

IN THE SUPREME COURT OF PENNSYLVANIA

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No. \_\_\_\_\_

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SANDS BETHWORKS GAMING, LLC

*Petitioner,*

v.

PENNSYLVANIA DEPARTMENT OF REVENUE; C. DANIEL HASSELL  
IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE  
PENNSYLVANIA DEPARTMENT OF REVENUE; and THE  
PENNSYLVANIA GAMING CONTROL BOARD

*Respondents.*

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VERIFIED PETITION IN THE NATURE OF A COMPLAINT SEEKING  
A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

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Petitioner Sands Bethworks Gaming, LLC (“Sands” or “Petitioner”), by and through its undersigned counsel, DLA Piper LLP (US), brings the following Verified Petition under 4 Pa. C.S. § 1904 of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S. § 1101 et. seq., *as amended* (2017) (the “Amended Act”), against the Pennsylvania Department of Revenue, C. Daniel Hassell in his official capacity as Secretary of the Pennsylvania Department of Revenue, and the Pennsylvania Gaming Control Board.

Received in Supreme Court

DEC 29 2017

Middle

RECEIVED

DEC 28 2017

SUPREME COURT  
EASTERN DISTRICT

## Overview

1. **Summary.** The Amended Act establishes a new tax scheme that violates the Uniformity Clause of the Pennsylvania Constitution, the Special Laws Clause of the Pennsylvania Constitution, and the equal protection and due process guarantees of the Constitution of the United States. This Petition seeks (i) a declaration that this aspect of the Amended Act (described below) is unconstitutional on its face and as applied to the Petitioner, (ii) a permanent injunction against its enforcement, and (iii) a permanent injunction enjoining the distribution of any funds that may be paid into the restricted “Casino Marketing and Capital Development Account” (“CMCD Account”) and requiring the return of any such funds paid into it.

2. **The Challenged Legislation.** In the portions challenged here, the Amended Act taxes casinos based on their daily slot machine revenues through its new “Supplemental Daily Assessment” (“Supplemental Assessment”). 4 Pa. C.S. §§ 1407(C.1), 1407.1, 1408(C.1). The Act requires that the Supplemental Assessment be paid into the CMCD Account, a specific and restricted fund. The Act then requires the Board to redistribute the Supplemental Assessment receipts from the CMCD Account back to a subset of the same casinos paying the tax. This petition challenges the aspects of the Amended Act that establish the Supplemental Assessment, the deposit of the Supplemental Assessment proceeds into the CMCD

Account, and the payouts made from the CMCD Account to a subset of casinos. For purpose of this Petition, the Act's framework of requiring payment of the Supplemental Assessment into the CMCD Account and then distributing it to certain recipients out of that fund is referred to as the "Tax Scheme."

3. **The Tax Scheme.** The Supplemental Assessment and CMCD Account create a patently non-uniform tax. The payouts from the CMCD Account function as a variable tax credit for the recipients that result in impermissibly variable tax rates. The amount that each casino must get credited from the CMCD Account—*i.e.*, from the very taxes that they paid into the fund—is unconstitutionally based on the casinos' revenue. Some casinos receive higher payouts from the CMCD Account than others, in amounts that depend on the casino's annual slot revenues. Casinos with higher revenues, like the Petitioner, are not eligible for any payouts from the CMCD Account at all. The Amended Act thus imposes a higher net tax rate on high-revenue casinos compared with other casinos. In addition, there is no public purpose for the payouts, which fund marketing and improvements to recipients' private casino operations.

4. **The Uniformity Clause.** The Uniformity Clause of the Pennsylvania Constitution forbids taxing businesses at different rates based on their size and revenue. Pa. Const. Art. VIII § 1. The Uniformity Clause provides that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits

of the authority levying the tax, and shall be levied and collected under general laws.” *Id.* The Tax Scheme violates those requirements. It is patently *not* uniform. Through its taxation and redistribution framework, the Tax Scheme places a varying and non-uniform net tax on the daily receipts that casinos generate from their businesses based only on the casino’s annual slot revenue levels. These casinos are in the same class of taxpayers. The Tax Scheme’s variable net tax rates, based only on casino revenue levels, are invalid under the Uniformity Clause.

5. **The Public Purpose Requirement.** Taxes must have a public purpose. The Tax Scheme serves no purpose except to finance a restricted fund that is used exclusively to redistribute tax proceeds to other casino licensees for their private use.

6. **The Special Law Clause.** The Pennsylvania Constitution prohibits special laws. It provides, “[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law.” Pa. Const. Art. III, § 32. It prohibits taxes that are “levied for a special local purpose” where only a “portion of the public is specially benefited,” *Allegheny County v. Monzo*, 500 A.2d 1096, 1105 (Pa. 1985), and where the “benefit received and the burden imposed [are] palpably disproportionate.” *Id.* at 1102. The Tax Scheme is specifically designed to redistribute tax revenue from certain casinos (like Sands)

to other casinos. This redistribution is just the kind of non-public special law that the Pennsylvania Constitution prohibits. It benefits only a small group and at grossly disproportionate amounts.

