

This is an amendment to 15.1.10 NMAC, Sections 7, 25, 32, and 45 effective, 5/21/2024.

15.1.10.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

- A.** “**act**” means the Gaming Control Act;
- B.** “**additional payout**” means a supplemental cash payout, based on a jackpot, that is not reflected in the gaming machine pay table (e.g., double jackpot);
- C.** “**affiliate**” means a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation;
- D.** “**allocate**” means the transfer of an allocating racetrack’s right to operate a number of its authorized gaming machines to the receiving racetrack;
- E.** “**allocation agreement**” means a written contract between an allocating racetrack and a receiving racetrack;
- F.** “**allocating racetrack**” means a racetrack gaming operator licensee that has allocated or is proposing to allocate a number of its authorized gaming machines to a receiving racetrack pursuant to a valid allocation agreement;
- G.** “**allowable gaming expenses**” means the following bona fide expenses in reasonable and customary amounts:
 - ~~_____ (1) purchase prices of non-cash prizes;~~
 - ~~_____ (2) security and surveillance expenses;~~
 - ~~_____ (3) independent accountant’s fees;~~
 - ~~_____ (4)] license fees, including renewals and gaming machine license fees;~~
 - ~~_____ (5) utilities attributable to the licensed premises;~~
 - ~~_____ (6) installment payments to an independent administrator or lease payments for licensed gaming machines;~~
 - ~~_____ (7) gaming device repair and maintenance;~~
 - ~~_____ (8) gaming employee salaries and employment taxes;~~
 - ~~_____ (9) gaming supplies;~~
 - ~~_____ (10) approved management fees; and~~
 - ~~_____ (11) licensed premises repair and maintenance;]~~
- H.** “**balance of net take**” means the amount of net take remaining after the gaming operator licensee pays the gaming tax, income and other applicable taxes, and allowable gaming expenses as set forth in this rule;
- I.** “**charitable purposes**” means activities that promote, directly or indirectly, the well-being of the public at large or the benefit of an indefinite number of persons in the state; the term “charitable purposes” does not include operating expenses of the organization or any affiliated organization;
- J.** “**control**” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the licensee or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the licensee;
- K.** “**credit slip**” means a cash-out ticket for winnings earned on a gaming machine that provides for credit play;
- L.** “**disciplinary action**” means an action by the board that limits, conditions, suspends or revokes a license, registration, finding of suitability or prior approval issued by the board, or an assessment of a fine by the board, or any combination of the foregoing;
- M.** “**educational purposes**” means activities or uses that develop the capabilities of individuals by formal instruction; the term “educational purposes” does not include the operating expenses of the organization or any affiliated organization;
- N.** “**gaming credit**” means an accumulation of awards on a gaming machine display screen rather than from the dispensing of winnings from a hopper; one gaming credit equals the denomination of the game being played;
- O.** “**independent administrator**” means:
 - (1)** a bank licensed by the state or a national bank with an office in the state; or

(2) an insurance company admitted to transact business in the state with a best insurance rating of “A,” “A+” or “A-”; and

(3) one that is not an affiliate of the gaming operator licensee;

P. “receiving racetrack” means a racetrack gaming operator licensee that is proposing to receive, or has received pursuant to a valid allocation agreement, allocated gaming machines from an allocating racetrack;

Q. “management contractor” means any person that has entered into a management contract with a gaming operator licensee; a management contractor may not be an affiliate of the licensee;

R. “nonprofit operator licensee” means a qualified nonprofit organization that has obtained a gaming operator’s license pursuant to the provisions of the act and board regulations;

S. “periodic payments” means a series of payments that are paid at least annually and includes annuities;

T. “person” means a legal entity or individual;

U. “personal property award” means an award of personal property based on gaming machine play;

V. “promotion” means a short-term program designed to stimulate participation in gaming activities by patrons through advertising and the award of cash and non-cash prizes, not based on a jackpot; “promotion” includes the gift of nominal value items, such as T-shirts and mugs; and includes player’s clubs or similar programs in which gaming patrons accumulate points, which can be exchanged for cash, machine credits, merchandise or any other thing of value;

W. “state” means the state of New Mexico;

X. “this title” means Title 15, Chapter 1 of the state administrative code;

Y. “trust” means an irrevocable fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another.

[15.1.10.7 NMAC - Rp, 15.1.10.7 NMAC, 1/29/2016; A, 5/21/2024]

15.1.10.25 PAYMENT OF WINNINGS:

A. No gaming machine offered for play by a nonprofit operator licensee shall award a prize that exceeds ~~four thousand dollars (\$4,000)~~ ten thousand dollars (\$10,000). Nonprofit operator licensees shall not offer periodic payments of cash or non-cash winnings and shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

(1) Every gaming machine offered for play by a nonprofit operator licensee shall have affixed to it in a prominent fashion, a notice stating the maximum jackpot possible for that machine.

(2) If a gaming machine offered for play by a nonprofit operator awards a jackpot exceeding the maximum jackpot set/posted for that machine, the gaming operator shall immediately remove the machine from play and notify the operations and enforcement divisions of the NMGCB and the licensee’s gaming machine distributor. It shall be the responsibility of the distributor to determine in five working days whether the excessive jackpot is a machine malfunction or the result of failed programming on the part of the distributor. A copy of the distributor’s findings shall be returned to the licensee and the operations and enforcement divisions of the NMGCB prior to being returned to play on the nonprofit operator’s gaming floor. It shall be an unsuitable method of operation for a distributor to put into play a gaming machine with programming that exceeds the jackpot posted on a gaming machine.

