



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF CHARITABLE GAMING
132 Brighton Park Boulevard
Frankfort, Kentucky 40601

GENERAL NOTICE

TO: Kentucky Licensees
FROM: Cannon G. Armstrong, Commissioner
DATE: December 1, 2016
RE: Calculation of Fees under KRS 238.570(1)

Introduction

The Commonwealth of Kentucky authorized electronic pulltabs as a permissible type of charitable gaming as of March 2016. Since that time, some Kentucky licensees have raised a question of what is the proper method to calculate fees due under KRS 238.570(1). These licensees have asserted to the Department that the existing method of calculation does not comply with the statutes, and results in excessive fees being collected on the gross receipts of electronic pulltab sales. We have also noted in filings made with the Department that there is some variation occurring in how licensees are making this calculation, which needs to be corrected. This has become an issue particularly with the electronic games because of the way winnings are accrued, recorded, and in many cases are immediately used by the players to purchase additional plays without having to turn in winning tickets. The Department of Charitable Gaming and the Public Protection Cabinet have given this question due consideration and research, and submit this response.

Analysis

KRS 238.570(1) requires that “[a] fee is imposed on charitable gaming in the amount of fifty-three hundredths of one percent (0.53%) of **gross receipts** derived from all charitable gaming

conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky.” (emphasis added). As per subparagraph (3) of that section, the fee is adjusted in odd-numbered years; currently, the fee is $.00962 \times$ gross receipts. KRS 238.505 provides this definition: “(12) **“Gross receipts”** means **all moneys collected or received** from the conduct of charitable gaming.”

With electronic pulltab games, an individual player pays cash into the pulltab machine, which is reflected on the player’s electronic account. If the player then has any winnings, those are added directly into the electronic account. Losses in the form of the cost of each ticket played, of course, are deducted from the account. *The player may at any point choose to cash out the account, or the player may continue to play more games out of the proceeds in the account.* For example, a player might pay \$1 into the machine, and win \$10 on that play. The player may then cash out the \$10, or may continue to play up to 10 more losing tickets, ending with a \$0 balance in the account.

The issue is whether the fee to be calculated on “gross receipts” is calculated on the \$1 the player originally paid in, or on the \$11 total of games played by the player. Our licensees contend that the fee should only be paid on the initial \$1 because that is the only cash they receive for the gaming, i.e., they contend this is the meaning of the phrase “moneys collected.”

It is the conclusion of the Department of Charitable Gaming, however, with which the Public Protection Cabinet has concurred, that the fee should be calculated on the number of games actually played by the player, because the player has, in essence, paid in their winnings for additional pulltab plays. These are not “free” plays, but are plays paid for from the player’s winnings. In other words, the money has been “received” by the player in his account, and then paid back out for additional plays and is thus “received” back into the machine’s account, which inures to the benefit of the licensed charitable organization and the distributor based on their contractual arrangement. The winnings are always available to the player as cash, and the player has the choice to dispose of the winnings to purchase more plays rather than taking the cash. A transfer of the money and receipt of income has taken place. We do not believe the actual, physical exchange of legal tender matters in this determination, particularly in this age of digital financial transactions.

The Department of Charitable Gaming will thus continue its existing policy, and will calculate and collect the KRS 238.570(1) fee based upon the number of games played, not the actual cash received in hand.