7. **The Federal Constitution.** For largely the same reasons, the Tax Scheme violates the equal protection and constitutes a taking without due process under the Fourteenth Amendment to the Constitution of the United States. See *Mount Airy #1, LLC v. Pennsylvania Dep't of Revenue*, 154 A.3d 268, 273 (Pa. 2016) (federal equal protection and the Pennsylvania Uniformity Clause are “largely coterminous”); *Monzo*, 500 A.2d at 1102 (holding that a special tax that disproportionately benefits a portion of the public is “a taking without due process under the Fourteenth Amendment of the United States Constitution” and “an arbitrary form of classification in violation of equal protection”).<sup>1</sup>

### **The Parties**

8. Petitioner Sands is a limited liability company organized and existing under the laws of Pennsylvania and having a business address at 77 Sands

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<sup>1</sup> This Court held in *Mount Airy*, that § 1904 does not provide this Court with original jurisdiction to hear a claim under 42 U.S.C. § 1983. 154 A.2d at 271 n.1. Petitioner hereby expressly reserves all rights to pursue relief under § 1983 in an appropriate forum, and does not waive any such claim. *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411 (1964). To the extent the claims of equal protection and due process under the Constitution of the United States overlap with any claim under § 1983, the Petitioner states that it reserves all rights to pursue those claims in the same court that has competent jurisdiction to adjudicate its § 1983 claim.

Boulevard, Bethlehem, PA 18015. Sands has operated Sands Casino Resort Bethlehem (“Sands Bethlehem”) in Pennsylvania for all times relevant to this petition. Sands Bethlehem had \$304,160,284.80 in “Gross Terminal Receipts” for its slot machine business in the 2016-2017 tax year.<sup>2</sup> Sands reasonably expects its gross terminal revenues to remain well above \$200 million.

9. Respondent Pennsylvania Department of Revenue (the “Department”), is an executive agency of the Commonwealth of Pennsylvania with its principal address at 1147 Strawberry Square, Harrisburg, Pennsylvania 17128.

10. Respondent C. Daniel Hassell, is Secretary of Revenue of the Commonwealth of Pennsylvania (the “Secretary”). Defendant Hassell is named as a defendant in this action in his official capacity.

11. Respondent the Pennsylvania Gaming Control Board (the “Gaming Board”), is an executive agency of the Commonwealth of Pennsylvania with its principal address at Verizon Tower, Strawberry Square, 5th Floor, Harrisburg, Pennsylvania 17101.

12. The Gaming Act established the seven-member Gaming Board. The Board consists of three members appointed by the Governor and four members appointed by the House and Senate leadership. 4 Pa. C.S. § 1201(b).

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<sup>2</sup> “Gross Terminal Revenue” (“GTR”) is the difference between the wagers received by a slot machine minus the total of payouts to patrons, cash paid to purchase certain annuities to fund prizes to patrons, and qualifying personal property distributed to patrons. 4 Pa. C.S. § 1103.

### **Jurisdiction**

13. The Amended Act confers exclusive jurisdiction on this Court “to hear any challenge to or to render a declaratory judgment concerning the constitutionality” of the Act. 4 Pa.C.S. § 1904; *see DePaul v. Commonwealth*, 969 A.2d 536, 538 n.1 (Pa. 2009); *Pennsylvania Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 392 (Pa. 2007).

14. This Court’s province is to determine the constitutionality of Pennsylvania statutes. *Respublica v. Duquet*, 2 Yeates 493, 501 (Pa. 1799). It is this Court’s function to “determine the meaning of Constitutional and statutory provisions,” and this is “precisely the role of the Judiciary in our tri-partite system of government.” *Thornburgh v. Lewis*, 470 A.2d 952, 955 (Pa. 1983).

### **Factual Background**

15. Anyone seeking to operate slot machines in Pennsylvania needs a license from the Gaming Board. Upon issuance of a “Slot Machine License,” the licensee may place and operate slot machines at a licensed facility. 4 Pa. C.S. § 1301.

16. There are different Categories of Slot Machine Licenses. As of the date of this filing, the Gaming Board has issued six “Category 1” Slot Machine Licenses, five “Category 2 licenses”, and two “Category 3” Slot Machine Licenses. Each Category 1 and Category 2 licensee is permitted to operate up to 5,000 slot

machines and, upon issuance of a table games certificate, up to 250 table games at their respective licensed facilities. 4 Pa. C.S. §§ 1302-1303 (Category 1 licenses and requirements), § 1304 (Category 2 licenses). Category 3 Licensees are permitted to operate up to 600 slot machines and, upon issuance of a table games certificate, up to 50 table games at their respective licensed facility. *Id.* § 1305 (Category 3 licenses).<sup>3</sup> The Amended Act also added a Category 4 license for smaller gaming facilities to be placed at qualified locations throughout the Commonwealth. 4 Pa. C.S. §§ 1305.1(D)(1); 13A11 (B)(2.2)(II).