B. Except as otherwise provided in this title, a racetrack gaming operator licensee shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

C. If a gaming operator licensee uses ticket-in/ticket out technology, a patron shall be required to personally present the ticket for redemption at the licensee’s premises. A licensee shall not redeem tickets by mail or by any common carrier.

[15.1.10.25 NMAC - Rp, 15.1.10.25 NMAC, 1/29/2016; A, 5/21/2024]

15.1.10.32 USE OF GAMING RECEIPTS BY NONPROFIT OPERATOR LICENSEE:

A. A nonprofit operator licensee may utilize up to sixty five percent of net take, after payment of the gaming tax, to pay allowable expenses in reasonable amounts for conducting gaming activities on its licensed premises. If the nonprofit operator licensee has entered into a valid lease or other arrangement for furnishing gaming machines, the sixty five percent maximum shall be distributed as follows:

(1) the maximum of forty percent of net take after gaming taxes or no greater than the contract amount if less than forty percent for payment to licensed distributors pursuant to a lease or other arrangement for furnishing a gaming machine;

(2) for payment of other allowable gaming expenses, an amount equal to the difference between sixty five percent of net take less the amount paid to the distributor as described above.

B. The percentage set forth in this section constitutes the maximum amount that may be paid annually for allowable gaming expenses from net take. No other expenses related to or arising out of gaming activities shall be paid from net take or gaming revenues, including but not limited to supplies, fees for management and other services, and repairs to and maintenance of licensed premises and gaming devices. These funds shall be transferred each month to the licensed organization's operating account.

C. A nonprofit operator licensee shall not under any circumstances pay to any distributor licensee the percentage payment allowed in this section, until the required charitable and educational deposits have been made, gaming tax and other applicable taxes have been paid and all taxes and fees are current.

D. The nonprofit operator licensee shall distribute at least ~~sixty~~ twenty percent of the balance of net take to charitable or educational purposes, which purposes do not include gaming expenses. All funds required to be spent for charitable or educational purposes must be expended each year within 120 days after close of the nonprofit operator licensee's fiscal year end. The maximum forty percent of net take, after gaming taxes, remaining after such distribution may be used for other expenses at the discretion of the nonprofit operator licensee, provided none of those expenses shall be incurred to compensate a licensed distributor for the furnishing of gaming machines.

E. Distributions for charitable purposes shall be made solely for benevolent, social welfare, philanthropic, humane, public health, civic or other objectives or activities to benefit the welfare of the public at large or an indefinite number of persons.

(1) Charitable distributions shall not be used to fund operating or capital expenses of any nonprofit gaming operator or any affiliated organization of a nonprofit gaming operator.

(2) A charitable distribution shall be made to an organization outside the state of New Mexico only if the organization is either a charitable organization under Section 501(c)(3) of the Internal Revenue Code or the organization is the nonprofit gaming operator's national organization and the distribution is used for charitable purposes.

F. Educational distributions shall be expended solely to benefit an educational institution or organization or to provide financial assistance to individuals in their pursuit of educational goals.

G. The board shall maintain and publish guidelines that establish the allowed and disallowed uses for charitable and educational funds. The nonprofit operator licensee shall comply with these guidelines in making distributions from its charitable and educational account.

H. The executive director of the board shall disallow any distribution for charitable and educational purposes not in compliance with this rule. If a charitable or educational distribution is disallowed by the executive director, the nonprofit gaming operator may appeal that decision to the board pursuant to Section 60-2E-59 of the act.

[15.1.10.32 NMAC - Rp, 15.1.10.32 NMAC, 1/29/2016; A, 5/21/2024]

15.1.10.45 NONPROFIT CONTRACTS:

A. A nonprofit gaming operator and distributor licensee jointly shall submit any contract or lease agreement between the nonprofit gaming operator licensee or distributor licensee and any other licensee to the board for review not less than 30 calendar days before the contract or lease agreement goes into effect. The term "contract or lease agreement" shall include any amendment of an existing contract or lease agreement.

B. Any contract or lease agreement submitted for review shall include copies of any ancillary agreement, shall state with specificity the beginning and expiration date of the contract, shall state the maximum jackpot agreed upon by the parties for each machine being installed, and shall include meeting minutes or other evidence that the contract has been approved by the nonprofit gaming operator's governing body.

C. The contract or lease agreement shall be deemed approved unless the board disapproves the contract or lease agreement in writing prior to the effective date of the contract or lease agreement. The board shall disapprove a contract or lease agreement submitted for review if the contract or lease agreement was not submitted in compliance with this rule or if it directly or indirectly permits another licensee to manage or otherwise control the nonprofit gaming operator licensee.

D. The factors that may be considered by the board to be indicia of direct or indirect management or control include, but are not limited to:

(1) whether the amount and terms of any loans made to the nonprofit gaming operator licensee, including the principal amount, interest rate, monthly payment and re-payment period, are disproportionate to the assets of the nonprofit gaming operator licensee or create an excessive debt to income ratio;

(2) whether the terms and conditions of any gift, donation or other benefit conferred to the non-profit gaming operator licensee permit another licensee to exercise any direct or indirect management or control over the day-to-day operations of the nonprofit gaming operator licensee;

(3) whether the contract or agreement contains a provision that calls for automatic renewal of the contract or agreement without notice,

(4) whether the term of the contract or agreement is greater than five years,

(5) whether any other term or condition of the lease agreement or contract permits any licensee to effectively exercise direct or indirect management or control over any of the day-to-day operations of the nonprofit gaming operator licensee.

[15.1.10.45 NMAC - Rp, 15.1.10.45 NMAC, 1/29/2016; A, 5/21/2024]