promotional gaming credits in accordance with (d) below; and

2. The agreement costs, thereby signifying the end of the recoupment period.

(d) After the tax value of eligible promotional gaming credits deducted by participating casino operators equals amounts paid in accordance with the 2008 agreement and until the end of the recoupment period, in any tax year or portion thereof in which eligible promotional gaming credits are wagered in the casinos of non-participating casino operators, each casino operator shall be entitled to a deduction from gross revenue in an amount equal to its proportionate share, as defined in N.J.A.C. 13:69L-1.2, times the value of the eligible promotional gaming credits wagered in the casinos of non-participating casino operators. This deduction shall be in addition to any deduction to which a participating casino operator is entitled pursuant to (a)2 above.

(e) After the completion of the recoupment period, in any tax year or portion thereof in which there are eligible promotional gaming credits, a casino operator shall be entitled to a deduction from gross revenue in an amount equal to its proportionate share of the eligible promotional gaming credits wagered in the casinos of all casino operators during the tax year or portion thereof.

(f) On or before the third calendar day of each month, each casino operator shall report to the Division the value of the promotional gaming credits that were wagered in its casino during the preceding month. In addition, until all payments are made pursuant to the 2008 agreement, each participating casino operator shall report any payments that it made pursuant to the 2008 agreement during the preceding month. Upon timely receipt of this information, the Division shall, on or before the seventh calendar day after month-end, make available to all casino operators the industry promotional gaming credit information, including the value of promotional gaming credits wagered and the value of eligible promotional gaming credits allocable to each casino operator for deduction from gross revenue.

(g) In each tax year or portion thereof during the recoupment period, and in accordance with the information provided by the Division pursuant to (f) above, each participating

casino operator shall be entitled, in its monthly gross revenue report and monthly gross revenue tax return, to deduct from its gross revenue the value of eligible promotional gaming credits allocated by the Division to such participating casino operator.

(h) In each tax year or portion thereof after the tax value of eligible promotional gaming credits deducted by participating casino operators equals \$90 million, and in accordance with the information provided by the Division pursuant to (f) above, each casino operator shall be entitled, in its monthly gross revenue report and monthly gross revenue tax return, to deduct from its gross revenue its proportionate share, as defined by N.J.A.C. 13:69L-1.2, times the value of the eligible promotional gaming credits wagered in the casinos of non-participating casino operators. This deduction shall be in addition to any deduction to which a participating casino operator is entitled pursuant to (g) above.

(i) In each tax year or portion thereof after the completion of the recoupment period, and in accordance with the information provided by the Division pursuant to (f) above, each casino operator shall be entitled, in its monthly gross revenue report and monthly gross revenue tax return, to deduct from its gross revenue its proportionate share of the value of the eligible promotional gaming credits wagered in the casinos of all casino operators.

(j) Any increase or decrease in the value of eligible promotional gaming credits from the previous month shall be reported on the next weekly tax transfer made in accordance with N.J.A.C. 13:69L-1.5.

(k) Notwithstanding any other provision of this section to the contrary, the Division may reduce the value of the available deduction for promotional gaming credits if it determines that such a limitation is necessary to eliminate a negative fiscal impact on the Casino Revenue Fund attributable solely to the deduction and not to other economic or other factors that cause a negative fiscal impact to the Casino Revenue Fund. In accordance with the provisions of N.J.S.A. 5:12-144.2d(2), a negative fiscal impact shall be deemed to have occurred only if the value of promotional gaming credits wagered by patrons in all casinos during any tax year falls below \$90 million.

SUBCHAPTER 2. INVESTMENT TAX CREDITS

13:69L-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.

13:69L-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 Division 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 also be filed with the Division. The CRDA shall give notice of its receipt of a petition for deferral to the Division within three days of the date on which the licensee files the petition. The Division 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 Division 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 Division, 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 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 Division within the time period specified. Failure to provide in a timely manner any such information or assistance to the Division may, in the discretion of the Division, 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 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. 13:69B.