17. Sands Bethlehem has operated under a Category 2 license for all periods relevant to this Petition.

18. Under the Amended Act, each Slot Machine Licensee is required to pay certain taxes, including a Slot Machine Tax, a Daily Assessment (paid into the “Pennsylvania Gaming Economic Development and Tourism Fund”),<sup>4</sup> and the newly-created Supplement Assessment (paid into the “Casino Marketing and Capital Development Account”). *See* 4 Pa. C.S. §§ 1403, 1407, and 1407.1.

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<sup>3</sup> Category 1 licensees are also called “racinos,” and require hosting of live racing in addition to casino activities. 4 Pa. C.S. § 1302. Category 2 licensees are stand-alone casinos. 4 Pa. C.S. § 1304. And Category 3 licensees are known as “resort casinos” and have certain restrictions on gambling by hotel guests or members. 4 Pa C.S. § 1305.

<sup>4</sup> The Economic Development and Tourism Fund is a discreet account that pays for local public works and pays off the debt for certain public projects such as the Philadelphia Convention Center. 4 Pa. C.S. § 1407(B).



19. All Category 1, 2, and 3 licensed gaming entities, including Sands, will be required to pay the Supplemental Assessment. The Supplemental Assessment is a new tax established by the Amended Act that taxes certain licensed gaming entities in the amount of 0.5% of their GTR. These tax payments go into the newly-created CMCD Account. 4 Pa. C.S. § 1407(C.1).

20. In addition, Slot Machine Licensees must pay Slot Machine Taxes into the State Gaming Fund. *See* 4 Pa. C.S. § 1403(A)& (C)(1). The Slot Machine Tax rate for non-category 4 casinos is 34% under the Amended Gaming Act. At least \$2,000,000 annually is transferred from the State Gaming Fund to the CMCD Account. 4 Pa. C.S. § 1408(C.1).

21. Pursuant to § 1501 of the Gaming Act, the Department is authorized and assigned the duties of administering and collecting taxes imposed under the Amended Gaming Act. 4 Pa. C.S. § 1501. The Gaming Board is charged with administering the CMCD Account and making distributions from the CMCD Account to certain licensed casinos pursuant to its own procedures and guidelines. 4 Pa. C.S. § 1407.1.

22. But under the Amended Act, the CMCD Account is a “restricted” fund that serves only as a pass-through account that collects the proceeds of the Supplemental Assessment and redistributes them from higher-revenue casinos to lower-revenue casinos. After the Supplemental Assessment and designated Slot

Machine Taxes are deposited into the CMCD Account, the Board *must* pay out mandatory “grants” from the CMCD Account balance back to a narrow subset of the same casinos that financed the Account. *See id.* 1407.1(E) (specifying the payout that licensees “*shall* receive” depending on their revenues and license category) (emphasis added). The Amended Act specifies the “grant” amounts, which vary depending only on the casinos’ slot machine revenues and license category. *Id.* The receiving casinos may use the payouts for their own “marketing and capital development.” 4 Pa. C.S. § 1407.1(D). The CMCD Account thus is a form of tax credit for the recipients that offset part of their tax burden.

23. Although slot machine licensees (except Category 4 licensees) pay the Supplemental Assessment into the CMCD Account at a uniform rate of 0.5% of GTR, the mandatory “grant” payments out of the CMCD Account are inherently unequal—they are tiered according to the revenues of the potential recipient casinos. Licensees with GTRs under \$200 million are entitled to receive a “grant” from the CMCD Account in amounts ranging from \$500,000 to \$4 million, depending on the category of license and the licensee’s GTR. 4 Pa. C.S. § 1407.1(E). But licensees such with GTR over \$200 million, such as Sands, are not eligible for CMCD “grants.” *Id.*<sup>5</sup>

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<sup>5</sup> Category 4 licensees are also ineligible for a “grant” from the CMCD Account, as are any Category 3 licensees with GTR over \$50 million. 4 Pa. C.S. § 1407.1(D) & (E).

24. The Tax Scheme therefore creates a net tax with effective rates that disproportionately favor lower-revenue casinos over higher-revenue casinos. Upon redistribution of the Supplemental Assessment out of the CMCD Account, the net result is that casinos with GTR under \$200 million can reduce their effective tax rate by 1%-2.7%, depending on their license category and revenues. By contrast, a casino like Sands Bethlehem, with GTR above \$200 million, is ineligible for any CMCD Account payout.

25. The following chart summarizes the payout scheme and the effective reduction of each licensee's tax rate:

Eligibility for CMCD "Grant"	"Grant" Amounts	Effective Reduction in Tax Rate <sup>6</sup>
Cat. 1 and 2 Slot Machine Licensees with GTR of \$150 million or less	\$4 million	2.6%+ reduction in GTR tax rate
Cat. 1 and 2 Slot Machine Licensees with GTR between \$150 and \$200 million	\$2.5 million	1.25% to 1.7% reduction in GTR tax rate
Cat. 3 Slot Machine Licensees with GTR under \$50 million	\$500,000	1.0%+ reduction in GTR tax rate

<sup>6</sup> The effective reduction in tax rate reflects the mandatory grant amount as a percentage of the *maximum* GTR for a licensee in each grouping. If a grantee's GTR is less than the maximum amount, that grantee will benefit from an even larger effective reduction in its tax rate as a percentage of its GTR.

