

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 :

No. 216 MM 2017

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RESPONDENTS' ANSWER TO PLAINTIFF'S VERIFIED PETITION  
IN THE NATURE OF A COMPLAINT SEEKING  
A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Respondents, 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, through their undersigned counsel, respond to Petitioner's Verified Petition in the Nature of a Complaint as follows:

1. The averments of this numbered paragraph constitute conclusions of law to which no response is required. It is specifically denied that the Amended Act violates the Pennsylvania Constitution or Constitution of the United States in any way.

2. 4 Pa. C.S.A. §§ 1407 (C.1), 1407.1, and 1408 (C.1) are written documents which speak for themselves.

3. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are considered factual in nature, they are denied.

4. Pa. Const. Art. VIII § 1 is a written document which speaks for itself. The remaining averments of this numbered paragraph constitute conclusions of law to which no response is required.

5. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are considered factual in nature, they are denied.

6. Pa. Const. Art. III, § 32 is a written document which speaks for itself. The remaining averments of this numbered paragraph constitute conclusions of law to which no response is required.

7. The averments of this numbered paragraph constitute conclusions of law to which no response is required. It is specifically denied that the Amended Act violates the Fourteenth Amendment.

8. It is admitted that Petitioner Sands is a limited liability company organized and existing under the laws of Pennsylvania and having the business address stated. It is further admitted that Sands has operated Sands Casino Resort Bethlehem for all times relevant and had the stated gross terminal receipts for the 2016-2017 fiscal year. After reasonable investigation, Respondents lack sufficient information to form a belief as to the truth of the remaining averment of this numbered paragraph; therefore, it is denied.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted. By way of further response, 4 Pa. C.S. §1301 is a written document which speaks for itself.

16. It is admitted that there are different categories of Slot Machine Licenses and that the PGCB has issued six "Category 1" licenses, five "Category 2" licenses, and two "Category 3" licenses. It is further admitted that a Category 1 or Category 2 licensee may, potentially, operate up to 5,000 slot machines at its licensed facility. *See* 4 Pa. C.S.A. §1210. It is denied that a Category 3 licensee is only permitted to operate up to 600 slot machines as the statute allows for a licensee to potentially receive approval to add an additional 250 slot machines. 4 Pa. C.S.A. §1305(c.1). It is further denied that Category 1 and 2 licensees, who hold a table games certificate, are limited to 250 table games or that a Category 3 licensee, who holds a table games certificate, is limited to 50 table games as the statute allows for such a licensee to potentially receive approval for additional table games. 4 Pa. C.S.A. §§13A11(b). It is admitted that the Amended Act adds a Category 4 license. By way of further response, the Amended Act is a written document which speaks for itself.

17. Admitted.

18. Admitted. By way of further response, the Amended Act is a written document which speaks for itself.

19. It is admitted that all Category 1, 2 and 3 licensed gaming entities will be required to pay the Supplemental Assessment, which is 0.5% of the facility's daily gross terminal revenue

(GTR). It is denied that this assessment is only collected from "certain" licensed gaming entities. By way of further response, the Amended Act is a written document which speaks for itself.

20. It is admitted that slot machine licensees must pay slot machine taxes into the State Gaming Fund and that the tax rate for non-category 4 casinos is 34%. The remaining averments are denied as stated. By way of further response, 4 Pa. C.S. §§1403(A) & (C)(1) and 1408 (C.1) are written documents which speak for themselves.

21. It is admitted that the Department is authorized and assigned the duties of administering and collecting taxes imposed under the Amended Gaming Act. It is further admitted that the Gaming Board is charged with administering the CMCD account. The remaining averments are denied. By way of further response, the Amended Act is a written document which speaks for itself.

22. Denied as stated. By way of further response, the Amended Act is a written document which speaks for itself.

23. Denied. By way of further response, 4 Pa. C.S. § 1407.1(e)(2) specifically allows licensees with GTR over \$200 million to apply for grants. Further, the Amended Act is a written document which speaks for itself.

24. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature, they are denied. By way of further response, 4 Pa. C.S. § 1407.1(e)(2) specifically allows licensees with GTR over \$200 million to apply for grants.

25. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature, they are denied.

26. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature, they are denied.

27. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

28. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

29. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

30. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

31. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

32. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

33. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

34. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

35. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

36. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

37. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

### COUNT I

38. Respondents incorporate Paragraphs 1 through 37 of this Answer as though set forth at length herein.

39. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

40. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are determined to be factual, they are denied.

41. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are determined to be factual, they are denied.

42. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

43. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

44. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

45. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

46. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

### COUNT II

47. Respondents incorporate Paragraphs 1 through 46 of this Answer as though set forth at length herein.

48. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

49. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are determined to be factual, they are denied.

50. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

51. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

### COUNT III

52. Respondents incorporate Paragraphs 1 through 51 of this Answer as though set forth at length herein.

53. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

54. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are determined to be factual in nature, they are denied.

55. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are determined to be factual in nature, they are denied.

56. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are determined to be factual in nature, they are denied.

57. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

58. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

#### COUNT IV

59. Respondents incorporate their responses to Paragraph 1 through 58 of this Answer as though set forth at length herein.

60. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

61. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

62. The averments of this numbered paragraph constitute conclusions of law to which no response is required. To the extent the averments are determined to be factual, they are denied.

63. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

64. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

65. The averments of this numbered paragraph constitute conclusions of law to which no response is required.



66. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

67. Respondents incorporate Paragraphs 1 through 66 of this Answer as though set forth at length herein.

68. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

69. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

70. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

71. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

72. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

73. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

74. The averments of this numbered paragraph constitute conclusions of law to which no response is required.

WHEREFORE, Respondents respectfully request that Petitioner's Petition be denied.

#### **NEW MATTER**

In addition to the denials set forth above, Respondents raise the following new matters:

75. The Petition may be barred because this Court lacks subject matter jurisdiction.

76. The Petition must be dismissed because it is not ripe.

77. The Amended Act does not violate the Constitution of the United States or the Pennsylvania Constitution in any respect.

78. The portions of the Amended Act challenged herein are rationally related to a legitimate state purpose.

79. The Amended Act does not disproportionately impact Petitioner.

80. The Petition must be dismissed as it relates to all facial challenges, because Petitioner cannot demonstrate that there are no set of circumstances that exist under which the provision would be valid.

81. Petitioner's claims for declaratory relief are barred by Eleventh Amendment Immunity.

82. Some or all of Petitioner's claims may be barred by the Tax Injunction Act.

WHEREFORE, Respondents respectfully request that this Court grant judgment in their favor, dismiss the Petition with prejudice.

Respectfully submitted,

**JOSH SHAPIRO**  
Attorney General

By: *s/ Karen M. Romano*

**KAREN M. ROMANO**  
Deputy Attorney General  
Attorney ID 88848

**KELI M. NEARY**  
Acting Chief Deputy Attorney General  
Civil Litigation Section

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**Date: January 24, 2018**

IN THE SUPREME COURT OF PENNSYLVANIA

SANDS BETHWORKS GAMING, LLC, :  
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 GAMING CONTROL BOARD, :

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**Respondents** :

CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

By: s/ Karen M. Romano  
KAREN M. ROMANO  
Deputy Attorney General  
Attorney ID 88848

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Respondents :

CERTIFICATE OF SERVICE

I, Karen M. Romano, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on January 24, 2018, I caused to be served a true and correct copy of the foregoing document titled Answer to Petitioner’s Verified Petition in the Nature of a Complaint to the following:

VIA ELECTRONIC FILING

Timothy J. Lowry, Esquire  
Ilana Eisenstein, Esquire  
Adam A. DeSipio, Esquire  
DLA PIPER LLP  
1650 Market Street, Suite 4900  
Philadelphia, PA 19103  
adam.desipio@dlapiper.com  
*Counsel for Petitioner*

s/ Karen M. Romano  
KAREN M. ROMANO  
Deputy Attorney General

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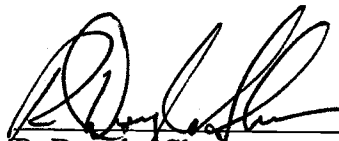
No. 216 MM 2017

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VERIFICATION

The undersigned hereby certifies that the statements contained in Respondents' Answer to Petitioner's Verified Petition in the Nature of a Complaint, which relate to the Pennsylvania Gaming Control Board, are true and correct to the best of his knowledge, information and belief. It is understood that this statement is made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification.

Date: 1-24-2018

  
R. Douglas Sherman

IN THE SUPREME COURT OF PENNSYLVANIA

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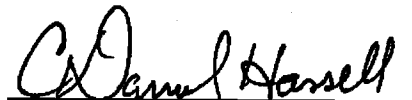
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Respondents :

VERIFICATION

The undersigned hereby certifies that the statements contained in Respondents' Answer to Petitioner's Verified Petition in the Nature of a Complaint, which relate to the Department of Revenue, are true and correct to the best of his knowledge, information and belief. It is understood that this statement is made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification.

Date: 1/24/18

  
C. Daniel Hassell

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**Respondents :**

**NOTICE TO PLEAD**

You are hereby notified to file a written response to respondents' new matter within thirty (30) days from service hereof or a judgment may be entered against you.

**Respectfully submitted,**

**JOSH SHAPIRO  
Attorney General**

**By: s/ Karen M. Romano**

**KAREN M. ROMANO  
Deputy Attorney General  
Attorney ID 88848**

**Office of Attorney General  
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Harrisburg, PA 17120  
Phone: (717) 787-2717**

**[kromano@attorneygeneral.gov](mailto:kromano@attorneygeneral.gov)**

**KELI M. NEARY  
Acting Chief Deputy Attorney General  
Civil Litigation Section**

**Date: January 24, 2018**