



STATE OF WEST VIRGINIA

LOTTERY POLICY STATEMENT 11-08/LVL

AUDITS, OPERATOR-RETAILER CONTRACTS: PERCENTAGE SHARES of REVENUE AND SHARING EXPENSES

[Adopted March 27, 2012]

§1. Situation.

During 2011, the Commission received complaints concerning the percentage sharing provisions of the operator-retailer contracts on file with the Lottery [and in several cases not on file]. Some operators appear to be charging their respective retailers an extra weekly or monthly fee. In many cases, there is no contractual basis for the charges. In other cases, the operator and retailer apparently have agreed to a sharing of expenses. Upon review of this issue, the Lottery also realized the necessity of creating a uniform one (1) page Settlement Report that accounts for distributions of the agreed percentage shares made pursuant to these operator/retailer contracts that can be retained by the Operator as the official record of these transactions for audit purposes. The current lack of settlement records precludes the Lottery from conducting an accurate and thorough audit of these transactions as required by law.

§ 2. Laws and Rules.

West Virginia Code §29-22B-706 reads in part as follows:

In addition to the general duties imposed on all licensees in section 22B-701 of this article, an operator shall: ...

(4) Pay no compensation of any kind to any limited video lottery retailer or give or transfer anything of value to any limited video lottery retailer, that is in addition to the consideration stated in the written agreement between the operator and the limited video lottery retailer, which may be not less than forty percent nor more than fifty percent of the amount of net terminal income received by the operator in connection with the video lottery terminals at that location;

The limited video lottery Legislative Rule 179 CSR 5-19.2.c reads as follows:

The operator shall provide to the commission an affidavit stapled to each contract, which is signed and attested to by the operator's chief executive stating that this contract is the only contract, agreement or understanding, written or oral, between the operator and the licensed video lottery retailer concerning the placement and operation of limited video lottery terminals, and that the operator will execute no further limited video lottery agreements with the retailer so long as this attached agreement is in force for video lottery terminals on the premise of the retailer stated in the contract. Any other agreements between the operator and the limited video lottery retailer shall be identified by the operator and are subject to review by the commission. Those agreements shall be arms length and for fair market consideration, and shall not be for excess or unreasonable consideration designed to circumvent the requirement of this subdivision 19.2.c of this subsection.

W.Va. Code §29-22B-1402(d) further requires that "(e)ach limited video lottery retailer's periodic distribution from the appropriate operator shall be paid by check or by electronic funds transfer to the limited video lottery retailer's designated bank account."

Additionally, 179 C.S.R. 179-5-3.1. reads in pertinent part:

3.1. The commission shall determine on a continuing basis the eligibility of licensees to hold a

License by one or more of the following means...

3.1.b. The commission shall perform spot audits at retailer locations and at operator locations;

Finally, W.Va. Code §29-22B-701(5) requires all licensees to maintain all records required by the Commission.

§ 3. Policy.

(a) The State Lottery Commission policy for the ten-year permit period beginning on July 1, 2011, in compliance with State law, requires all periodic contract sharing payments made by operators to retailers to be by check or electronic transfer and paid in an amount equal to the retailer's contracted percentage times the remainder of gross profits after the state's percentage share of 30% to 50% has been deducted. ("Gross Profits" is "Gross Terminal Income" minus the Lottery's 2% administrative deduction.)

(b) The operator shall document all periodic distributions to a retailer by completing a WV Lottery Settlement Report each time a distribution is made. **WV**

Lottery Settlement Reports shall be retained by the operator for two (2) years and shall be the official record reviewed by the WV Lottery when conducting an audit of the periodic distributions made between an operator and retailer. If an operator fails to complete and retain the WV Lottery Settlement Reports required by the Commission for the requisite two (2) years then the operator's eligibility to continue holding a license will be subject to review by the Commission.

(c) If a separate written, arms-length contractual agreement is made between the operator and retailer that contains cost or expense sharing agreement(s) that do not violate any restrictions on such agreements found in 179 CSR 5-19.2.c, settlement for these agreed expenses shall be a separate transaction(s) after the percentage shares are distributed to the operator and retailer.

(d) The West Virginia Lottery is not party to the agreements made between operators and retailers and does not approve contracts. Contract disputes between operators and retailers have not been, and will not be, decided by the West Virginia Lottery. The West Virginia Lottery only reviews the contracts to determine the parties, term, number of machines, and that the contract contains a lawful revenue percentage split.

§4. – Adoption.

This policy statement was adopted by the State Lottery Commission at its March 27, 2012 meeting after fair and frank discussion.