Eligibility for CMCD "Grant"	"Grant" Amounts	Effective Reduction in Tax Rate <sup>6</sup>
Cat. 1 and 2 Slot Machine Licensees with GTR above \$200 million ( <i>i.e.</i> , <b>Sands Bethlehem</b> ) & Cat. 3 Slot Machine Licensees with GTR above \$50 million	Ineligible for CMCD "grant"	No reduction in GTR tax rate

4 Pa. C.S. § 1407.1(E).

26. Casinos like Sands thus pay a higher tax rate than other licensed casinos simply because they have larger slot revenues than other licensees. The Supplemental Assessment therefore results in substantially unequal rates of taxation on certain slot machine licensees, including Sands, based on the amount of revenue generated by each entity. It also directs the taxes to private rather than public purposes.

### Constitutional Principles

#### A. **The Uniformity Clause**

27. The Uniformity Clause does not permit variable tax rates that change depending on the taxpayer's income or revenues. *Nextel Comm. of Mid-Atl., Inc. v. Commonwealth, Dep't of Revenue*, 171 A.3d 682, 699-700 (Pa. 2017); *Mount Airy #1, LLC v. Pennsylvania Dep't of Revenue*, 154 A.3d 268, 276 (Pa. 2016); *Amidon v. Kane*, 279 A.2d 53, 62 (Pa. 1971); *Turco Paint & Varnish Co. v. Kalodner*, 184 A. 37, 40 (Pa. 1936); *Kelley v. Kalodner*, 181 A. 598 (Pa. 1935).

28. The Court evaluates how a tax actually “functions” in the context of the statutory scheme to decide whether the tax “in its operation or effect” resulted in non-uniform results. *Nextel*, 171 A.3d at 698-99; *Mount Airy*, 154 A.3d at 277. This Court does not evaluate tax issues “in a vacuum,” but “also examine[s] how [a tax] functions when applied to establish a corporation’s net income tax liability.” *Nextel*, 171 A.3d at 698.

29. This Court thus does not elevate form over substance. It accounts for the practical net effect of not only the tax rate, but also of any applicable credits, exclusions, and deductions. *Nextel*, 171 A.3d at 698 (finding corporate tax scheme violated Uniformity Clause even though tax rate was uniformly 9.9% because annual dollar limits on carry-over loss deductions resulted in higher effective tax rates for companies with revenues over \$3 million); *Mount Airy*, 154 A.3d at 277 (holding that Uniformity Clause was violated where casinos with revenues over \$500 million faced higher local assessment tax rate than casinos with revenues under \$500 million, which paid a flat tax).

30. Calling CMCD Account payments “grants” does not change their function as a form of tax credit. In the same vein, calling the Supplemental Assessment an “assessment” rather than a “tax” does not change that it is actually tax. *See, e.g., National Federation of Independent Business v. Sebelius*, 567 U.S.

519, 563-64 (2012) (upholding “individual mandate” in health care legislation because it was a tax irrespective of its labeling).

### **B. The Public Purpose Requirement**

31. Tax legislation must be “reasonably designed to yield benefits to the public.” *Tosto v. Pennsylvania Nursing Home Loan Agency*, 331 A.2d 198, 202 (Pa. 1975). Taxes are to raise revenue only for public purposes. *See Sharpless v. Mayor of Philadelphia*, 21 Pa. 147, 148 (Pa. 1853) (“An Act of the legislature authorizing contributions to be levied for a mere private purpose, or for a purpose which, though it be public, is one in which the people from whom they are exacted have no interest, would not be a law, but a sentence commanding the periodical payment of a certain sum by one portion or a class of the people to another.”).

32. The Tax Scheme imposes a tax whose proceeds are entirely and directly redistributed to other private casinos for their own benefit for purposes of commercial marketing and improvements to their own private facilities. The Tax Scheme does not benefit the public in any way. Accordingly, the Supplemental Assessment, which funds the Tax Scheme, is not a valid tax.

### **C. The Special Law Provision**

33. The “Special Law” provision of the Pennsylvania Constitution provides that “the General Assembly shall pass no local or special law in any case which has been or can be provided for by general law.” Pa. Const. Art. III § 32.

That provision prohibits special taxes where only a “portion of the public is specially benefited” and where the “benefit received and the burden imposed [are] palpably disproportionate.” *Allegheny County v. Monzo*, 500 A.2d 1096, 1102, 1105 (Pa. 1985); *see also Bold Corp. v. County of Lancaster*, 801 A.2d 469 (Pa. 2002) (evaluating whether the burdens imposed by a tax disproportionately outweighed the benefits that the tax would generate); *Leventhal v. City of Philadelphia*, 542 A.2d 1328 (Pa. 1988) (applying *Monzo*’s proportionality test). The Special Law restrictions also specify that the General Assembly may not pass a special law that “exempt[s] property from taxation” or “[r]emit[s] ... moneys legally paid into the treasury.” Pa. Const. Art. III § 32.

