

IN THE SUPREME COURT OF PENNSYLVANIA

**SANDS BETHWORKS GAMING, :
LLC, :**

Petitioner :

No. 216 MM 2017

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, :**

Electronically Filed Document

Respondents :

**RESPONDENTS' ANSWER TO PETITIONER'S APPLICATION FOR
SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY INJUNCTION**

Respondents, through their undersigned counsel, respond to Petitioner's Application for Special Relief in the Nature of a Preliminary Injunction as follows:

The initial, unnumbered paragraph constitutes a prayer for relief to which no response is required. To the extent that a response is required, this paragraph is DENIED.

1. DENIED. It is DENIED that the Amended Act establishes a new tax scheme or that it violates any provision of the Pennsylvania Constitution or the Constitution of the United States. The remaining averments of this numbered paragraph constitute a prayer for relief and conclusions of law to which NO RESPONSE is required.

2. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, they are DENIED.

3. ADMITTED in part, DENIED in part. It is ADMITTED that the Amended Act imposes a supplemental daily assessment on Category 1, 2, and 3 slot machine licensees; that these monies are deposited into a restricted fund known as the Casino Marketing and Capital Development Account (CMCD Account); and that the monies are then redistributed to slot machine licensees through a series of distributions and grants. It is specifically denied that the Amended Act creates a new tax scheme. The remaining factual averments of this numbered paragraph are DENIED. To the extent the averments of this number paragraph attempt to interpret the Amended Act codified at 4 Pa. C.S. §§ 1407(c.1), 1407.1, and 1408(c.1), the statute speaks for itself.

4. DENIED. It is DENIED that the Supplemental Assessment and CMCD Account create a non-uniform tax or that the payouts function as a variable tax credit

for the recipients. It is further DENIED that Petitioner is not eligible for any payouts from the CMCD Account. To the contrary, each slot machine licensee is assessed the same 0.5% of its gross terminal revenue and each slot machine licensee is eligible to receive up to four million dollars in distributions and/or grants per year. *See* 4 C.S. §§ 1407(c.1), 1407.1(e)(2). The remaining averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent any factual averments remain, they are DENIED.

5. DENIED. It is DENIED that the Amended Act violates the Uniformity Clause of the Pennsylvania Constitution. It is further DENIED that the Amended Act places a varying and non-uniform net tax rate on the daily receipts that casinos generate. To the contrary, each slot machine licensee is assessed the same 0.5% of its gross terminal revenue and each slot machine licensee is eligible to receive up to four million dollars in distributions and/or grants per year. *See* 4 C.S. §§ 1407(c.1), 1407.1(e)(2). To the extent this numbered paragraph is quoting the Pennsylvania Constitution, that document will speak for itself. The remaining averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent any factual averments remain, they are DENIED.

6. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are

determined to be factual, they are DENIED. It is DENIED that the Amended Act creates a new tax scheme.

7. DENIED. It is DENIED that the Amended Act violates the Special Law Clause of the Pennsylvania Constitution. It is DENIED that the Supplemental Assessment is designed to redistribute tax revenue from certain casinos to other casinos. To the contrary, each slot machine licensee is eligible to receive up to four million dollars in distributions and/or grants per year. *See* 4 C.S. § 1407.1(e)(2). To the extent this numbered paragraph is quoting the Pennsylvania Constitution, that document will speak for itself. The remaining averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent any factual averments remain, they are DENIED.

8. DENIED. It is DENIED that the Amended Act violates the equal protection clause or constitutes a taking without due process. To the extent this numbered paragraph is quoting case law, those documents speak for themselves. The remaining averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent any factual averments remain, they are DENIED.

9. ADMITTED.

10. DENIED. It is DENIED that Petitioners meet the standard for a preliminary injunction or that an immediate stay of the Supplemental Assessment is required. To the contrary, any harm that may be sustained by Petitioners can be adequately compensated by damages. Further, as procedures have not yet been established for a slot machine licensee to apply for grants, no distributions can currently be made from the CMCD Account. Finally, Petitioners are not likely to prevail on the merits. To the extent this numbered paragraph is quoting case law, those documents will speak for themselves. The remaining averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent and factual averments remain, they are DENIED.

11. ADMITTED in part, DENIED in part. It is ADMITTED that the supplemental assessment is based on daily slot machine revenues. It is DENIED that the Supplemental Assessment imposes an unconstitutional and non-uniform tax on Sands. To the contrary, each slot machine licensee is assessed 0.5% of their gross terminal revenue. *See* 4 C.S. § 1407(c.1). It is further DENIED that Sands will suffer irreparable harm each day the Supplemental Assessment is collected. The remaining averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent any factual averments remain, they are DENIED.

12. ADMITTED in part, DENIED in part. It is ADMITTED that beginning January 1, 2018, the supplemental assessment is assessed and remitted daily. After reasonable investigation, Respondents lack sufficient information to form a belief as to the truth of Petitioner's representation of its projected revenues, therefore, those averments are DENIED. The remaining averments constitute conclusions of law to which NO RESPONSE is required.

13. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, they are DENIED. By way of further response, Respondents maintain that the facts of this case are distinguishable from those cited by Petitioners in that the money collected is placed into a discrete and restricted account for which no distributions are anticipated in the short term. This is not a situation where the money is being paid in to a general fund with regular distributions and cannot be recouped.

14. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, it is DENIED that the distribution of the Supplemental Assessment proceeds will provide an unfair and unconstitutional advantage to Sands' competitors. It is further DENIED that the payouts will allow Sands'

competitors to operate at a lower effective tax rate. It is DENIED that a stay is necessary to prevent irreparable harm.

15. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, they are DENIED.

16. ADMITTED in part, DENIED in part. It is ADMITTED that the supplemental assessment and Casino Marketing and Capital Development Account are newly established and that the supplemental assessment was first assessed on January 1, 2018. The remaining averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, they are DENIED.

17. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, it is DENIED that the Amended Act violates the Pennsylvania Constitution or Constitution of the United States.

18. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, it is DENIED that the Amended Act violates the Uniformity Clause or imposes a non-uniform effective tax rate on daily slot receipts.

To the contrary, each slot machine licensee is assessed the same 0.5% of its gross terminal revenue and each slot machine licensee is eligible to receive up to four million dollars in distributions and/or grants per year.

19. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, they are DENIED.

20. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, it is DENIED that the Amended Act creates a new tax scheme which benefits only a handful of private casinos. To the contrary, each slot machine licensee is eligible to receive up to four million dollars in distributions and/or grants per year. *See* 4 C.S. §1407.1(e)(2). To the extent any factual averments remain, they are DENIED.

21. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, it is DENIED that the Amended Act violates the Fourteenth Amendment. It is further DENIED that the Amended Act benefits only a portion of the public.

22. DENIED. The averments of this numbered paragraph constitute conclusions of law to which NO RESPONSE is required. To the extent they are determined to be factual, they are DENIED. It is specifically DENIED that Sands will suffer irreparable harm if the injunction is not granted. This is especially true when there are no procedures in place for distributions to be made from the CMCD Account.

23. DENIED. It is DENIED that the Amended Act's sole purpose is to redistribute the Supplemental Assessment proceeds from higher-revenue to lower-revenue private casinos. To the contrary, each slot machine licensee is eligible to receive up to four million dollars in distributions and/or grants per year. *See* 4 C.S. § 1407.1(e)(2).

24. The averments of this paragraph constitute a prayer for relief to which NO RESPONSE is required.

25. DENIED.

26. The averments of this numbered paragraph are a prayer for relief to which NO RESPONSE is required.

27. The averments of this numbered paragraph are a prayer for relief to which NO RESPONSE is required. Respondents maintain that, as Sands is not at risk of suffering irreparable harm, an expedited briefing schedule is not necessary.

28. ADMITTED in part, DENIED in part. Respondents agree that a schedule should be adopted which allows time for orderly and thoughtful briefing; however, Respondents DENY that the timeframes proposed by Petitioners accomplish this goal. Respondents would request at least forty-five (45) days to file their brief on the merits of this action. Moreover, the parties have already been in discussions regarding a stipulation to resolve the preliminary injunction which would eliminate the need for such expedited action. The remaining averments of this paragraph are a prayer for relief to which NO RESPONSE is required.

WHEREFORE, Respondents respectfully request that the Application for Special Relief be denied.

NEW MATTER

29. Respondents incorporate the denials and responses above as if fully set forth and, for those reasons, Petitioners' Application for Special Relief must be denied.

30. Petitioners' Application for Special Relief must be denied because it is not likely to succeed on the merits.

31. Petitioners Application for Special Relief must be denied because the provisions challenged in their Verified Petition for Review do not violate the Pennsylvania Constitution or United States Constitution.

32. Petitioners' Application for Special Relief must be denied because the constitutional challenges raised in their Petition for Review are not ripe.

33. Petitioners' Application for Special Relief must be denied because Petitioners cannot demonstrate they will suffer irreparable harm that cannot be adequately compensated by damages.

34. Petitioners' Application for Special Relief must be denied because more harm will occur by issuing the injunctive relief than will occur by denying it.

35. Petitioners' Application for Special Relief must be denied because the regulation of wagering is a legitimate state interest and the provisions challenged serve that purpose.

WHEREFORE, Respondents respectfully request that the Application for Special Review be denied.

Respectfully submitted,

**JOSH SHAPIRO
Attorney General**

By: s/Karen M. Romano

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Date: January 29, 2018

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CERTIFICATE OF SERVICE

I, Karen M. Romano, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on January 29, 2018, I caused to be served a true and correct copy of the foregoing document titled Respondents’ Answer to Petitioner’s Application for Special Relief in the Nature of a Preliminary Injunction to the following:

VIA ELECTRONIC FILING

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

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REVENUE <i>and</i> THE PENNSYLVANIA	:	
GAMING CONTROL BOARD,	:	
	:	
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,

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Attorney General

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Civil Litigation Section

Date: January 29, 2018