#### **D. Equal Protection and Due Process**

34. A special tax not only violates state uniformity standards, but also is “a taking without due process under the Fourteenth Amendment of the United States Constitution” and “an arbitrary form of classification in violation of equal protection.” *Monzo*, 500 A.2d at 1102.

35. Under the federal Equal Protection Clause, a tax classification scheme is generally evaluated under rational-basis review. *Mount Airy*, 154 A.3d at 274. The Pennsylvania Uniformity Clause typically aligns with federal equal protection protections, although Pennsylvania uniformity requirements are, in some instances, more restrictive than federal law. *Valley Forge Towers Apartments N, LP v. Upper*

*Merion Area Sch. Dist.*, 163 A.3d 962, 967 n.4 (Pa. 2017); *Mount Airy*, 154 A.3d at 274. In other words, this Court has “struck down numerous tax statutes” under the Pennsylvania Uniformity Clause “that unquestionably would survive the highly deferential rational basis review attendant to a federal Equal Protection challenge.” *Mount Airy*, 154 A.3d at 274.

36. But even under a deferential standard of review, the Equal Protection Clause still requires that any “classification rationally further a legitimate state interest.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). Moreover, equal protection does not permit a state to subject certain taxpayers to “discriminatory treatment by subjecting [them] to taxes not imposed on others of the same class.” *Allegheny Pittsburgh Coal Co. v. Cty. Comm’n of Webster Cty., W. Va.*, 488 U.S. 336, 345–346 (1989) (citation omitted).

37. Similarly, “where the benefit received and the burden imposed is palpably disproportionate, a tax is \* \* \* a taking without due process under the Fourteenth Amendment to the United States Constitution.” *Monzo*, 500 A.2d at 1102; *see also Leventhal v. City of Philadelphia*, 542 A.2d 1328, 1332 (Pa. 1988).

### **COUNT I** **(Violation of the Uniformity Clause)**

38. Petitioner Sands incorporates by reference Paragraphs 1 through 37 of this Petition as though set forth herein in full.



39. As applied to Sands and to other slot machine licensees, 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), violate Article VIII § 1 of the Pennsylvania Constitution (the Uniformity Clause). The Tax Scheme imposes a substantially unequal tax burden on similarly situated taxpayers, without any reasonable basis for the difference in treatment. The continued enforcement of 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1) is arbitrary and unreasonably discriminatory.

40. When the Supplemental Assessment and Slot Machine Tax are considered together with the CMCD Account payouts, the result is that similarly situated taxpayers are taxed at different effective rates depending on their revenue level. *See Nextel*, 171 A.3d at 698 (concluding that tax scheme violated the Uniformity Clause even though it did “not explicitly exempt income below a certain threshold from taxation,” because it “operates in a manner that creates the very same type of exemption from taxation solely on the basis of income”).

41. Under the Tax Scheme, the proceeds of the Supplemental Assessment and the Slot Machine Tax and are deposited into the restricted CMCD Account. The Amended Act then requires the Board to pay those proceeds back to licensed gaming entities whose slot revenues fall within certain thresholds. The Amended Act sets the mandatory payouts from the CMCD Account at different amounts which vary based on casino revenues. The CMCD Account payouts function as a tax credit to the recipient casinos.

42. By imposing variable tax obligations based on the revenue level of the casino, the Tax Scheme violates the Uniformity Clause. *See Mount Airy*, 154 A. 3d at 274 (invalidating the prior Gaming Act’s local share assessment scheme because higher-revenue casinos paid a higher effective tax rate than lower-revenue casinos); *see also Nextel*, 171 A.3d at 699-701 (striking down the \$3 million cap on carry-over losses for corporations); *Turco Paint*, 184 A. at 40 (holding that “[w]here different rates are legislatively imposed on varying amounts or quantities of the same tax base, then you have a graded tax that lacks uniformity under [the Pennsylvania] constitution”); *In re Cope’s Estate*, 43 A. 79 (Pa. 1899) (overturning inheritance tax statute that exempted the first \$5,000 of the estate property from taxation); *Fidelity Bank, N.A. v. Commonwealth, Dep’t of Revenue*, 645 A.2d 452, 460-61 (Pa. Commw. Ct. 1994) (holding tax-credit law violated uniformity clause where the availability of the credit depended on the bank’s charter date).

43. As a result of this Tax Scheme, certain slot machine licensees of the same class, including Petitioner, face grossly unequal rates of taxation that are arbitrary, unreasonable, not related to a legitimate governmental purpose, and not based on any legitimate distinction between the taxpayers.

44. The Tax Scheme is an unconstitutional progressive tax. A licensee with greater GTR is taxed at a higher effective rate compared to a licensee with lower GTR.

45. The enforcement and collection of the Supplemental Assessment, as well as the payouts from the CMCD Accounts, therefore violates the Uniformity Clause.

46. If the Respondents were permitted to implement the Tax Scheme, Sands would suffer irreparable harm, including the use of Sands' tax proceeds to fund its competitors for their own marketing and capital improvements.

WHEREFORE, Petitioner Sands Bethworks Gaming, LLC, demands judgment in its favor and against all Respondents on its claim for violation of the Uniformity Clause of the Pennsylvania Constitution and requests that the Court grant the following relief:

- A. Enter judgment declaring the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), and all of its constituent parts, to be in violation of the Uniformity Clause of the Pennsylvania Constitution and, therefore, unconstitutional on its face;
- B. Enter judgment declaring the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), and all of its constituent parts, to be in violation of the Uniformity Clause of the Pennsylvania Constitution and the Respondents in their continued collection of the tax from Petitioner;
- C. Enter an Order enjoining the Respondents from further collection of the tax enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1);
- D. Enter an Order enjoining the distribution of any funds paid into the CMCD Account and requiring the return to the payor(s) of any funds paid into it; and

- E. Award to the Petitioner such other and further relief as may be necessary, just, reasonable, and proper.

**COUNT II**  
**(Lack of Public Purpose)**

47. Petitioner Sands incorporates by reference Paragraphs 1 through 46 of this Petition as though set forth herein in full.

48. The Tax Scheme violates the Pennsylvania Constitution's Special Law provision. The proceeds of the Supplemental Assessment benefit only a discreet handful of private entities and the benefits are not proportional to the tax burdens. *See Monzo*, 500 A.2d at 1105-06 (invalidating a 1% room-rental tax designated to fund a new convention center in downtown Pittsburgh because the convention center would benefit only the closest hotels, but not the distant suburban hotels like the hotel operator challenging the room tax).

49. Sands, and others like it, pay the Supplemental Assessment but receive no benefit from the Tax Scheme. The Tax Scheme imposes a tax whose proceeds are entirely and directly redistributed to other private casinos for their own benefit in marketing and improvements to their own facilities. No conceivable public benefit is served by the Tax Scheme. Sands does not receive any private benefit from the tax either. Rather, Sands suffers irreparable harm by having its Supplemental Assessment tax payments directed solely at funding its competitors' private commercial interests. The impact of this unlawful tax affects

its financial and operational condition and its competitive standing in the marketplace. The use of the tax for exclusively private, rather than public, purposes renders the Tax Scheme unconstitutional. *See Sharpless v. Mayor of Philadelphia*, 21 Pa. 147, 148 (Pa. 1853) (holding that a tax “levied for a mere private purpose, or for a purpose which, though it be public, is one in which the people from whom they are exacted have no interest” is invalid).

50. The Respondents’ enforcement and collection of the Supplemental Assessment despite the absence of any public purpose would violate bedrock principles of tax law.

51. Sands and others like it would suffer and will continue to suffer irreparable harm if the tax were permitted to be imposed.

WHEREFORE, Petitioner Sands Bethworks Gaming, LLC, demands judgment in its favor and against all Respondents on its claim that the Tax Scheme is invalid because it serves no public purpose and requests that the Court grant the following relief:

- A. Enter judgment declaring the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), and all of its constituent parts, to be invalid and, therefore, unconstitutional on its face;
- B. Enter judgment declaring the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), and all of its constituent parts, to be invalid as applied by the Respondents in their continued collection of the tax from the Petitioner;

- C. Enter an Order enjoining the Respondents from further collection of the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1);
- D. Enter an Order enjoining the distribution of any funds paid into the CMCD Account and requiring the return to the payor(s) of any funds paid into it; and
- E. Award to the Petitioner such other and further relief as may be necessary, just, reasonable, and proper.

**COUNT III**  
**(Violation of Special Law Restriction)**

52. Petitioner Sands incorporates by reference Paragraphs 1 through 51 of this Petition as though set forth herein in full.

53. The Tax Scheme violates Article III § 32 of the Pennsylvania Constitution (the Special Law Restrictions). The Tax Scheme benefits only certain private licensed gaming entities for the particular and limited purpose of augmenting their marketing and capital budgets.

54. The benefits to those private entities are far from proportional to the tax burdens imposed. For higher-revenue slot machine licensees, including Sands, the Tax Scheme is harmful. Sands and other similar entities pay the Supplemental Assessment and Slot Machine Taxes, which flow into the CMCD Account. But unlike its competitors, Sands is ineligible under the Amended Act to receive any payouts from the CMCD Account. Instead, the payouts must be distributed

exclusively to Sand's competitor casinos to fund their marketing and capital improvements.

55. The purported benefits of the special tax are not proportional to the tax burden. As applied to Sands, the Tax Scheme provides no benefit whatsoever, and is actually harmful. The tax burden that Sands shoulders will be distributed to the CMCD Account with the sole purpose of funding the marketing and capital improvements of its competitors.

56. In sum, the Tax Scheme violates the Special Law provision of the Pennsylvania Constitution. It is imposed for the benefit of a small number of private casinos with the sole purpose of funding marketing and capital improvements of their commercial enterprises. Sands pays the Supplemental Assessment but receives no benefit from the Tax Scheme in return since it is ineligible for the payouts from the CMCD Account. The benefits accordingly are palpably disproportionate to its tax burden. *See Monzo*, 500 A.2d at 1104-06 (holding that a room-rate tax, which funded a downtown Pittsburgh convention center, violated the Special Law provision because the tax benefited only hotels proximate to the convention center, but not the petitioner, who was located in the suburbs).

57. As a direct result of the Respondents' continued collection of the tax, Sands will suffer irreparable harm. The impact of this unlawful tax affects its financial and operational condition and its competitive standing in the marketplace.

58. This Court is authorized to grant the relief sought by Petitioner by virtue of 4 Pa. C.S. § 1904.

WHEREFORE, Petitioner Sands Bethworks Gaming, LLC, demands judgment in its favor and against all the Respondents on its claim for violation of the Special Law restrictions of the Pennsylvania Constitution and requests that the Court grant the following relief:

- A. Enter judgment declaring that the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), and all of its constituent parts, to be in violation of the Special Law restrictions of the Pennsylvania Constitution and, therefore, unconstitutional on its face;
- B. Enter judgment declaring that the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), and all of its constituent parts, to be in violation of the Special Law restrictions of the Pennsylvania Constitution and unconstitutional as applied by Respondents in their continued collection of the tax from Petitioner;
- C. Enter an Order enjoining the Respondents from further collection of the tax enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1);
- D. Enter an Order enjoining the distribution of any funds paid into the CMCD Account and requiring the return to the payor(s) of any funds paid into it; and
- E. Award to the Petitioner such other and further relief as may be necessary, just, reasonable, and proper.



**COUNT IV**  
**(Violation of the Fourteenth Amendment of the U.S. Constitution)**

59. Petitioner Sands incorporates by reference Paragraphs 1 through 58 of this Petition as though set forth herein in full.

60. The Tax Scheme violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment. A tax scheme that disproportionately benefits only a handful of private entities is “a taking without due process under the Fourteenth Amendment of the United States Constitution” and “an arbitrary form of classification in violation of equal protection.” *Monzo*, 500 A.2d at 1102. Equal protection does not permit a state to subject certain taxpayers to “discriminatory treatment by subjecting [them] to taxes not imposed on others of the same class.” *Allegheny Pittsburgh Coal Co. v. Cty. Comm’n of Webster Cty., W. Va.*, 488 U.S. 336, 345-346 (1989) (citation omitted).

61. The Tax Scheme furthers *no* legitimate state interest because it serves only to redistribute the proceeds of the Supplemental Assessment to casinos to be used for their private marketing and capital development needs.

62. The Tax Scheme imposes different tax burdens on casinos, like Sands, than it does on casinos in exactly the same class based solely on their revenue levels. Sands shoulders the burden of paying the Special Assessment but it receives no benefit whatsoever from the proceeds. No legitimate government

interest supports the differential tax rates or the narrow private benefits supplied by the Tax Scheme.

63. In short, the Tax Scheme violates equal protection and due process guarantees under any standard of review, even rational-basis review. It furthers no legitimate state interest. It puts burdens disproportionately on members of the same class based solely on revenue levels. It places that burden on those class members without affording them any benefit. It is a taking. No legitimate government interest supports the Tax Scheme's differential rates or its narrow private purpose.

64. Accordingly the Tax Scheme is not valid under the equal protection and due process guarantees of the Fourteenth Amendment.

65. As a direct result of the Respondents' collection of the tax, Sands will suffer irreparable harm. The impact of this unlawful tax affects its financial and operational condition and its competitive standing in the marketplace.

66. This Court is authorized to grant the relief sought by Petitioner by virtue of 4 Pa. C.S. § 1904.

WHEREFORE, Petitioner Sands Bethworks Gaming, LLC, demands judgment in its favor and against all the Respondents on its claim for violation of the Fourteenth Amendment to the United States Constitution and requests that the Court grant the following relief:

- A. Enter judgment declaring that the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), and all of its constituent parts, to be in violation of the Fourteenth Amendment of the U.S. Constitution and, therefore, unconstitutional on its face;
- B. Enter judgment declaring that the Tax Scheme enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), and all of its constituent parts, to be in violation of the Fourteenth Amendment of the U.S. Constitution and unconstitutional as applied by Respondents in their continued collection of the tax from Petitioner;
- C. Enter an Order enjoining the Respondents from further collection of the tax enacted and imposed under 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1);
- D. Award to the Petitioner such other and further relief as may be necessary, just, reasonable, and proper.

**DEMAND FOR INJUNCTIVE AND DECLARATORY RELIEF**

67. Petitioner Sands incorporates by reference Paragraphs 1 through 66 of this Petition as though set forth herein in full.

68. The Petitioner's rights as described above are affected by the Tax Scheme set forth in the Amended Act, and its enforcement by the Respondents, in violation of the Pennsylvania and United States Constitutions.

69. Pursuant to 42 Pa. C.S. §§ 7532 & 7533, and 4 Pa. C.S. § 1904, this Court has jurisdiction to issue a declaratory judgement determining the validity of the Tax Scheme both on its face and as applied.

70. Sands has a bona fide, actual, imminent, present and practical need for a declaration concerning the validity of the Tax Scheme both on its face and as

applied. Sands will suffer direct harm as a result of the collection and redistribution of the tax.

71. Declaratory relief that 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1), are unconstitutional under the United States and Pennsylvania Constitutions is appropriate for all the reasons set forth in this Petition.

72. Injunctive relief is necessary and appropriate for all the reasons set forth in this Petition. 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1) are unconstitutional on their face and as applied, the harm to Sands is irreparable, and Sands lacks an adequate remedy at law.

73. Injunctive relief is necessary because, unless Respondents are enjoined from enforcing 4 Pa. C.S. §§ 1407(C.1), 1407.1, and 1408(C.1) of the Amended Gaming Act, the Petitioner and others subject to imposition of taxes under the Tax Scheme will suffer irreparable harm.

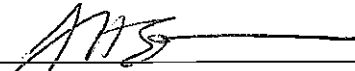
74. Injunctive relief is necessary because, unless Respondents are directed not to distribute funds from the CMDC Account, the Petitioner's competitors will directly and disproportionately benefit from the illegal taxes.

**WHEREFORE**, Petitioner Sands Bethworks Gaming, LLC demands judgment in its favor on its claim for declaratory judgment and injunctive relief.

Respectfully submitted,

Dated: December 28, 2017

By:

  
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Timothy J. Lowry (PA Bar No. 89532)  
Ilana Eisenstein (PA Bar No. 94907)  
Adam A. DeSipio (PA Bar No. 69511)  
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Attorneys for Petitioner  
Sands Bethworks Gaming, LLC

**VERIFICATION**

I, Brian R. Carr, President and Chief Operating Officer of Sands Bethworks Gaming, LLC, hereby state that I am authorized to make this verification on behalf of the Petitioner and I verify that the facts set forth in the foregoing Petition in the Nature of a Complaint Seeking a Declaratory Judgment and Injunctive Relief are true and correct to the best of my knowledge, information, and belief, and this statement is made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities

By:   
\_\_\_\_\_  
Brian R. Carr

Dated: December 27, 2017

**IN THE SUPREME COURT OF PENNSYLVANIA**

SANDS BETHWORKS GAMING, LLC

*Petitioner,*

v.

PENNSYLVANIA DEPARTMENT OF REVENUE; C.  
DANIEL HASSELL IN HIS OFFICIAL CAPACITY AS  
SECRETARY OF THE PENNSYLVANIA  
DEPARTMENT OF REVENUE; and THE  
PENNSYLVANIA GAMING CONTROL BOARD

*Respondents.*

New Case No.

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**PROOF OF SERVICE**

I hereby certify that this 28th day of December 2017, I have served the foregoing Petition in the Nature of a Complaint Seeking a Declaratory Judgment and Injunctive Relief by personal service upon the persons indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Pennsylvania Department of Revenue  
Fourth and Walnut Streets  
First Floor, Strawberry Square  
Harrisburg, PA 17128-1100

C. Daniel Hassell, in his official capacity as Secretary of the  
Pennsylvania Department of Revenue  
Fourth and Walnut Streets  
11th Floor, Strawberry Square  
Harrisburg, PA 17128-1100

R. Douglas Sherman, Esquire  
The Pennsylvania Gaming Control Board  
Verizon Tower, Strawberry Square, 5th Floor  
Harrisburg, PA 17101  
Telephone: (717) 346-8300



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Timothy J. Lowry (PA ID No. 89532)  
Ilana Eisenstein (PA ID No. 94907)  
Adam A. DeSipio (PA ID No. 69511)  
DLA PIPER LLP (US)  
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Philadelphia, PA 19103  
Tel: (215) 656-3300  
Fax: (215) 656-3301



**IN THE SUPREME COURT OF PENNSYLVANIA**

SANDS BETHWORKS GAMING, LLC :

*Petitioner,* :

v. :

New Case No. :

PENNSYLVANIA DEPARTMENT OF REVENUE; C.  
DANIEL HASSELL IN HIS OFFICIAL CAPACITY AS  
SECRETARY OF THE PENNSYLVANIA  
DEPARTMENT OF REVENUE; and THE  
PENNSYLVANIA GAMING CONTROL BOARD

*Respondents.*

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**NOTICE TO PLEAD**

To:

Pennsylvania Department of Revenue  
Fourth and Walnut Streets  
First Floor, Strawberry Square  
Harrisburg, PA 17128-1100

Received in Supreme Court

DEC 29 2017

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**Middle**

**RECEIVED**

DEC 28 2017

SUPREME COURT  
EASTERN DISTRICT

C. Daniel Hassell, in his official capacity as Secretary of the  
Pennsylvania Department of Revenue  
Fourth and Walnut Streets  
11th Floor, Strawberry Square  
Harrisburg, PA 17128-1100

R. Douglas Sherman, Esquire  
The Pennsylvania Gaming Control Board  
Verizon Tower, Strawberry Square, 5th Floor  
Harrisburg, PA 17101  
Telephone: (717) 346-8300

You are hereby notified to file a written response to the enclosed Verified  
Petition in the Nature of a Complaint Seeking a Declaratory Judgment and  
Injunctive Relief within twenty (20) days from service hereof or a judgment may  
be entered against you.